

CFPB Bites of the Month - July 2023 - Freedom, Independence, and Celebration From the CFPB

July 21, 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 July 2023 webinar.

Bite 10: Public Inquiry Launched into Credit Card and Loan Products for Healthcare Costs

On July 7, 2023, the CFPB and two other agencies opened an [inquiry](#) into credit card and loan products for healthcare costs. The U.S. Department of Health and Human Services, the U.S. Department of Treasury, and the CFPB are requesting information into what they call high-cost specialty financial products, such as medical credit cards and installment loans, which are used to pay for medical care. The three agencies are seeking information about the prevalence of these products, patients' experiences with them, and health care providers' incentives to offer these products to patients. These incentives may include avoiding the insurance claims process and financial assistance programs. The CFPB claims that these types of payment products were once used primarily to pay for care not traditionally covered by health insurance plans, such as dental and vision care, fertility services, and cosmetic surgery, but are now also used to pay for primary care and emergency room visits. The agencies are specifically requesting information about the medical payment product market, patient experiences and downstream consequences, billing and financial assistance issues, and healthcare provider incentives. Comments are due September 11, 2023.

Bite 9: Director Chopra's Prepared Remarks on Healthcare Costs

On July 11, 2023, the CFPB hosted a [hearing](#) on medical debt, billing and collections, which included remarks from California Attorney General Rob Bonta, the Department of Health and Human Services, a panel of experts, and the public. At the hearing, Director Chopra stated that "the practices used to bill and collect for medical services have tremendous consequences for American consumers," and that poor medical billing and collection practices can result in patients delaying or declining needed medical care. The CFPB is reportedly working with other agencies in what Chopra called an "all-government effort" to address the burden of medical debt and to lower healthcare costs for consumers.

Director Chopra said that the use of specialty financial products for medical costs can lead to high-pressure situations, such as when a patient is in the emergency room, needs

immediate care, and feels compelled to sign the paperwork in front of them, without the ability to shop around for other credit products. He also said that some consumers who sign financing agreements for their medical costs thought they were only signing consent forms to receive care. As noted above, the CFPB is formally requesting that the public give it information about their experiences with medical billing and debt collection.

Bite 8: CFPB Files Amicus Brief in Maine Mortgage Case

On July 12, 2023, the CFPB announced that it had filed an amicus brief in a mortgage case in Maine, in support of the borrowers' Truth in Lending claim. The CFPB, in its role as the primary regulator responsible for the Truth in Lending Act, joined with Maine's Attorney General, CFPB of Financial Institutions, and CFPB of Consumer Credit Protection to file an amicus brief in the Maine Supreme Judicial Court in a case involving a married couple's loan. The couple had taken out a mortgage for their home, and when the couple went to sell in 2014, their property had lost value and they took out a new loan to cover the shortfall on the original mortgage. After making payments for four years, the couple was unable to pay the final balloon payment, and the bank sued to recover.

During the suit, the couple tried to present evidence that the bank had not provided them with disclosures required by the Truth in Lending Act. In response, the bank argued that because the loan documents stated that the loan had a commercial purpose, the law does not apply. The CFPB's brief explains that lenders cannot escape coverage under the Truth in Lending Act by labeling their loans as "commercial" - instead, the borrower's purpose for taking out the loan determines whether the law applies. The CFPB states that letting lenders escape Truth in Lending Act requirements just by putting a particular label on their loans is inconsistent with Congress's intent.

Bite 7: CFPB Delivers Annual Fair Lending Report to Congress

On June 29, 2023, the CFPB issued its annual Fair Lending Report to Congress. By doing so, the CFPB fulfilled its statutory responsibility to, among other things, report annually to Congress on public enforcement actions taken by other agencies with administrative enforcement responsibilities under the Equal Credit Opportunity Act, and report annually on the utility of the Home Mortgage Disclosure Act's requirement that covered lenders itemize certain mortgage loan data. The CFPB states that its 2022 fair lending work centered on the consumers and communities most affected by unlawful discrimination, including working with federal and state partners to address redlining and discrimination in the home appraisal industry.

The report also said that the CFPB issued several rules and guidance documents reaffirming the importance and applicability of fair lending protections for prospective applicants, applicants for credit, and existing account holders. Finally, the CFPB said it is focusing its future efforts on the increased use of advanced and emerging technologies in financial services, and protecting consumers from algorithmic bias, digital surveillance, data harvesting, and patterns it calls "dark patterns," as well as protecting consumers from harmful uses of automated systems marketed as artificial intelligence. In 2023, the CFPB indicated it will continue to guard against violations throughout the entire credit lifecycle.

Bite 6: CFPB Files Amicus Brief in Discrimination Case

On June 23, 2023, the CFPB filed an amicus brief in a discrimination case, in support of borrower's ability to bring discrimination claims. The CFPB filed the brief in the U.S. Court of Appeals for the Second Circuit in a mortgage lending case. The plaintiffs alleged that a mortgage company and a bank targeted Black and Latino homeowners with abusive and predatory mortgage loans, directed loans to people whose low credit scores indicated that they were at a relatively high risk of default, and imposed higher rates after a single missed payment. The default rate on the defendants' loans allegedly reached nearly 50%, which the CFPB says is well above industry standards. The mortgage company and bank appealed an order to pay compensatory damages, arguing that the borrowers should not have been able to bring their claims at all because too much time had elapsed since they received their mortgage loans, and because the borrowers signed a modification agreement that said they would release and forever discharge the companies from any and all claims.

The CFPB argued in its brief that the federal law should permit borrowers to bring their claims when they did because the entities allegedly concealed their discriminatory and predatory conduct, and that borrowers cannot be bound by a contract to sign away their rights to challenge discrimination.

Bite 5: CFPB Announces Settlement Distribution in Student Loan Action

On July 6, 2023, the CFPB announced a settlement distribution in a prior student loan action, that will result in checks going to 7,000 borrowers. The distribution is related to a July 2020 settlement related to alleged Telemarketing Sales Rule violations. The CFPB claimed that the company advertised that it would help federal student loan borrowers reduce or eliminate their monthly payments, in exchange for paying fees of up to \$699. The Department of Education offers these options to federal student loan borrowers for free.

Under the Telemarketing Sales Rule, it is illegal to request or receive any fees for debt-relief services sold through telemarketing before the terms of the debt are altered or settled and the consumer has made at least one payment pursuant to the new arrangement. However, the CFPB alleges that the company requested and received payments from consumers within a few days, or at the latest, within 30 days of their enrollment—before the terms of the debts were altered. The CFPB will distribute \$3,543,000, which will come from the CFPB's victim relief fund and funds received from the defendant in this case.

Bite 4: CFPB and State Partners Sue Education Company

On July 13, 2023, the CFPB and several state AGs sued an education company offering training funded by an income share arrangement. Allegedly, the company promised to prepare consumers for entry-level positions with "six-figure salaries" and promoted a "job guarantee." The company also claimed that the income share plan was not a loan, though its terms allegedly required consumers to pay even if they never got a job. The company also allegedly unilaterally increased minimum monthly payments without any

evidence of employment or increased income. According to the suit, consumers were tricked into converting the income share agreement into a revised "settlement agreement" that required payments and contained more burdensome dispute resolution and collection terms. The states and CFPB are seeking to void the income share agreements, obtain redress for affected consumers, and obtain a penalty.

Bite 3: CFPB Issues Order against Payment Firm for Allegedly Processing Unauthorized Payments

On June 27, 2023, the CFPB issued an order claiming that a large payment processing company and one of its subsidiaries improperly initiated approximately \$2.3 billion in unlawful mortgage payment transactions, which could have opened up to 500,000 homeowners to overdraft and insufficient funds fees from their financial institutions. In April 2021, the payment firm conducted tests of its electronic payments' platform, but allegedly sent several files filled with actual customer data into the ACH network, accidentally initiating approximately \$2.3 billion in electronic payment transactions from homeowners' accounts without notice or authorization from the nearly 500,000 homeowners. At one bank, for example, more than 60,000 accounts reportedly experienced more than \$330 million in combined unlawful debits by that morning. Among these account holders, approximately 7,300 had their available balances reduced by more than \$10,000. The CFPB claims that these actions violated Regulation E, and in addition to a \$25 million penalty, the company must change its security and testing practices so that it does not happen again.

Bite 2: CFPB and OCC Take Action Against Large National Bank

On July 11, 2023, both the CFPB and OCC took action against a large national bank, ordering payment of more than \$100 Million to customers and \$150 Million in penalties. The CFPB alleged the bank was "double-dipping" on fees, withholding credit card rewards, and opening accounts without authorization. The Office of the Comptroller of the Currency (OCC) also claimed that the bank's fee practices were illegal. The agencies allege that the bank had a policy of charging customers \$35 for insufficient funds and allowed these fees to be repeatedly charged for the same transaction. The CFPB also claims that the bank withheld promised credit card account bonuses, such as cash rewards or bonus points, to tens of thousands of consumers, and denied sign-up bonuses due to system failures. The bank also allegedly opened credit card accounts without consumers' knowledge and obtained credit reports to do so. The enforcement orders require the bank to stop repeat offenses, pay redress to consumers, pay a \$60 million penalty to the OCC, and pay a \$30 million penalty to the CFPB.

Bite 1: Another Brief Filed in CFPB Constitutionality Challenge

On July 3, 2023 the respondent in the CFPB constitutionality case filed its brief, asking the Supreme Court to affirm the Fifth Circuit's Decision, which held that the CFPB's funding mechanism violates the Appropriations Clause of the U.S. Constitution. The Supreme Court will hear arguments on the constitutionality of the CFPB's funding structure during its next term, which starts in October. The brief argues that the CFPB, not Congress, decides the amount of the CFPB's annual funding, violating the

Appropriations Clause, since the CFPB directly requisitions funds from the Federal Reserve Board in the amount requested by the Director. The respondent said that the original meaning of the term "appropriation" was a specific sum, and that therefore the Appropriations Clause requires, at a minimum, that Congress must determine the total amount of funding itself. The CFPB must file its reply brief by August 2, 2023.

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