

CFPB Bites of the Month - April 2023 - Stress Awareness Month and the CFPB

April 24, 2023 | [Justin B. Hosie](#) and [Eric L. Johnson](#)

In this month's article, we share some of our top "bites" for the prior month covered during the April 2023 webinar.

Bite 10: CFPB Launches Inquiry Into the Business Practice of Data Brokers

On March 15, 2023, the CFPB issued a Request for Information about data brokers and their business practices, their impact on consumers, and compliance. The CFPB is seeking feedback about companies that track and collect personal information to ultimately address compliance with federal law. The CFPB indicated that data brokers are regulated by the Fair Credit Reporting Act (FCRA), and that this inquiry seeks to determine whether FCRA rules reflect data practices, or whether rulemaking is needed. The CFPB is also seeking information about people's direct experiences with these companies, including when individuals attempt to remove, correct, or regain control of their data. The CFPB must receive comments by June 13, 2023.

Bite 9: CFPB Says That State Business Lending Disclosure Laws are Not Preempted by TILA

On March 28, 2023, the CFPB announced that the federal Truth in Lending Act (TILA) does not preempt state disclosure laws covering business lending in California, New York, Utah, and Virginia. In recent years, these four states have enacted laws that require lenders to include disclosures in their commercial financing transactions with businesses. Commercial lenders have argued that these laws are preempted by TILA. The CFPB analyzed public comments on its preliminary determination and confirmed its position that there is no conflict between the state and federal laws. The CFPB reasoned that the state laws extend disclosure protections to businesses and entrepreneurs that seek commercial financing, not consumers. The Truth in Lending Act, by contrast, applies to consumer credit terms. Since the federal law only preempts state laws under conflict preemption, and the state laws in question expand protections to businesses beyond the scope of the Truth in Lending Act, the CFPB has taken the position that there is no conflict.

Bite 8: CFPB Addresses Collections on Discharged Student Loans

On March 16, 2023, the CFPB released a bulletin addressing unlawful collection of

discharged student loans. The CFPB alleged that certain loan servicers were illegally returning loans to collections after bankruptcy courts had discharged those loans. The CFPB directed those servicers to return the payments and to immediately stop unlawful collection tactics. Certain student loans are eligible for discharge in bankruptcy, including loans made to attend unaccredited schools, loans to students attending less than half-time, loans made in amounts in excess of the cost of attendance, and loans made to cover fees and living expenses incurred while studying for the bar exam or other professional exams. CFPB examiners claim that certain student loan servicers are failing to distinguish between these discharged loans and others, and as a result, are collecting discharged debt. The CFPB announced that it expects that servicers will proactively identify discharged student loans, permanently cease collections, and refund consumers affected by unlawful collections in the past.

Bite 7: CFPB Issues Guidance to Address Abusive Conduct in Consumer Financial Markets

On April 3, 2023, the CFPB issued a policy statement explaining the federal prohibition on "abusive conduct" and summarizing a decade of CFPB activity. The CFPB noted that abusive conduct generally includes (1) obscuring important features of a product or service or (2) leveraging certain circumstances—like gaps in understanding, unequal bargaining power, or consumer reliance—to take unreasonable advantage. The policy statement also describes how abusive conduct can arise from the use of what the CFPB calls "dark patterns," business models that set consumers up to fail, kickbacks, self-dealing, and profiteering from captive customers. The public will have until July 3, 2023, to submit comments.

Bite 6: CFPB Starting Mandated Review of Mortgage Loan Originator Rules

On March 10, 2023, the CFPB announced that it has started its mandatory review of mortgage loan originator rules. Specifically, the CFPB is seeking public input into the economic impact of the mortgage loan originator rules on small mortgage companies. The originator rules cover those paid to arrange, negotiate, or obtain mortgage credit for their customers, such as mortgage lending companies, mortgage brokers, and loan officers. The current rules prohibit dual compensation and practices that could steer consumers to more expensive mortgages. The comment period for this mandated review will be open for 45 days.

Bite 5: CFPB Finalizes Rule to Create a New Data Set on Small Business Lending in America

On March 30, 2023, the CFPB announced that it had finalized its small business lending rule. As we've discussed in prior Bites, Congress required the CFPB to issue a rule to increase transparency in small business lending, promote economic development, and combat unlawful discrimination. Business lenders will be required to collect and report information about the applications they receive, including geographic and demographic data, lending decisions, and the price of credit. The CFPB will require the largest lenders to report first and will allow lenders to accept the self-identification of the small businesses as women-, minority-, or LGBTQI+-owned, and will not need to make their

own determinations about these identifiers. The CFPB will also give extra time for implementation to small lenders that have strong records of service to their local communities. The CFPB also issued several compliance aids including an Executive Summary of the Rule; a Small Business Lending Rule Compliance Dates Info. Sheet, a Small Business Lending Data Points Chart, a Small Business Lending Rule Key Dates Chart, and a Filing Instruction Guide for data submission.

Bite 4: CFPB Files Statement of Interest in Florida Discrimination Case

On April 14, 2023, the CFPB announced that it had filed a statement of interest in a Florida case to help protect consumers from "discriminatory targeting." In that case, the plaintiffs alleged a for-profit nursing school extended and arranged for students to take out loans, and intentionally targeted its program based on race. The plaintiffs claim that the school imposed new grading policies and graduation requirements while students were enrolled in the program, increasing the time and corresponding cost to complete the program beyond what was advertised, and that these actions constituted "discriminatory targeting." The defendant nursing school stated that the plaintiffs failed to specify an aspect of the transaction that discriminated based on race and did not identify a specific unfair or predatory loan term. The CFPB takes the position that the Equal Credit Opportunity Act's (ECOA) prohibition on discrimination applies "with respect to any aspect of a credit transaction" and therefore the plaintiffs were able to allege discriminatory targeting without identifying specific loan terms that violated the law.

Bite 3: CFPB Sues Individuals for Allegedly Hiding Funds to Avoid Penalties

On April 5, 2023, the CFPB announced that it was suing two people for hiding funds to avoid CFPB penalties. The CFPB is pursuing those two people, named as individuals and as co-trustees of revocable trusts, alleging they hid money owed as restitution and penalties for illegal lending activities. The CFPB indicated that the individuals sought to avoid paying more than \$40 million they owed from a 2015 lawsuit. That lawsuit involved alleged deception and other allegations related to an online lending company, operated by one of the individuals, and resulted in an agency order to pay over \$38 million in restitution, a civil money penalty for the organization of \$7.5 million, and a civil money penalty of \$5 million for the CEO. The lender and the CEO lost an appeal, and afterwards allegedly did not comply with the order. The CFPB alleges that the CEO and his wife, the two named individuals in the action, fraudulently transferred funds they should have paid to the Bureau to revocable trusts to use for personal and business use.

Bite 2: CFPB Allocated \$11 Million for Consumers Related to Student Loan Debt Relief

On March 23, 2023, the CFPB announced that it had allocated \$11 million for consumers who were allegedly harmed by a student loan debt relief operation. In 2020, the CFPB alleged that a student-loan debt-relief business and four attorneys were part of an operation that charged approximately \$11.8 million in illegal upfront fees to thousands of consumers. The Telemarketing Sales Rule prohibits upfront fees for debt-relief services sold through telemarketing. In addition to collecting those fees, the CFPB alleged that the debt-relief operation led consumers to believe that they were working solely with an

attorney, but actually distributed the fees to the business. The original complaint also alleged that consumers were encouraged to stop paying their student loans altogether. The CFPB is distributing the funds to approximately 2,600 consumers.

Bite 1: CFPB Orders Payment of More Than \$24 Million Related to Debt Collection and Consumer Reporting

On March 23, 2023, the CFPB ordered a debt collector to pay more than \$24 Million Dollars for allegedly violating a 2015 order. The CFPB claims the organization: collected unsubstantiated debt, failed to provide required documentation and disclosures, sued or threatened to sue without the required documentation, and sued consumers after the statute of limitations had passed. In addition, the CFPB claims the collector violated the Fair Credit Reporting Act by failing to inform consumers about investigation outcomes, failing to timely resolve disputes, and conducting unreasonable investigations. The 2015 order required the debt collector to pay more than \$27 million in consumer refunds and penalties for allegedly unlawful debt collection activities. The CFPB's proposed order will require the debt collector to pay \$12 million to consumers and an additional \$12 million to the CFPB's victims relief fund, improve operations, and fix alleged failures to respond to consumers.

Extra Bite: CFPB Seeks \$3.1 Billion Judgment in Credit Repair Case

On March 12, 2023, media outlets reported that the CFPB was seeking a record setting \$3.1 Billion dollars from a group of credit repair organizations. The CFPB alleges violations of the Telemarketing Sales Rule against more than 4 million consumers, stating that the defendants unlawfully charged these consumers for credit repair services through illegal upfront and recurring fees. The CFPB also accuses the defendants of using "deceptive, bait advertising" to attract prospective customers. Last month, a U.S. District Judge granted the CFPB's motion for partial summary judgment, agreeing that the defendants violated the advance fee provisions of the TSR, and the Tenth Circuit dismissed the defendants' appeal. The allegations date to 2019, and the CFPB stated that the defendants had shown no willingness to comply with the law absent an injunction.

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