

CFPB Bites of the Month - October 2023 - Bewitching the CFPB

October 20, 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 October 2023 webinar.

Bite 10: New Report on NSF Fees at Banks and Credit Unions

On October 11, 2023, the CFPB issued a data spotlight on nonsufficient fund fees ("NSF fees") showing that many NSF fee practices have been eliminated by banks and credit unions. NSF fees are charges that some financial institutions impose when they determine that accounts lack sufficient funds and therefore reject to pay funds from a consumer's account for a check or electronic authorization. These are distinct from overdraft fees, which financial institutions charge when they pay a payment from an account that lacks sufficient funds, rather than reject the payment. According to the CFPB, over the last several years, nearly two-thirds of banks with over \$10 billion in assets have eliminated NSF fees and nearly three-fourths of the banks that earned the most in overdraft and NSF fee revenue in 2021 have eliminated NSF fees. However, the CFPB claims that many large credit unions, including 16 of the 20 that have over \$10 billion in assets, are still charging NSF fees. The CFPB's data analysis indicates that as the result of the elimination of NSF fees at these banks, consumers will be saving almost \$2 billion annually on a going forward basis. The CFPB says it will continue to monitor NSF fee practices in the market.

Bite 9: Consumer Advisory on Credit Repair Services

On September 22, 2023, the CFPB published a consumer advisory reminding consumers that they have the right to cancel credit repair services. This advisory followed a recent settlement involving several large credit repair companies. The CFPB says that these consumers have received notices that they can cancel their services with no penalties, at any time, and for any reason or no reason at all. The CFPB is also advising credit repair consumers who contracted for repair services through telemarketing that the credit repair service must achieve the promised results in the promised time frame, and that the consumer must receive a consumer report that shows the promised results, that was generated at least six months after the promised results were achieved. The CFPB's advisory says that only then can a credit repair company that used telemarketing charge any fees or accept payment. The CFPB further advised consumers that they don't need to hire anyone to dispute mistakes in their credit reports; they can do so on their own.

using tools available for free online.

Bite 8: CFPB Launches Initiative on Immigrant Access to Fair Credit

On October 12, 2023, the CFPB launched an initiative on immigrant access to fair credit, and started investigating the financial experiences of immigrants. The CFPB noted that immigrant borrowers, including those protected under the Deferred Action for Childhood Arrivals Program have been denied credit based on their immigration status. These include denials for credit cards, vehicle financing, and student loans. According to the CFPB, it has received complaints from consumers who received positive feedback from lenders about their credit scores and income, but were ultimately denied because of their immigration status alone. The CFPB and the Department of Justice also issued a joint statement on fair lending and credit opportunities for immigrant borrowers under the Equal Credit Opportunity Act (ECOA). Under the ECOA, the CFPB noted that lenders are not prohibited from considering a borrower's immigration status, but they are prohibited from using that status to discriminate based on national origin, race, and other protected characteristics. The CFPB's statement seeks to remind lenders that they cannot use immigration status to justify unlawful discrimination.

Bite 7: CFPB Publishes Special Edition of Supervisory Highlights

On October 11, 2023, the CFPB published a special edition of its Supervisory Highlights, focused on fees the CFPB (and FTC) call "junk fees." The CFPB took issue with organizations charging fees for: (1) multiple payment re-presentments returned unpaid; (2) authorized positive, settle negative overdraft; (3) printing and mailing undelivered statements; (4) depositing unpaid checks; and (5) add-on products in auto finance (including miscalculating add-on product refunds). This special edition also referenced program developments, a circular on overdraft fees, a bulletin on returned deposit fees, and an advisory opinion on pay-to-pay fees.

Bite 6: CFPB Issues Guidance on "Junk Fees" Charged by Banks

On October 11, 2023, the CFPB issued an advisory opinion regarding a statute prohibiting large banks and credit unions from imposing *unreasonable* obstacles on customers related to basic information about their own accounts. Specifically, Section 1034(c) of the Consumer Financial Protection Act requires large banks and credit unions to provide account information upon request to customers when the information is in their control or possession. This includes information about a consumer's accounts for financial products or services, such as balances, interest rates, and transaction history. The CFPB says that large banks are shifting away from a relationship model of banking and are charging so-called "junk fees" on customers to respond to account information inquiries. The CFPB says this practice impedes customers from obtaining information that they are entitled to under federal law. The advisory opinion says that charging fees to respond to an information request violates the CFPA, but that as a matter of prosecutorial discretion, the CFPB does not intend to seek monetary relief for potential violations described in the opinion that occur prior to February 1, 2024.

Bite 5: CFPB and FTC File Amicus Brief on Credit Reports

On September 29, 2023, the CFPB and FTC together filed an amicus curiae brief in the U.S. Court of Appeals for the Second Circuit. The brief argued that companies reporting consumer data must delete data that the company cannot verify after someone identifies the information as wrong. According to the CFPB, some companies have argued that if they are unable to determine that the disputed information is false, then they may continue providing the disputed information on reports. According to estimates cited by the CFPB, one in five Americans has incorrect information on at least one of their credit reports. As a result, the CFPB claims the FCRA requires companies to respond appropriately when notified of errors.

Bite 4: CFPB Kicks off Medical Bill Rulemaking

On September 21, 2023 the CFPB announced that it is beginning a rulemaking process to remove medical bills from credit reports. The CFPB says these efforts will help families financially recover from medical crises, stop debt collectors from coercing people into paying bills they may not even owe, and ensure that creditors are not relying on data that is often plagued with inaccuracies and mistakes. The CFPB cites to a 2022 report indicating that approximately 20% of Americans have medical debt. The CFPB also noted its research indicating that medical billing data on a credit report is less predictive of future repayment than reporting on traditional credit obligations, and that inaccuracies in billing are common and often compounded by disputes over bills and complex billing practices. The CFPB outlined proposals under consideration, which include prohibitions on: (1) the inclusion of medical debt and collection information on consumer reports; (2) a creditor's use of medical collections information when evaluating credit applications; and (3) "coercive" debt collection practices, including the use of the credit reporting system to leverage payments on medical debts. The CFPB is currently reviewing information public responses to recent hearings and inquiries as part of the rulemaking process.

Bite 3: CFPB Sues Another Alleged "Repeat Offender"

On October 4, 2023 the CFPB announced that it filed a lawsuit in federal court against a mortgage company. The CFPB claims that this company is a "repeat offender" as it sued the company earlier this year, and entered a 2019 consent order with this company. According to the CFPB, this company allegedly submitted erroneous mortgage data, which the CFPB says violates both the Home Mortgage Disclosure Act ("HMDA") and a 2019 consent order. In its lawsuit against the company earlier this year, the CFPB sued the company for allegedly paying illegal kickbacks for referrals. The 2019 consent order concerned the company's HMDA reporting, after the CFPB claimed that the company misreported data about applicant race and ethnicity. Director Chopra said that this recent suit demonstrates the CFPB's focus on "ending the cycle of misconduct by repeat offenders in the financial industry." The current lawsuit alleges that the company's 2020 HMDA submission contained widespread errors across multiple data fields; when the company resubmitted its data, it had found errors in 174,000 data fields, affecting nearly 20% of the company's mortgage loan applications. According to the CFPB, the 2019 consent order included a requirement that the company fix its deficient data practices, and the 2020 submission allegedly showed that they failed to do so.

Bite 2: CFPB Takes Actions against International Money Transfer App

On October 17, 2023, the CFPB announced that it had taken action against an international money transfer app, claiming that it violated the Electronic Funds Transfer Act ("EFTA") and Remittance Transfer Rule. The CFPB claimed that the operator of the mobile app allegedly deceived customers about the speed and costs of remittance transfers, forced consumers to waive legal rights, failed to provide required disclosures and receipts, and failed to properly investigate disputes. According to the CFPB, the company violated the EFTA when it required users to waive the company's liability for losses incurred through the app, as the EFTA provides that the rights conferred by the EFTA cannot be waived. The CFPB's Remittance Transfer Rule requires that consumers receive timely receipts, specific disclosures about funds availability and correctly calculated exchange rates- all of which the company allegedly failed to do. The CFPB also alleged that the company committed deceptive acts and practices by falsely claiming that transfers would be delivered instantly and that customers would not incur fees. The CFPB's order requires the company to refund consumers who were charged fees on transactions that were marketed as "fee-free" or whose payments were not delivered on the date promised. The company will also have to pay a \$1.5 million penalty to the victim relief fund.

Bite 1: CFPB and FTC Take Action Against Rental Screening Organization

On October 12, 2023, the CFPB and the FTC announced actions against a rental screening subsidiary of a large consumer reporting conglomerate, for violations of the Fair Credit Reporting Act. The CFPB and FTC have alleged that the subsidiary failed to take steps to ensure the rental background checks were accurate and withheld the names of third parties providing the inaccurate information from renters. Together, the agencies have requested that a federal court order the company to pay \$15 million and make changes to how it reports evictions. The CFPB separately ordered the conglomerate to pay \$8 million for allegedly lying to consumers about timely placing or removing security freezes and locks on the credit reports. According the CFPB, the conglomerate told consumers the requests were completed when they were actually placed into a years-long backlog. The joint action by the CFPB and the FTC against the rental screening subsidiary included allegations that the company failed to take steps to produce accurate reports, including failing to share updated information that evictions had been dismissed and permitting the inclusion of sealed records and multiple entries about the same case. The subsidiary also allegedly failed to identify who provided inaccurate information, leaving tenants unable to contact the provider to correct the inaccuracies. If entered by the court, the subsidiary will pay \$11 million to harmed consumers along with a \$4 million penalty into the CFPB victim relief fund.

Extra Bite: FTC Announces Proposed Rule on "Junk Fees"

On October 11, 2023, the FTC released a notice of proposed rulemaking that would prohibit junk fees, which it described as "hidden and bogus" fees that harm consumers. The FTC said that these fees can cost consumers tens of billions of dollars per year. The rulemaking comes after the agency requested public input (via an Advance Notice of Proposed Rulemaking) last year on whether a rule would help to eliminate these unfair

and deceptive charges. After receiving more than 12,000 comments, the FTC is now requesting a new round of comments on a proposed junk fee rule. Under the proposed rule, businesses would have to include all mandatory fees when telling consumers a price, and the rule would contain enforcement provisions that would allow the FTC to seek refunds and monetary penalties for noncompliance. The rule would ban the practice of so-called "bait and switch" pricing tactics that hide mandatory fees by requiring advertised prices to include mandatory fees and would also ban what the FTC described as "bogus" fees, where the business either does not disclose or misrepresents what the nature or purpose of the fee is. The proposed rule would give the FTC more enforcement authority to seek refunds for harmed consumers and impose penalties of up to \$51,200 per violation. The FTC is seeking public input on 37 questions, with comments due 60 days after the proposal is published in the Federal Register. Congresswoman Maxine Waters issued a press release today applauding the FTC's (and CFPB's) efforts crack down on junk fees and stated that "in the coming weeks, I look forward to further building on this effort by unveiling additional legislation to more expansively address junk fees in the financial services and housing industries."

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