CFPB Bites of the Month – June 2023 – A New Definition of Summer Madness

June 23rd, 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 June 2023 webinar.

Bite 12: CFPB Focusing on Overdraft Issues

On May 18, 2023, the CFPB announced that it had issued a report on consumer experiences with overdraft. The CFPB conducted focus groups with 36 low- and moderate-income consumers in 2022 to discuss consumer experiences and understand overdraft programs. Discussion topics included confusion about overdraft policies, concerns about excessive fees, consumer experiences with financial hardships after incurring overdraft fees, account closures, and tactics to avoid overdraft. The focus group members were largely unaware that deposit accounts without overdraft fees were available or were skeptical that these accounts worked as promised or would be available to them. The CFPB found that many of these consumers had low awareness about how overdraft programs work in general, had mixed views on what overdraft protection meant, and often did not know if they had signed up for an overdraft protection program or if it came with their account. Additionally, the focus group members expressed frustration with fees and with a perceived lack of communication from their financial institution about payment timing and negative balances.

The following week, on May 24, 2023, the CFPB reported that overdraft and non-sufficient fee (NSF) revenue for the fourth quarter of 2022 was approximately $1.5 billion lower than in the fourth quarter of 2019 – a decrease of 48%. The CFPB stated that the evidence suggests that financial institutions are not increasing other checking account fees to compensate for reduced overdraft/NSF revenue, and that across all reporting banks, combined account maintenance and ATM fees remained flat from 2019 to 2022. The CFPB collected this data from banks with assets over $1 billion, who have been required to report this information since 2015. From 2015-2019, the overdraft/NSF revenue reported by these banks totaled $11-12 billion annually. While the original drop in fee revenues was probably due to pandemic-related stimulus checks pushing up average checking account balances, the CFPB claimed the continued fall is likely due to changes in bank polices. The total overdraft/NSF revenue for 2022 was $7.72 billion, a decrease of 35% compared to the nearly $12 billion reported in 2019.

Bite 11: Chatbots in Consumer Finance

On June 7, 2023, the CFPB released a new spotlight on the use of chatbots by financial institutions, which can simulate a human-like response to customers and reduce the costs of customer service agents. CFPB Director Rohit Chopra stated that "many" financial institutions are using artificial intelligence technology to steer users to chatbots, which can lead to "customer frustration, reduced trust, and even violations of the law." Approximately 37% of the United States population is estimated to have interacted with a bank's chatbot in 2022, and the top 10 commercial banks in the country all use chatbots to engage with customers. The CFPB believes that several risks can arise from the use of chatbots, including:

- Noncompliance with federal consumer financial protection laws by providing inaccurate information or failing to realize a consumer is invoking their federal rights,
- Diminished consumer service and trust, and
- Harm to consumers, including the potential to steer consumers to the wrong product or service.

The CFPB indicated that it will continue to monitor the market and will expect financial institutions to use chatbots in a manner consistent with their customer and legal obligations.

Bite 10: CFPB Cautions Consumers about Storing Funds in Payment Apps

On June 1, 2023, the CFPB issued a caution to consumers about storing funds in payment aps. Specifically, the CFPB published an advisory to consumers to transfer balances to insured banks and credit unions. According to a CFPB analysis, the funds stored in digital payment apps may be vulnerable in the event of financial distress, as they are not always held in accounts with federal deposit insurance coverage. The use of nonbank payment apps has rapidly grown in the past few years, and these apps allow people to quickly make payments, while also providing the option to store funds. Unlike funds stored in insured deposit accounts, the funds stored in these apps may be unprotected. Up to ¾ of adults in the U.S. have used a payment app, transaction volume in 2022 was estimated at approximately $893 billion, and is projected to reach approximately $1.6 trillion by 2027. The CFPB's research suggested that the funds that consumers receive through apps are not automatically swept into their linked bank or credit union account, and payment app companies do not necessarily store customer funds in an insured account through a business arrangement with a bank or credit union. Additionally, the user agreements often lack specific information about where the payment apps hold or invest funds, and what would happen to these funds if the entity holding them were to fail.

Bite 9: CFPB Intends to Simplify and Streamline Mortgage Servicing

On June 15, 2023, the CFPB announced that it intends to simplify mortgage servicing. Last fall, the CFPB sought public input into ways to reduce risks for borrowers struggling to make mortgage payments, and whether any of the features of pandemic-related forbearance programs could be used to automate and streamline long-term loss mitigation. The CFPB said that during the unemployment spike caused by COVID-19, it recognized that there were places where mortgage servicing rules could be revised to reduce unnecessary complexity. The comments received by the CFPB showed that consumers can face paperwork challenges that hurt both homeowners and servicers, and that the pandemic-related changes made it easier to accommodate borrowers quicker. Commenters also expressed concern that borrowers often incur servicing fees and experience negative credit reporting while waiting for their mortgage servicers to review their options, which can continue to harm borrowers after the loss mitigation options have been implemented. The CFPB says it will use this input to propose ways to simplify and streamline mortgage servicing rules in ways that will promote greater agility on the part of mortgage servicers in their response to borrowers.

Bite 8: Proposed Rule on Open Banking Coming Soon

On June 12, 2023, the CFPB announced that it is working on a new personal data rights rule to accelerate the shift towards open banking. According to the CFPB, there are obstacles that occur when consumers try to switch banks or apply for loans. The CFPB's goals include allowing consumers to "vote with their feet," exercise their data rights, and easily move to new financial institutions without feeling trapped by their current bank. The CFPB says the rule will achieve these goals by developing open banking standards that curtail attempts to limit consumers' exercise of their data rights. The CFPB estimated that it will issue a proposed rule in October 2023 and finalize the rule sometime in 2024.

Bite 7: CFPB and Other Agencies Propose Guidance on Real Estate Valuation Reconsiderations

On June 8, 2023, the CFPB and other agencies proposed interagency guidance on real estate valuation reconsiderations. The CFPB, FDIC, Federal Reserve, NCUA, and OCC requested comments on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions. ROVs are requests from a financial institution to an appraiser or another preparer of a valuation report to reassess the value of residential real estate. ROVs sometimes arise after a consumer provides information to a financial institution about potential deficiencies or other information that may affect the estimated value. The proposed guidance advises on policies that financial institutions could implement to address this consumer information. It also describes how financial institutions may create or enhance ROV processes while remaining consistent with safety and soundness standards, complying with applicable laws and regulations, preserving appraiser independence, and remaining responsive to consumers. The guidance also addresses ways financial institutions can mitigate risks in the collateral valuation process, including discrimination risk. The agencies must receive comments within 60 days of the proposed guidance's publication in the Federal Register.

Bite 6: Comment Requested on Proposed Rule about Automated Valuation Models

On June 1, 2023, the CFPB, FDIC, Federal Reserve, NCUA, FHFA, and OCC requested comment on a proposed rule to address the credibility and integrity of real estate valuation models. The rule is designed to regulate automated valuation models (AVMs), which are models used as part of the real estate valuation process, that are made possible by advances in database and modeling technology and the availability of larger property datasets. Under the proposed rule, the agencies would require policies, practices, procedures, and quality control standards designed to ensure the credibility and integrity of valuations. Standards in the rule are intended to ensure a high level of confidence in the estimates produced by AVMs, help protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and promote compliance with applicable nondiscrimination laws. CFPB is especially concerned that the AVMs may continue to reflect any bias or blind spots that existed in the data used to create these models. The agencies provided 60 days for the public to comment, from the date of publication in the Federal Register.

Bite 5: Comment Deadline Extended to Share Feedback on Data Brokers

On June 8, 2023, the CFPB announced that it was extending its comment deadline to share feedback on data brokers. In March of 2023, the CFPB launched a public inquiry into the data broker industry, seeking input into an industry that can involve the collection and sale of private data. The CFPB says that data brokering is an industry that largely operates out of public view, and that there is still relatively limited public understanding of data brokers' operations. "Data broker" is a term the CFPB uses to describe those companies that collect, aggregate, sell, resell, license, or share personal information with others. The CFPB says that some of these companies have a direct relationship with consumers, and others operate without any consumer contact. The CFPB is specifically interested in input into the ways in which data brokers may interact with or impact specific consumer populations, such as older adults, servicemembers, students, workers, immigrants, low-income consumers, and underserved or vulnerable consumers. The CFPB extended the comment deadline to July 15, 2023, and stakeholders from across the marketplace are encouraged to share their data, analysis, research, and other information about their experiences with data brokers.

Bite 4: CFPB Orders Medical Debt Collector to Pay Redress and Penalties

On June 8, 2023, the CFPB ordered a medical debt collector to pay $1.675 million to the victim relief fund as well as an unspecified amount in consumer redress for alleged debt collection and credit reporting violations. The CFPB claims that in thousands of cases, the debt collector continued to attempt to collect debts that were not substantiated after consumers disputed the validity of those debts, risking consumer harm. The CFPB also accused the debt collector of sharing the disputed information with consumer reporting agencies, which may have resulted in many inaccuracies remaining on consumers' credit reports. The order states that the debt collector violated both the Fair Credit Reporting Act and Fair Debt Collection Practices Act, and must pay the penalties, provide redress to consumers, cease unlawful activity, and cooperate with CFPB examinations for the duration of the order.

Bite 3: CFPB Reaches $9 Million Settlement with Large Bank

On May 23, 2023, the CFPB announced a $9 Million settlement with a large bank. The settlement resolved allegations that the bank failed to appropriately manage and respond to card disputes and fraud claims. Specifically, issuers are required to investigate billing allegations, send consumer notifications, and issue refunds as appropriate. The CFPB claimed in a 2020 lawsuit that the bank violated the Truth in Lending Act and Regulation Z by improperly denying customer reports of fraud, failing to provide refunds, failing to provide required notices, and referring customers who called for credit counseling to collections. The bank will pay a $9 Million fine and must change its dispute practices, plus properly address valid billing error notices and unauthorized use claims.

Bite 2: CFPB Orders Installment Lender to Pay Large Settlement

On May 31, 2023, the CFPB ordered an installment lender to pay $20 Million for alleged deceptive sales practices. According to the CFPB's claims, the lender expected its employees to upsell add-on products to borrowers on every loan, and incentivized employees to push more add-on products, even when consumers had already declined the products on previous loans. Allegedly, salespeople could be fired for failing to sell enough add-on products. The CFPB also claims that the lender failed to refund interest charged to 25,000 consumers within a "full refund period" and deceived borrowers about their need to purchase add-on products to receive a loan. The lender will pay $10 million to consumers and an additional $10 million penalty to the CFPB's victims relief fund. The CFPB will also require the lender to adjust its policies to make cancellation of add-on products easier, double the period in which a consumer can cancel an unused add-on product without cost (from 30 to 60 days), and include interest in refunds after add-on product cancellations at any time.

Bite 1: Eleventh Circuit says CFPB Abused Discovery Process

On June 12, 2023, the US Court of Appeals for the 11th Circuit upheld sanctions against the CFPB for deposition obstruction. Previously, a U.S. District Judge had sanctioned the CFPB for its behavior during discovery in a 2015 robocall case, and an Eleventh Circuit panel affirmed those sanctions, stating that discovery abuses justified dismissing part of the CFPB's enforcement action. The sanctions were imposed in 2017, and the court threw out the CFPB's claims against 5 of the 18 named defendants in the case. The District Court Judge agreed with the defendants who asked for sanctions, after they said the CFPB was violating discovery rules. The CFPB had allegedly objected excessively during depositions and had a CFPB representative repeatedly answer with "filibuster style reading" from notes. The CFPB argued that dismissal was too draconian, and that the defendants would never be held accountable for their roles in debt collection activity that resulted in over $5 million in compensation to consumers from the other defendants. The Eleventh Circuit upheld the sanctions, however, stating that the CFPB repeatedly disobeyed the judge's clear instructions and orders and therefore the judge had not abused his discretion by ordering the dismissal.

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.