

CFPB Bites of the Month - August 2023 - School Bells Ringing Loud and Clear, Vacation's Over, CFPB is Near

August 18, 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 August 2023 webinar.

Bite 1: CFPB Publishes Report on Employer-Driven Debt

On July 20, 2023, the CFPB published a report on employer driven debt, based on an inquiry it started in June of 2022. According to the CFPB, employer-driven debt, which occurs when workers become indebted as a condition of employment, is becoming increasingly common. Employers in some industries require their employees to pay for mandatory training programs when those employees leave the job before a certain time passes, even when those employees started their jobs with the requisite training and state licensing. Another type of employer-driven debt arises when employers require their employees to purchase equipment and supplies. According to the report, workers feel rushed and coerced to incur such debt as a term of employment, and sign paperwork appearing to allow employers to change terms unilaterally. The CFPB expressed concern that this type of debt can impede labor mobility, dissuade wage increases, and impact employees like non-compete agreements would impact them.

Bite 2: Director Chopra Speaks at Roundtable on Data Brokers

On August 15, 2023, Director Chopra spoke at a roundtable event to discuss the findings of its inquiry into the data brokering industry. According to the CFPB director, significant harms can occur when data brokers misuse private data, and the CFPB will be developing rules to address these concerns. One proposal will define data brokers as consumer reporting agencies that are subject to the Fair Credit Reporting Act ("FCRA"), thereby limiting the sale of the data only for specified "permissible purposes," such as underwriting. The FCRA also mandates that consumer reporting agencies and data collectors only collect and report accurate credit information. Under the proposal, individuals would have the right to obtain their data from third-party brokers and dispute any inaccuracies. Another proposal will clarify the extent to which "credit header data"- which includes identifiers like name, date of birth, and Social Security Number - will be deemed a consumer report. At the time of the roundtable, Director Chopra indicated that an outline of the proposal would be released within a month, and that a rule would be proposed for public comment in 2024.

Bite 3: CFPB Addresses Landlord-Tenant Issues

On July 25, 2023, Director Chopra appeared at the *Community Table on the White House Blueprint for a Renters Bill of Rights*, discussing the cost of housing and the increased use of new technologies to score renters. According to Director Chopra, the costs of residential rentals are climbing, driven by large corporate property managers, which now own more than 45% of rental units. Director Chopra said that these property managers are reportedly more likely to evict tenants, even when controlling for other factors, and more likely to use new technologies like artificial intelligence and social scoring to select tenants or raise rental costs. Director Chopra said that consumers have reported instances of mistaken identity, incorrect criminal records, and false eviction information on background checks used for housing and employment. Director Chopra also said that the CFPB will be monitoring the use of algorithms and AI that can lead to junk data and incorrect tenant reports.

In addition, on July 27, 2023, various federal agencies reminded landlords of their obligation to inform tenants and prospective tenants of their rights. The CFPB and the federal agencies indicated that when landlords use a rental background check, the Fair Credit Reporting Act requires those landlords to tell the tenant of their decision and how the tenant can contact the company that created the background check. This adverse action notice requirement applies to actions such as denials, increasing the rent or deposit, or requiring a co-signer. The agencies stated that providing this information in writing is the best way to ensure that tenants get the information they need, and for landlords to demonstrate they are meeting their legal obligations. The CFPB noted that renters have told the CFPB and the FTC they were denied repeatedly when applying for rental housing, sometimes without explanation or even notification. The CFPB and other agencies stated that landlords are ultimately responsible for providing this information to consumers, and a written notice of rights will protect everyone in the transaction.

Bite 4: Director Chopra Releases Statement on Bank Resilience Rule

On July 27, 2023, Director Chopra, in his role as a member of the FDIC board of directors, released a statement supporting a rule to increase banks' capital requirements. He said that the failures of two banks this past March showed that the financial system is critical infrastructure for the country, that financial crises can paralyze the economy, and that the potential costs of bank failures by "too big to fail" Wall Street banks are extraordinary. He said that when these banks fail, those who bear no responsibility for the crash disproportionately feel the pain. The proposed rule would increase the binding capital requirements on banks, using a principle known as "risk-weighting." The proposed rule would also prevent banks from relying on in-house models to determine the risks of their lending activities. The capital increases would happen over a four-year period to ease the transition. Chopra stated that the benefits of these increased resilience requirements include supporting long-term economic growth and reducing the competitive disadvantages that smaller, local banks face. Director Chopra stated that the FDIC welcomes comments on the proposed requirements, and that he is especially interested in ways to help simplify the calculation methodologies.

Bite 5: CFPB Celebrates Twelve Years of Operations By the Numbers

On July 20, 2023, the CFPB published a blog post celebrating its 12th anniversary. The CFPB touted that it has returned \$17.5 Billion to consumers in the form of monetary compensation, principal reductions, canceled debts and other relief, \$4 Billion in civil money penalties into the victim relief fund, identified 200 million consumer accounts eligible for relief, and returned \$175 Million in monetary relief for servicemembers and veterans. Additionally, the CFPB counts 50.1 million users who have accessed answers on the CFPB website, 4 million consumer complaints sent to companies for response, 3,000 average complaints per day, and 180 available languages that consumers can use when filing a complaint. The CFPB indicated that it will continue to deliver results for consumers as the economy and consumer finance markets transition out of the pandemic and further into the digital era. Looking forward, the CFPB indicated that consumers will continue to see CFPB enforcement actions involving repeat offenders, a focus on so-called "junk fees," and a focus on compliance for advanced technology in finance.

Bite 6: New Supervisory Highlights Report finds Violations Across Array of Financial Products

On July 26, 2023, the CFPB released its latest Supervisory Highlights, addressing concerns, particularly UDAAP concerns, across various financial services. The Supervisory Highlights also addressed new examinations involving nonbanks. The Highlights includes for the first time, findings from the CFPB's Supervision information technology program. The CFPB claims that its examiners found that supervised institutions engaged in the deceptive marketing of auto "loans" when they used advertisements that pictured cars that were significantly larger, more expensive, and newer than the advertised "loan" offers were good for; that auto servicers improperly collected and retained interest consumers paid on contracts that included vehicle options that were not in fact included on or in the vehicle, leading to improperly inflated contract amounts; and that servicers engaged in illegal collections practices. The report also claims that payday lenders used unfair and abusive acts by contractually agreeing with consumers that they could not revoke their consent for the lender to call, text, or e-mail about collections. The CFPB also claims that payday lenders threatened wage garnishment and used unauthorized wage deduction documents. The report further claims that debt collectors continued collection attempts after receiving sufficient information that debts were uncollectible. Finally, the CFPB stated that it has begun conducting examinations of new products in emerging markets, including data aggregators that are larger participants in the consumer reporting market. According to the CFPB, "several nonbanks, recognizing the benefits of CFPB supervision, have voluntarily consented to CFPB supervisory authority."

Bite 7: Bankers Ask for Suspension of CFPB's New Small Business Rule

On August 11, 2023, banking groups asked for expansion of a stay on the CFPB's new small business rule. Back in May, the CFPB had issued its Final Rule on small business data collection, amending Regulation B. The rule required those covered to collect and report data on loan applications by small businesses. On July 31, 2023, a District Court Judge in Texas stayed the rule, enjoining the CFPB from implementing and enforcing the rule, while the CFPB's constitutionality is at issue in a pending U.S. Supreme Court Case.

But, the ruling in Texas only applied to members of the Texas and American Bankers Association. The Kentucky Bankers Association and its members filed a lawsuit in a Federal Court in Kentucky, asking for the same relief. Similarly, a group of banking associations nationwide asked Director Chopra to apply the stay to all FDIC insured banks.

Bite 8: CFPB Case against an Auto Finance Company Paused in New York

On August 9, 2023, a federal judge in New York paused a lawsuit against an auto finance company that was brought by the CFPB and New York Attorney General Letitia James, citing the pending case before the Supreme Court about the constitutionality of the CFPB's funding. The auto finance company is accused of misrepresenting the cost of credit, and "tricking" consumers into high-cost credit on used cars. The lawsuit's claims included that the company was hiding costs in its credit agreements and setting consumers up to fail. The original lawsuit sought to force the company to stop its practices, to reimburse harmed consumers, to pay back its allegedly wrongfully earned gains, and to pay a penalty. Both the CFPB and the New York AG's office objected to the decision by U.S. District Judge Jennifer Rearden, saying that the CFPB's funding status had no bearing on whether their lawsuit could proceed. Judge Rearden disagreed, stating that "any potential harm to the public caused by delaying this action is outweighed by the benefit to consumers in proceeding in a streamlined fashion." A decision in the Supreme Court case that will decide the constitutionality of the CFPB's funding is expected in 2024.

Bite 9: CFPB Sues Rent to Own Company for Deceptive Acts and Practices

On July 19, 2023, the CFPB announced that it had filed suit against a lease-to-own company, alleging that the company had deceived consumers, obscured the terms of its agreements, and made false threats. According to the lawsuit, the lease-to-own company used deceptive advertising practices to lock consumers into expensive agreements. The advertisements allegedly promoted a "100 Day Cash Payoff," but the CFPB claims customers were automatically entered into a 12-month plan. The company also allegedly obscured the terms and conditions of its agreements when merchants signed and submitted agreements without customer review and required consumers to pay fees before seeing the terms of the agreement. The CFPB also claimed that the company made false and misleading statements to consumers about their rights under the agreement, which led consumers to believe they could not terminate their agreement or surrender merchandise. Finally, the company also reportedly employed illegal debt collection practices by threatening actions and misrepresenting consumers' payment terms, including to customers who were not in default. The CFPB is seeking penalties, monetary relief for consumers, and an end to the allegedly illegal practices.

Bite 10: CFPB Sues Auto "Loan" Servicer for Alleged Illegal Practices

On August 2, 2023, the CFPB sued an auto servicer in federal court alleging illegal practices. Specifically, the CFPB claims the servicer illegally disabled vehicles, improperly double-billed customers, and failed to give required refunds. The CFPB alleges that the servicer improperly activated starter interrupt devices, which allow for a vehicle to be remotely disabled. According to the suit, the servicer incorrectly disabled vehicles at

least 7,500 times and caused these devices to play warning tones in vehicles over 71,000 times during periods when the consumer was not in default or was in communication about upcoming payments. The suit alleges the servicer remotely disabled vehicles at least 1,500 times after explicitly promising consumers it would not do so. The suit also claims that the servicer illegally repossessed the vehicles of some consumers who never qualified for repossession or had taken action to stop the repossession, and in some instances, sold the vehicles that it had wrongfully repossessed. The servicer also allegedly failed to provide customers with required refunds for Guaranteed Asset Protection products, and double-charged approximately 34,000 consumers for collateral-protection insurance. The CFPB claims the servicer's actions were unfair under the Consumer Financial Protection Act, and is seeking to obtain consumer redress and civil money penalties, as well as a stop to any future violations.

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