



CFPB Bites of the Month – December 2023 – I’m Dreaming of a Winter Solstice and the CFPB

January 9th, 2024 | [Eric L. Johnson](#) and [Justin B. Hosie](#)

In this month’s article, we share some of our top “bites” for the prior month covered during the December 2023 webinar.

Bite 10: CFPB Issues Fair Debt Collection Practices Act Report

On November 16, 2023, the CFPB [issued](#) its annual FDCPA report. The report noted 8,500 complaints submitted in 2022 by servicemembers, older adults, and other consumers relating to medical debt collections. Additionally, it outlined CFPB and state agency efforts to stop inaccurate medical bill collection. The report also included updates on the debt collection market more broadly, summarized agency debt collection efforts, CFPB outreach, and related consumer education initiatives, and referenced consumer resources such as sample letters for use with debt collectors.

Bite 9: CFPB Comment Letter Focused on Earned Wage Access

On December 1, 2023, the CFPB [announced](#) that as a part of its efforts to monitor state law and regulatory developments, it had submitted input into a proposal by the California Department of Financial Protection and Innovation (DFPI) regarding earned wage access, also known as income-based advances. The CFPB appears to now take the position that these advances have long been part of what the CFPB calls the country’s “consumer lending market.” According to this new development from the CFPB, state agencies provide critical oversight of companies that provide these types of consumer financial products. The CFPB now claims that the DFPI’s proposed approach to treating these programs as loans, is like the approach under the federal Truth in Lending Act and Regulation Z. In its letter to the DFPI, the CFPB noted that it believes that it is appropriate for states to ensure that these products are treated similarly to other income-based advance products with respect to supervision for compliance with applicable law, including ensuring that costs are accurately reflected in what the CFPB called the “cost of credit” and fully disclosed. The CFPB said that it plans to offer guidance on these products to clarify the application of federal law, noting that its previous advisory opinion on this topic had a “very narrow scope” that “should not be misrepresented.”

Bite 8: CFPB Starts Piloting New Construction Loan Disclosures

On November 21, 2023, the CFPB [announced](#) that it approved an application to test new Know Before You Owe Disclosures for construction loans. According to the CFPB, the standard disclosures pose challenges for those loan types. Many first-time homebuyers in rural areas build

their homes, and therefore these challenges may impact rural areas more acutely. The CFPB reviewed the application earlier this year and solicited feedback. After reviewing public comments, the CFPB agreed to approve the template for use. Lenders may apply to the CFPB for approval to test these alternative disclosures for construction loans.

Bite 7: CFPB Shuts Down Medical Debt Collector

On December 15, 2023, the CFPB [announced](#) an action against a medical debt collector, alleging that the collector illegally attempted to collect unverified medical debts after consumers disputed their validity. The CFPB claims the collector violated the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. The FDCPA requires debt collectors to stop collecting disputed debts without substantiating documentation, and the FCRA requires furnishers to conduct a reasonable investigation and notify consumer reporting agencies when a consumer disputes a debt. The CFPB shut down the collector, and banned it from participating in collection activities, debt buying, debt selling, and consumer reporting. The collector must also instruct consumer reporting agencies to delete all collection accounts for all consumers and pay a \$95,000 penalty to the CFPB's civil penalty fund.

Bite 6: CFPB Acts Against a Bank for “Fee Harvesting”

On December 7, 2023, the CFPB [announced](#) an action against a bank that allegedly misled consumers and failed to provide proper disclosures when it enrolled them in overdraft programs over the telephone. The CFPB alleged that the bank failed to describe overdraft service in writing before getting a consumer to opt-in to overdraft coverage, violating the Electronic Funds Transfer Act. The CFPB also claims that bank employees omitted key cost information when enrolling customers over the phone. The CFPB's order requires the bank to refund \$5 million to affected consumers and pay a \$1.2 million penalty to the CFPB's civil penalty fund.

Bite 5: CFPB and 11 States Enter Order Against Student Lender

On November 20, 2023, the CFPB [announced](#) that it joined with 11 states to bring an enforcement action against a student lender that promoted a “job guarantee” and “six-figure salaries.” According to the CFPB, the company deceptively claimed its income share transactions were not loans because repayment was not mandatory. However, the CFPB claims that the company's terms did require repayment. The CFPB also claimed that the company did not disclose required terms to consumers, such as the amount financed and the annual percentage rate. The CFPB further claims the company pushed consumers into converting their income share agreements to revised “settlement agreements” that required payments even if they had not found a job. The company also allegedly filed debt collection lawsuits in a distant jurisdiction that it did not disclose in its agreements. The company must refund \$4.2 million to consumers, cancel all outstanding transactions, permanently cease operations, and pay a civil penalty to the victims relief fund.

Bite 4: CFPB Orders Large Bank to Pay \$12 Million Penalty

On November 28, 2023, the CFPB [announced](#) that it has ordered a large bank to pay a \$12 million penalty for violations of the Home Mortgage Disclosure Act. According to the CFPB's allegations, hundreds of loan officers at the bank failed to ask mortgage applicants certain demographic questions as required under federal law, and then falsely reported that the applicants had chosen not to respond. The loan officers allegedly reported that 100% of applicants chose not to provide their demographic data over at least a three-month period. The CFPB also alleged that the bank

failed to adequately oversee accurate data collection and ignored the known problem for years. The CFPB claims that this bank is a “repeat offender” based on other fines and penalties imposed since 2017.

Bite 3: CFPB Fines Online Lender \$15 Million

On November 15, 2023, the CFPB [announced](#) that it fined an online lender \$15 Million, claiming that the company is a “repeat offender.” The CFPB claimed the lender withdrew funds from customers’ bank accounts without permission, made deceptive statements, and cancelled loan extensions. The CFPB previously fined the lender \$3.2 million in 2019 and ordered it to cease its alleged illegal activities. According to the CFPB’s allegations, the lender withdrew funds from consumer accounts without express informed consent, violating the 2019 order, and in some circumstances used bank account information it had purchased from online lead generators, overwriting the bank account information that borrowers had authorized. The company also allegedly granted loan extensions but then cancelled them, and instead debited consumer accounts for the full loan payment. In addition to the penalty, the CFPB banned the lender from making certain consumer loans. The CFPB is requiring the company to refund money to consumers, and to tie executive compensation to the company’s compliance with federal consumer financial protection laws.

Bite 2: CFPB and OCC Announce Action Against Large Bank

On December 19, 2023, the CFPB and OCC [announced](#) an action against a large bank. The CFPB says the bank kept consumers from accessing their unemployment benefits. The bank allegedly froze tens of thousands of accounts without providing the customers with a reliable and quick way to regain access and failed to provide provisional account credits while investigating potentially unauthorized transfers. These alleged actions happened during the pandemic, while the bank had contracts with at least 19 states to deliver unemployment benefits. The consumers whose accounts were frozen lost access to their benefits until they were able to verify their identities to unfreeze their accounts, but the bank allegedly did not have a system in place for the identity verification. According to federal law, when accountholders report unauthorized transfers, banks must provide provisional account credits if their investigations take more than 10 days, and the CFPB and OCC said that this bank failed to provide those credits. The bank must pay \$5.7 million to consumers, a \$15 million penalty to the civil penalty fund, and change its practices regarding limiting account access and issuing provisional credits. The OCC has separately fined the bank an additional \$15 million.

Bite 1: CFPB Orders Auto Finance Company to Pay \$60 Million

On November 20, 2023, the CFPB [announced](#) that it ordered one of the nation’s largest indirect auto companies to pay \$48 million in redress to harmed consumers and a \$12 million penalty to the civil penalty fund. The order follows allegations that the company prevented borrowers from cancelling products sold with the vehicle, failed to provide proper refunds, and reported incorrect information to credit bureaus. The product included GAP waivers, credit life and health insurance, and extended service contracts, which cost between \$700-\$2,500 per transaction. According to the CFPB, thousands of consumers complained to the auto finance company that their dealers had lied to them about whether these products were mandatory, included them on contracts without the borrowers’ knowledge, or rushed through paperwork to hide buried terms. The CFPB says that despite these complaints, the company made it difficult to cancel these products and failed to fully

refund those consumers who were able to cancel. The CFPB alleged that the company directed consumers to a cancellation hotline that would not accept a cancellation request, delayed refunds by applying the amounts to principal payments, withheld refunds, and furnished false data about delinquent payments to consumer reporting companies. In addition to the monetary penalties, the CFPB ordered the company to cease such practices.

Extra Bite- FTC's CARS Rule

On December 12, 2023, the Federal Trade Commission [announced](#) that it finalized a new rule, the Combating Auto Retail Scams (CARS) Rule, which is a modified form of its proposed Motor Vehicle Dealer Trade Regulation Rule, also known as the Vehicle Shopping Rule. Under the new rule, certain motor vehicle dealers will be prohibited from making any misrepresentations about key information, like price and cost, must provide the “offering price,” which is the price that any consumer can pay for the vehicle, must tell consumers that optional products are not required, and give information about total payments when discussing monthly payments. The rule also prohibits motor vehicle dealers from charging for any add-on product that does not actually provide value to the consumer, and requires dealers to get a consumer’s express, informed consent (a defined term) for any charges that they pay as part of the vehicle purchase. The CARS Rule also includes extensive recordkeeping requirements and additional protections for servicemembers. Absent an injunction, the new Rule will be effective July 30, 2024.

Still hungry? Please [join us](#) for our next CFPB Bites of the Month. If you missed any of our prior Bites, [request a replay](#) on our website.