

## CFPB Bites of the Month - Carving Up the CFPB

November 30, 2022 | [Eric L. Johnson](#) and [Justin B. Hosie](#)

In this month's Top 10 article, we share some of our top "bites" for the prior month covered during the November 16, 2022 webinar.

### **So, what happened last month?**

#### **Extra Bite: CFPB Releases Report on Tenant Background Checks**

On November 15th, the CFPB released two [reports](#) on the tenant background check industry. The reports describe how errors in these background checks contribute to higher costs for tenants and barriers to quality rental housing. The CFPB analyzed more than 24,000 complaints and results from focus groups with 44 renters which they claim highlighted the renter challenges associated with failure to remove wrong, old, or misleading information and to provide adequate investigations of disputed information. According to the CFPB, these reports: have questionable content, increasingly involve algorithmic scoring, are difficult for consumers to fix, and are sold with erroneous data. Moreover, the CFPB indicated that renters don't receive adverse action notices as required by the Fair Credit Reporting Act.

#### **Extra Bite: CFPB Publishes New Bulletin Analyzing Rise in Crypto-Asset Complaint**

On November 10th, the CFPB released a new [complaint bulletin](#) that highlights complaints the CFPB received related to crypto-assets. According to the CFPB, consumers most commonly reported being victimized by fraud, theft, account hacks, and scams. The CFPB also claims that consumers had issues executing transactions and transferring assets. Many consumers had issues accessing funds due to platform failures, identity verification issues, security holds, and technical issues with platforms. The CFPB also indicated that poor customer service is a common theme across crypto-related complaints.

#### **Bite #10: CFPB Seeks Further Public Input on Big Tech Payment Platforms**

On November 5th, the CFPB announced that it is seeking additional information about big tech payment platforms, their acceptable use policies as well as their use of fines, liquidated damages provisions, and other penalties. The CFPB will re-open the public comment period for 30 days and add additional questions related to a prior request for information. The CFPB published a [Federal Register notice](#) with additional details on the

questions and public comment period.

### **Bite #9: CFPB Kicks Off Personal Financial Data Rights Rulemaking**

On October 27th, the CFPB released an outline of options and proposals aimed to strengthen consumers' access to, and control over their financial data. The CFPB indicated that this is a first step before issuing a proposed rule on data rights that would implement section 1033 of the Dodd-Frank Act. Under the proposals, the CFPB would require firms to make a consumer's financial information available to them or to a third party at that consumer's direction.

### **Bite #6: Director Chopra's Prepared Remarks at Money 20/20**

On October 25th, CFPB Director Rohit Chopra delivered remarks at the Money 20/20 trade show. Director Chopra said the CFPB is planning to move away from "writing complicated rules to fit existing business models" and instead serve as a catalyst to a more competitive market. Director Chopra also said that the CFPB plans to propose rules, requiring financial institutions offering deposit accounts, credit cards, digital wallets, prepaid cards, and other transaction accounts to set up secure methods, like APIs, for data sharing.

### **Bite #7: CFPB Issues Advisory Opinion on "Junk Data" in Credit Reports**

On October 20th, the CFPB issued an Advisory Opinion addressing Fair Credit Reporting Act (FCRA) procedures to prevent facially false information in credit reports. The Advisory Opinion also discusses failures to implement reasonable internal controls and non-compliance with section 607(b) of the FCRA.

### **Bite #6: 2022 Report of the CFPB Education Loan Ombudsman**

On October 20th, the CFPB released its 2022 edition of its annual Report of the CFPB Education Loan Ombudsman. The CFPB's report analyzes complaint data from September 1, 2021, through August 31, 2022, noting an increase in complaints for both private and federal student loans. Among other things, the report highlights borrower experiences regarding defenses to repayment (including the protections provided by the Holder Rule), collection on non-qualified private student loans that have been discharged in bankruptcy, as well as processing delays and incorrect information provided by federal student loan servicers. The report also covers the student lending market and makes recommendations to policymakers and law enforcement officials.

### **Bite #5: CFPB Issues Guidance to Address Investigation Practices by Consumer Reporting Companies**

On November 10th, the CFPB issued a circular indicating that neither consumer reporting companies nor information furnishers can skirt dispute investigation requirements. The circular outlines how regulators and attorneys general can bring claims against companies that fail to investigate and resolve consumer report disputes. The CFPB claims that some consumer reporting companies and some furnishers have failed to conduct reasonable investigations of consumer disputes and failed to sufficiently address

inaccuracies.

#### **Bite #4: CFPB Issues Guidance to Help Banks Avoid Charging Certain Fees on Deposit Accounts**

On October 26th, the CFPB issued guidance about two alleged "junk fee" practices that the CFPB claims are likely unfair and unlawful under existing law. The first potentially illegal practice, which the CFPB calls "surprise overdraft fees," are overdraft fees charged when consumers had enough money in their account to cover a debit charge at the time the bank authorized payment. The second is the practice of broadly charging depositor fees to every person who deposits a check that bounces. This is part of the CFPB's wider effort to address fees the agency calls "junk fees," and the CFPB reminded readers they could learn more about the efforts at [consumerfinance.gov/JunkFees](https://consumerfinance.gov/JunkFees).

#### **Bite #3: CFPB Issues Guidance to Credit Reporting Companies on how to Address "Junk Data" in Credit Reports**

On October 20th the CFPB issued guidance to consumer reporting agencies (CRAs) about their obligation to screen for and eliminate certain "junk data" from consumers' credit reports. The CFPB commented that companies need to take steps to reliably detect and remove inconsistent or impossible information from consumers' credit profiles. In its guidance, the CFPB indicated that CRAs have a legal requirement to follow reasonable procedures to assure maximum possible accuracy of information that they collect and report. According to the CFPB, CRA policies and procedures should be able to detect and remove inconsistent account information and information that cannot be accurate.

#### **Bite #2: The CFPB Finalizes Rule to Increase Transparency Regarding Key Nonbank Supervision**

On November 10th, the CFPB finalized changes to its nonbank supervision procedural rule. In April 2022, the CFPB had amended its procedures to allow the CFPB to publicly release decisions indicating that supervision of a company is warranted. Under the amended procedures, the nonbank entity will have an opportunity to provide the CFPB with input as to whether the decision should be withheld or redacted. The CFPB's changes and clarifications also indicate that the CFPB will not publish information that would fall within certain "Freedom of Information Act exemptions." Likewise, the changes and clarifications extend the time for respondents to provide input related to public release determinations - from 7 business days, to 10 business days.

#### **Bite #1: Appeals Court Finds CFPB Funding Unconstitutional**

On October 19th, a three judge panel of the U.S. Circuit Court of Appeals for the Fifth Circuit decided unanimously, that "Congress's decision to abdicate its appropriations power under the Constitution, *i.e.*, to cede its power of the purse to the Bureau, violates the Constitution's structural separation of powers." As a result, the court reversed the judgment of the district court, rendered judgment in favor of the trade associations suing the CFPB, and vacated the CFPB's 2017 Payday Lending Rule.

**Still hungry?**

Join us for our next CFPB Bites of the Month: Year in Review on December 21. If you missed any of our 2022 Bites, request a replay on our website.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

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