

CFPB Bites of the Month - September 2023 - Harvesting the Latest Compliance Crop

September 22, 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 September 2023 webinar.

Bite 1: Update on Federal Student Loan Borrowers

On September 5, 2023, the CFPB reminded federal student loan borrowers that student loan payments will resume in October, for the first time since March of 2020. The CFPB also reminded borrowers that cancellation and lower payment options may be available, and that these borrowers should explore these options before they start making payments. The CFPB claims that some student loan servicers have made it harder for borrowers to access lower payments and loan cancellation programs, and that borrowers should be aware of the options available to them. The CFPB also noted that there will be an on-ramp period in which interest that accrues during the first year on any missed payments will not capitalize, and borrowers will not be placed in default, receive negative credit reporting, or be referred to collections for twelve months. The CFPB also encouraged anyone having issues with their loans to submit a complaint to the CFPB.

Bite 2: Director Chopra's Prepared Remarks at Fintech Conference

On September 7, 2023, CFPB Director Chopra spoke to the Federal Reserve Bank of Philadelphia's Annual Fintech Conference about the payments system. He said that banking and payments are not regulated just by government regulations but also by regulations imposed by private actors outside the democratic process. He further claimed that when essential facilities succumb to unchecked private control, this can undermine the free market. Director Chopra said that BigTech's entrance into the payments system has deepened consumer engagement on their technology platforms, harvested and potentially monetized transaction related data, and exploited traditional financial sector fee streams. He also claims that the rise of the "tap-to-pay" ecosystem has allowed the two major mobile phone companies to develop a monopolistic dominance over payments. He also expressed concerns that the largest firms will be able to stifle competition and fairness, and called on regulatory agencies to equalize the playing field.

Bite 3: Director Chopra's Statement on Managing Bank Failures

On August 29, 2023, Director Chopra released a statement discussing proposals to improve FDIC options for bank management and addressing new proposals to manage large bank failures. His statement was released ahead of a vote by the FDIC Board of Directors on proposed rules to help protect the public in the event of a bank failure. The proposed rules would increase wind-down planning requirements for domestic systematically important banks (DSIBs) and require DSIBs to fund their operations with a minimum level of long-term debt. Director Chopra said in his statement that he believes that certain aspects of this rulemaking could be revisited and strengthened.

Bite 4: CFPB Reports on College Tuition Payment Plans

On September 14, 2023, the CFPB issued a new report analyzing tuition payment plans offered by nearly 450 institutions. The report indicates that many plans have inconsistent disclosures and confusing repayment terms, putting students at risk of missing payments, incurring late fees, and accumulating debt. The report also claims that many institutions withhold transcripts as a debt collection tool. According to the CFPB, students appear to be a captive market and institutions offer limited options for meeting payment obligations. The CFPB claims that the terms of some tuition payment plans waive borrowers' legal protections, limit consumer rights, and misrepresent the rights and protections available to students. The CFPB noted that it will continue to gather and analyze information on tuition payment plans and the practices of school-based lenders.

Bite 5: CFPB Reports on Role of BigTech in Mobile Payments

On September 7, 2023, the CFPB published an issue spotlight on the role of BigTech in mobile payments. The report indicates that consumers' use of tap-to-pay options has grown considerably in recent years, nearing an estimated \$300 billion on the three largest platforms, with some analysts estimating that digital wallet tap-to-pay transactions will grow by over 150 percent by 2028. According to the report, the two most dominant mobile operating systems impose different regulations on contactless payments. One restricts all third-party applications from using the technology, and the other could change its policy to add similar restrictions. According to the CFPB, these restrictions can reduce consumer choice and hamper innovation. The CFPB claims that developers could create payment solutions that better meet consumer needs without these technological roadblocks. The CFPB noted that it is undertaking a rulemaking effort to clarify consumers' personal financial data rights and that it could consider how BigTech is hindering interoperability across consumer financial products.

Bite 6: CFPB Issues Guidance on AI-Driven Credit Denials

On September 19, 2023, the CFPB issued new guidance about creditors using artificial intelligence and other complex models to assess consumers' creditworthiness, and reminded these creditors that consumers must receive accurate and specific reasons for credit denials. According to the CFPB, when creditors take adverse action against consumers, they cannot simply use CFPB sample adverse action forms and checklists if those materials do not reflect the actual reason for the denial or change. According to the CFPB, creditors are using increasingly complex algorithms in underwriting, sometimes involving information obtained through consumer surveillance. As a result,

the CFPB claims that consumers may be denied credit for reasons that they don't consider particularly relevant to their finances. The CFPB also noted that when creditors simply select the closest matching factor on a sample denial form, they may not be in compliance with the law if those reasons don't sufficiently reflect the actual reason for the action taken against the consumer.

Bite 7: CFPB Sues an Installment Lender for "Loan-Churning"

On August 22, 2023, the CFPB announced a lawsuit against an installment lender. The CFPB sued the installment lender for allegedly illegal "loan-churning" practices that the CFPB claims harvested hundreds of millions of dollars in loan costs and fees. According to the CFPB's allegations, the company identified struggling borrowers and then encouraged them to refinance. The CFPB claims that the company has a business strategy to get customers to refinance loans early and often. The CFPB also alleged that the company incentivized employees to push refinancing, focused on customers' likelihood to refinance instead of their ability to repay, and falsely marketed refinances as fresh starts. The CFPB brought this lawsuit under its UDAAP authority, claiming that these practices are unfair and abusive. The CFPB's suit seeks to end the company's practices, gain redress for consumers, and require the company to pay a monetary penalty.

Bite 8: CFPB Penalizes Two Companies for Alleged Kickbacks

On August 17, 2023, the CFPB penalized two companies for alleged kickbacks. The CFPB took action against a mortgage company and a real estate brokerage firm for actions the CFPB described as an illegal kickback scheme, violating the Real Estate Settlement Procedures Act and its implementing regulation. The CFPB alleged that the mortgage company provided real estate agents and brokers with numerous incentives, including cash payments, in exchange for referrals. The CFPB also claimed that the mortgage company violated federal law by paying for referrals through illegal marketing service arrangements, offering premium subscription services free of charge, and hosting and subsidizing company events and providing gifts. The CFPB ordered the mortgage company to stop providing anything of value to other entities in exchange for referrals and to pay \$1.75 million to the victim relief fund. The brokerage company will pay a \$200,000 penalty and must cease its conduct as well.

Bite 9: CFPB Settles with a Leasing Company

On September 11, 2023, the CFPB and 41 states, plus the District of Columbia, settled an action involving a leasing company, requiring payment of \$36 Million in penalties and relief. The CFPB alleged that the company tricked consumers into expensive leasing agreements by concealing the contract terms and costs, as well as failing to provide legally required disclosures. The CFPB alleged that in addition to concealing the terms of the lease agreements and failing to provide the disclosures required by Regulation M, the company trapped consumers with unreasonable return practices. The CFPB's order will require the company to release consumers from existing agreements, which represents approximately \$33.6 million in released payments, pay an additional \$2 million penalty to the victim relief fund and to the states entering into the settlement,

and permanently cease leasing activities.

Bite 10: CFPB Announces Large Settlement with Credit Repair Conglomerate

On August 28, 2023, the CFPB announced a \$2.7 Billion settlement agreement with a group of credit repair providers. The settlement followed a court's holding in March of 2023 that the entities violated federal law by collecting illegal advance fees for credit repair services through telemarketing. Following the ruling, the companies filed for Chapter 11 bankruptcy protection and represented that they have shut down about 80% of their business. Besides paying a \$2.7 billion dollar judgment, the companies will also be banned from telemarketing credit repair services for 10 years. The companies will be required to send a notice of the settlement to any remaining enrolled customers about the case and about canceling the service.

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