



## CFPB Bites of the Month – August 2024 – All That’s Left of the CFPB’s Summer Sky

August 28th, 2024 | [Eric L. Johnson](#), [Justin B. Hosie](#) and [Kristen Yarows](#)

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In this month’s article, we share some of our top “bites” for the prior and current month covered during the August 2024 webinar.

### **Bite 15: CFPB Receives Petition to Treat Housing Rental Leases as Credit**

On August 12, 2024, a consumer advocacy group [submitted](#) a petition to the CFPB requesting rulemaking under the Equal Credit Opportunity Act to define residential real estate leases as “credit” and landlords as “creditors” under the ECOA for two limited purposes. One is related to the adverse action requirement in Section 1691(d) of the ECOA. The other is to ban the inclusion of medical debt on consumer reports. The consumer advocacy group argued that extending the ECOA notice requirements to rental housing could help improve tenants’ chances to be approved for the next rental application by potentially exposing errors in credit screening reports or weaknesses that they can address ahead of time. Also, the consumer advocacy group argued that the logic for banning medical debt information from credit reports and underwriting carries over equally to the credit screening context. Finally, the consumer advocacy group argued that the CFPB has the authority to advance ECOA’s anti-discrimination objectives.

### **Bite 14: CFPB Responds to a Treasury Request for Information on AI**

On August 14, 2024, the CFPB [responded](#) to the U.S. Treasury’s request for information on the use of artificial intelligence in the financial services sector. The CFPB emphasized that regulators have a legal mandate to ensure that existing rules are enforced for all technologies, including new technologies like artificial intelligence. The CFPB wrote that although “institutions sometimes behave as if there are exceptions to the federal consumer financial protection laws for new technologies, that is not the case.” The CFPB noted that artificial intelligence is just one aspect of the rapid adoption of new technologies in the financial services marketplace and that these technologies are “accompanied by new risks and challenges that the CFPB is keenly focused on.”

### **Bite 13: CFPB Plans to Issue FAQs on BNPL products**

On August 16, 2024, the CFPB [announced](#) that it plans to issue frequently asked questions on Buy-Now-Pay-Later products, and that it won’t seek penalties for noncompliance with its recent interpretive rule on BNPL during a transition period. The CFPB had released what it called an “interpretive rule” saying that BNPL is subject to Regulation Z credit card rules back in May of

2024. In this latest announcement the CFPB indicated that for those BNPL providers working diligently and in good faith to move into compliance, it would not seek penalties for violations of the rules addressed in the interpretive rule. The CFPB also promised to provide FAQs in September to address how to transition into compliance.

### **Bite 12: CFPB Issues Report on School Lunch “Junk Fees”**

On July 25, 2024, the CFPB [issued](#) a report on school lunch junk fees, highlighting concerns with transaction fees for low income families. Specifically, the CFPB issued a report on payment processing companies that help school districts process children’s school lunch payments. CFPB Director Chopra noted that some financial firms “harvest excessive fees from families who purchase school lunch.” The CFPB claimed that while more than 20 unique companies offer these services, just three market leaders serve most enrolled students. The CFPB noted concerns with parents and caregivers not being able to choose their payment platform and fee-free options not being meaningfully available. The CFPB also noted concern with fees being charged per transaction, meaning that fees may disproportionately burden lower-income families making frequent small payments compared to families who can afford to load a substantial amount onto the account at one time. The report is part of the CFPB’s broader effort to monitor payment processing.

### **Bite 11: CFPB Publishes Issue Spotlight on Solar Energy Transactions**

On August 7, 2024, the CFPB [published](#) an issue spotlight addressing solar energy transactions, claiming the transactions have hidden markup fees and exaggerated savings claims. The CFPB’s report claims that solar lenders allegedly mislead homeowners about the terms and costs of their loans, misrepresent the energy savings, and add fees onto the loan balances. The report claims that fees often increase loan costs by 30% or more above the cash price and that providers misrepresent the impact of the federal tax credit for solar installation. The CFPB noted that the market for solar energy systems continues to rapidly grow and is now shifting toward less affluent communities. The CFPB identified four areas of risk, including: (i) hidden markup fees; (ii) misleading claims about what consumers will pay; (iii) ballooning monthly payments; and (iv) exaggerated savings claims. The CFPB also released a consumer advisory warning homeowners of allegedly “risky” practices in the solar lending market and sharing advice to borrowers who encounter illegal activity.

### **Bite 10: CFPB Releases Circular on Intimidation of Whistleblowers**

On July 24, 2024, the CFPB [issued](#) a circular analyzing the following issue: “Can requiring employees to sign broad confidentiality agreements violate Section 1057 of the Consumer Financial Protection Act (CFPA), the provision protecting the rights of whistleblower employees, and undermine the CFPB’s ability to enforce the law?” According to the CFPB, some confidentiality agreements could lead an employee to reasonably believe that they would be sued or subject to other adverse actions if they disclosed information related to suspected violations of federal consumer law to government investigators. The circular notes that it would violate federal law for an employer to demand a confidentiality agreement during an internal investigation that warns employees not to discuss the relevant matters with any external parties and saying they may be subject to legal penalties for doing so. Finally, the CFPB noted that the circular builds on prior CFPB efforts to affirm whistleblower protections, such as the tool that the CFPB implemented in 2021 to streamline how tech employees can submit tips about potential violations of federal

consumer financial laws.

### **Bite 9: CFPB Proposes an Interpretive Rule on Paycheck Advance Products**

On July 17, 2024, the CFPB [announced](#) that it is proposing an interpretative rule on paycheck advance products; sometimes called “earned wage access” or “EWA.” In Director Chopra’s prepared remarks, he noted that many employers have started partnering with companies to provide paycheck advance services. According to the CFPB, some financial companies offering EWA impose significant fees. The CFPB also claims that it observed that direct-to-consumer paycheck advance product providers seek to convince borrowers to “tip” them, generating substantial revenue. The proposed interpretive rule claims that these transactions are loans under federal law and addresses the practice of tipping or charging for “expedited” access to proceeds. Comments on the proposed interpretive rule are due by August 30, 2024.

### **Bite 8: CFPB Issues an Advisory Opinion Addressing Contract-for-Deed Investors**

On August 13, 2024, the CFPB [issued](#) an advisory opinion to address “contract for deed investors.” These transactions, also called “land contracts,” “installment land contracts,” “land sales contracts,” or “bonds for deed,” involve a seller agreeing to turn over a home’s deed only after the buyer completes a series of payments. According to the advisory opinion, federal home lending rules and laws, such as the Truth in Lending Act, cover contracts-for-deed deals. The CFPB says that these transactions can harm housing markets by causing or perpetuating substandard housing stock, inflated home prices, and less access to mainstream mortgage credit.

### **Bite 7: CFPB Finalizes Interagency Guidance on ROVs**

On July 18, 2024, the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and CFPB [issued](#) interagency guidance on reconsiderations of value (“ROVs”) of residential real estate transactions. ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to *reassess* the value of residential real estate. The guidance advises on policies and procedures that financial institutions may implement to permit consumers to provide information that may not have been considered during an appraisal or if deficiencies are identified. The guidance offers examples of policies and procedures to help identify, address, and mitigate discrimination risk. The agencies largely finalized the guidance as initially proposed back in July 2023, with some edits based on the public comments received, including clarifying the guidance’s scope.

### **Bite 6: CFPB Joins Other Regulators in Proposing a Rule to Standardize Data**

On August 2, 2024, the CFPB [announced](#) that it joined several other federal financial regulatory agencies to propose a rule to establish data standards to promote “interoperability” of financial regulatory data across the agencies. The proposal would establish data standards for identifiers of legal entities and other common identifiers. The other agencies that joined in the proposal include the Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Housing Finance Agency, Commodity Futures Trading Commission, Securities and Exchange Commission, and the Department of the Treasury. Congress required the rule under the Financial Data Transparency Act of 2022. Comments on the proposed rule are due 60 days following publication in the Federal Register.

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### **Bite 5: CFPB Issues Final Rule on Automated Valuation Models**

On July 17, 2024, the CFPB and five other agencies [issued](#) a final rule on automated valuation models. The agencies, including the OCC, FRB, FDIC, NCUA, and FHA indicated that the rule was designed to help ensure credibility and integrity of models used in valuations for certain housing mortgages. The rule requires adoption of compliance management systems to ensure a high level of confidence in estimates, protect against data manipulation, avoid conflicts of interest, randomly test and review the processes, and comply with nondiscrimination laws. The rule will become effective about 12 months after publication in the Federal Register.

### **Bite 4: CFPB Takes Action Against Credit Repair Software Company**

On August 8, 2024, the CFPB [announced](#) an action alleging that a credit repair software company and its CEO violated the Telemarketing Sales Rule by charging fees before providing customers with a credit report showing the promised results. The company provided an “all-in-one solution” for people to start their own credit repair businesses. The CFPB alleged that the company provided *substantial assistance* to credit repair businesses and that the CEO was individually liable for the company’s violations because he controlled the company and participated in its acts of substantial assistance, and he knew or recklessly disregarded that they were taking place. The proposed order requires the company to pay a \$1 million civil penalty and the CEO to pay a \$2 million civil penalty. The company and its CEO agreed to stop providing assistance to any businesses that use telemarketing to sell credit repair services and charge advance fees. The company and its CEO also agreed to notify companies using its tools and services that they cannot charge illegal upfront fees and to monitor whether the company’s users are telemarketing and charging advance fees. Director Chopra stated that the CFPB would continue to hold individual executives accountable when they violate federal law.

### **Bite 3: Lease to Own Company Sues the CFPB in Texas, the CFPB Sues in Utah**

On July 22, 2024, a lease to own company [announced](#) that it filed a lawsuit against the CFPB in the U.S. District Court for the Eastern District of Texas alleging that the CFPB does not have statutory authority to bring its threatened enforcement action against the company because its transactions are not credit, loans, or financing transactions. The lawsuit alleges that with “each passing day, Plaintiffs continue to suffer substantial harm from the CFPB’s ongoing and costly ultra vires investigation, which the CFPB recently escalated to a threat—and indeed explicit promise—of imminent litigation against” the company. The complaint also seeks a declaration that the CFPB is unconstitutional because it has not been funding from “earnings” of the Federal Reserve, as required by the Dodd-Frank Act. Four days later, on July 26, 2024, the CFPB [announced](#) that it filed a complaint in a federal court in Utah, alleging that the company’s leases were actually credit. The CFPB claimed that the company violated the Consumer Financial Protection Act’s prohibition against unfair, deceptive, and abusive acts and practices along with the Fair Credit Reporting Act, the Truth in Lending Act, and the Electronic Fund Transfer Act. The CFPB claims the company misled consumers about cost, made product returns difficult, and misled consumers about automatic payments.

### **Bite 2: CFPB Appeals District Court’s Decision in UDAAP Exam Manual Case**

On August 8, 2024, the CFPB appealed an earlier decision from the [U.S. District Court for the Eastern District of Texas](#), which had vacated CFPB changes to its examination manual. Those

amendments deemed discriminatory conduct to be an unfair practice. At that time, the District Court’s decision held that the changes were invalid because the CFPB’s funding structure was unconstitutional, and because the changes exceeded the CFPB’s UDAAP authority. After that decision, the Supreme Court upheld the CFPB’s funding structure as constitutional. In its appeal, the CFPB raised standing and procedural issues. The CFPB also argued that “the only natural reading” of United States Code Section 5531 “is that unfairness can encompass discriminatory acts.” The CFPB argued that Congress provided “clear congressional authorization to regulate in that manner.” The response is due on September 6, 2024.

### **Bite 1: CFPB Loses Argument that Lease-to-Own is Credit**

On August 1, 2024, in an action involving a different lease-to-own company than the one mentioned above, the CFPB [lost](#) in the U.S. District Court for the District of Utah, on claims that leasing-to-own goods constitutes credit. Back in September of 2023, the CFPB had filed a lawsuit against the lease-to-own company alleging violations of the Consumer Financial Protection Act, the Electronic Fund Transfer Act, the Truth in Lending Act, and the Fair Credit Reporting Act. The company moved to dismiss the complaint arguing that it is not subject to the CFPA, TILA, or EFTA because its lease-to-own agreements did not extend “credit.” The court held that the company’s product leases did “not meet the statutory definition of credit because it did not give consumers any right to defer the payment of debt, incur debt and defer its payment, or purchase goods and services and defer payment therefor.” According to the decision, since the company’s product leases did not constitute credit, the lease-to-own agreements were not subject to the CFPA. The court did allow the CFPB to proceed with some claims, including claims that leasing of services may constitute credit.

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