

CFPB Bites of the Month - March 2023 - Beware the Ides of March and the CFPB

March 23, 2023 | [Eric L. Johnson](#), [Justin B. Hosie](#) and [Laura J. Bacon](#)

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

Bite 10: Junk Fees Supervisory Highlights Special Report

On March 8, 2023, the CFPB [released](#) the latest edition of its Supervisory Highlights, this time focused on junk fees. The CFPB addressed types of financial services including deposit accounts, auto finance, mortgage servicing, small dollar lending, and student lending. For deposit accounts, the supervisory highlights addressed authorized positive fees for overdraft and charging multiple NSF fees for a single item. In auto finance, the CFPB addressed excessive late fees, inflated repossession fees, and pay-to-pay fees. In mortgage servicing, the CFPB addressed excessive late fees, fees for unnecessary property inspections, and "fake" PMI charges. In small dollar lending, the CFPB addressed repossession and property retrieval fees that were not disclosed in credit agreements as well as vehicle repossessions during modification plans. In student lending, the CFPB addressed late fees that were charged even when consumers paid on time.

Bite 9: CFPB Delivered its Annual Report Under the GAO/IG Act

On February 17, 2023, the CFPB [published](#) its annual report under the Good Accounting Obligation in Government Act (GAO-IG Act). From July 2010 through December 31, 2022, the Government Accountability Office (GAO) and the Office of the Inspector General (OIG) have issued a total of 438 recommendations to the CFPB. To date, 375 or 86% of them have been closed. Open recommendations include the GAO's recommendation to: (i) strengthen oversight of the servicemember's interest rate cap on student loans, (ii) clarify private deposit insurance disclosure rules, (iii) provide clarification to fintech lenders on the appropriate use of alternative data in the underwriting process, (iv) assess the impact of recent changes to fair lending activities, (v) define the CFPB's supervisory expectations of CRAs, and (vi) develop a systemic process to prioritize consumer risks. Open OIG recommendations include suggestions to improve the CFPB's information security program, strengthen hiring practices to cultivate a diverse workforce, and improve controls for issuing and managing interagency agreements.

Bite 8: CFPB Claims That Large Credit Card Companies Are Suppressing Payment Data on Credit Reports

On February 16, 2023, the CFPB [announced](#) that it believes larger credit card companies are not reporting actual payment amounts to consumer reporting agencies. The CFPB claims that these credit

card companies started to deliberately suppress their customers' actual payment amounts from the nationwide consumer reporting system. Last May, the CFPB sent letters to the CEOs of several credit card companies asking if actual payment data is being furnished, why they stopped sending that data, and if they plan to change this practice. A CFPB investigation showed that after one large company started leaving this data out of reports, that others soon followed. Following the change, the share of furnished credit card accounts with actual payment information fell from 88% in late 2013 to only 40% by 2015. The CFPB indicated that it believes these companies are withholding this information to make it harder for competitors to offer better customers better rates, products, or services.

Bite 7: CFPB Releases Joint Letter Regarding Discrimination in Appraisal Standards

On February 14, 2023, the CFPB and other federal agencies sent a letter to The Appraisal Foundation (TAF), which is a private, nongovernmental organization that sets appraisal standards. The letter urges TAF to revise its draft Ethics Rule for appraisers to address federal prohibitions against discrimination. The agencies expressed concern about: (i) appraisers lacking awareness of these prohibitions, (ii) alleged discriminatory statements in appraisals, and (iii) disparities for communities and borrowers of color. This is the second time that the CFPB has asked TAF to address appraisal bias, and the CFPB claims that TAF appears reluctant to act. The CFPB says it will continue to work closely with other member agencies to address mis-valuation of properties owned or sold by families and communities of color.

Bite 6: CFPB and FTC Ask for Consumer Experience with Rental Background Checks and Fees

On February 28, 2023, the CFPB and FTC announced a request for information on rental background checks and fees. The CFPB indicated that it has received thousands of complaints about incorrect information on reports, difficulty removing the erroneous information, and an inability to find out what information is being factored into risk scores used to make rental decisions. As a result, the CFPB is asking for public input on: (i) experiences with tenant background checks, (ii) information going into background checks and where it comes from, (iii) accuracy of the information in the checks, especially regarding criminal and eviction records, (iv) whether and how renters know if they've been denied housing or charged higher prices because of the information in a background check, (v) challenges faced in attempting to correct information; and (vi) the types of risk scores marketed to landlords and what challenges these scores can present. The public has 90 days to submit comments from the date of publication in the Federal Register.

Bite 5: CFPB Announces Auto Finance Data Pilot

On February 23, 2023, the CFPB announced a new auto finance pilot and required auto finance companies to provide data as part of the CFPB's ongoing monitoring for consumer risks. The CFPB noted that the auto finance market has changed significantly over the past 2 years, due to rising car prices, larger transaction amounts, and higher monthly payments. The CFPB's data shows that delinquencies are rising, and some consumers are being priced out of the market. As a result, the CFPB issued orders to 9 large auto finance companies, requiring those companies to provide information about their portfolios.

The CFPB identified three areas that are guiding the pilot efforts: "lending" channel differences, data (granularity, consistency, and quality), and "loan" performance trends. The CFPB noted that it reserves the right to use and internally share the information it receives for any lawful purpose. If a creditor has

written policies or procedures that contain responsive information, it must provide those documents to the CFPB with the creditor's answer. The CFPB indicated that it may also issue follow-up requests in connection with a creditor's responses.

Bite 4: CFPB Publishes New Findings on BNPL Users

On March 2, 2023, the CFPB published a new report analyzing the financial profiles of Buy Now, Pay Later (BNPL) consumers. According to the CFPB, BNPL consumers are more likely to use other types of credit products like credit cards, personal loans, and student loans. The CFPB claims that BNPL consumers are also more likely to exhibit measures of financial stress than non-users. The CFPB also claims that BNPL users are more likely to be highly indebted or have revolving balances or delinquencies on their credit cards compared to consumers who don't use BNPL products, and are more likely to use payday loans, pawn transactions, and bank account overdrafts.

The CFPB says that this report debunks the idea that BNPL users don't have access to other forms of credit; they are actually more likely to use other credit products. The CFPB found that BNPL users have lower credit scores on average than non-users, are more likely to have a credit record in another account, are more likely to be delinquent by more than 30 days on other credit accounts, and have higher usage of other loan products. CFPB Director Chopra said the CFPB is "working to ensure that borrowers have similar protections and that companies play by similar rules."

Bite 3: Updated Procedures Finalized for Administrative Enforcement Proceedings

On February 24, 2023, the CFPB announced updates to its procedures for administrative enforcement. The CFPB indicated that while it still plans to bring most of its matters in district court, that in certain circumstances, administrative proceedings can be valuable. The CFPB claims the process allows agencies to harness their regulatory expertise using a "time-honored process that is fair to litigants." The CFPB also says that the updated procedures were designed to benefit all parties in adjudication proceedings. Among various changes, the new procedures provide that (i) parties will have the flexibility to conduct depositions of potential witnesses, and (ii) proceedings can be divided into multiple stages. The CFPB also indicated that these updates will make hearings more efficient and focused.

Bite 2: CFPB Orders Vehicle Title Company to Pay \$10 Million Penalty

On February 23, 2023 the CFPB announced a Consent Order involving a vehicle title loan company. The CFPB claims that the company (i) extended credit at a rate in excess of the Military Lending Act's cap, (ii) attempted to alter consumer information to hide activities, and (iii) collected non-file insurance fees without obtaining non-file-insurance coverage. The CFPB called the company a "repeat offender" due to a 2016 Consent Order. The order requires payment of more than \$5 million in consumer relief and a \$10 million penalty. In addition to the monetary penalties, the company must maintain robust internal controls and testing to address potential violations and report findings directly to the company's chief officers. The Company denies the factual and legal allegations, noting they have not been proven, and noting that it has complied with all prior direction from the CFPB.

Bite 1: CFPB Shuts Down Mortgage Loan Business for Alleged Repeat Offenses Against Military Families

On February 27, 2023, the CFPB announced that it had shut down and permanently banned a mortgage loan business for alleged repeat offenses against military families. The CFPB claims that the mortgage lender disseminated millions of mortgage advertisements to military families that deceptively used fake

U.S. Department of Veterans Affairs (VA) seals, the Federal Housing Administration (FHA) logo, and other language or design elements to falsely imply that the lender was affiliated with the government. The lender was considered a "repeat offender" by the CFPB as it was issued an order in 2015 for these same violations.

The CFPB claims that the lender deceived borrowers about interest rates and key terms by illegally disclosing a simple annual interest rate more conspicuously than the annual percentage rate, advertising unavailable credit terms, and using the name of the homeowner's current lender in a way that could mislead consumers into the belief that the advertisement was coming from their current lender. The advertisements also allegedly misrepresented that the benefits were time limited and that military families could obtain VA cash-out refinancing loans without an appraisal. The advertisements also misrepresented the amount of monthly payments, the annual savings under the advertised loans, and the cash available in connection with the advertised loans. In addition to the permanent ban, the lender will pay a \$1 million penalty that will be deposited into the CFPB's victim's relief fund.

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410.684.3200

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