



CFPB Bites of the Month – October Top 10

October 20th, 2021 | [Justin B. Hosie](#) and [Eric L. Johnson](#)

Each month, we host a 30-minute [webinar](#) outlining the month's key announcements and takeaways from the Consumer Financial Protection Bureau (CFPB) for financial services providers to consider. In this month's article, we share some of our top "bites" covered during the October 20 webinar.

So, what happened at the CFPB in the past month?

Bite #10 – An appeals court vacated the CFPB's award against two mortgage relief companies and their attorneys.

Back in 2014, the CFPB brought an action against two legal groups and their law firms alleging they violated the Consumer Financial Protection Act (CFPA) and Regulation O. Regulation O bans mortgage assistance relief service providers from requesting or receiving payment from consumers before a consumer signs their lender's mortgage modification agreement. It provides exemptions for attorneys engaging in the practice of law. The CFPB had alleged that the law firms, in this case, were not engaging in the practice of law while providing mortgage relief services. Although the U.S. Court of Appeals for the 7th Circuit agreed with the lower court ruling that the law firms were subject to and had violated the CFPA and Reg O, they did not find evidence that the firm and attorneys had acted recklessly.

The 7th Circuit directed the lower court to consider the violations under a strict liability standard, which does not require a finding of intent and carries a fine of \$5,000 per day, rather than the \$25,000 per day for the reckless standard. The Court also reversed the lower court's ruling barring the attorneys from offering debt relief services.

Bite #9 – The CFPB sued a software company and its owner.

The CFPB filed a lawsuit in federal district court accusing a California-based software company and its owner of providing assistance to an allegedly illegal credit-repair business. The CFPB alleged that the company violated the Telemarketing Sales Rule (TSR) and the CFPA by providing substantial assistance or support to credit-repair businesses that use telemarketing and charge unlawful advance fees to consumers. The CFPB seeks relief for alleged harm to consumers, disgorgement of their alleged unjust gains, an injunction to stop their alleged illegal conduct, and civil penalties.

Bite #8 – The CFPB released three reports.

The CFPB released three reports last month, one addressing consumer complaints and

demographic characteristics, one on defaults and interest rates in subprime auto transactions, and one reporting semi-annual activity to Congress.

The first report found differences, based on demographic characteristics between the types of complaints consumers made. According to the CFPB, complaints from wealthier communities and communities with higher percentages of white, non-Hispanic residents were more frequently about loan origination and performing servicing, while the complaints from communities of color and lower-income communities were more frequently about credit reporting, identity theft, and delinquent servicing. Asian American and Pacific Islander communities had higher rates of submitting credit reporting complaints than predominantly white, non-Hispanic communities; however, they also had a lower share of delinquent servicing complaints.

The second report examined the variation of interest rates among subprime loans and differences in default rates. According to the CFPB, differences in default risk could only explain some differences in interest rates offered by different creditors. The report indicated that banks and credit unions that offer subprime auto transactions have consumers with higher credit scores than finance companies and buy-here-pay-here dealerships, and have lower default rates. Bank rates average around 10% and their consumers default about 15% of the time. Finance companies and buy-here-pay-here dealerships offer rates between 15-20% and their consumers default about 25-40% of the time. The report discusses other reasons that interest rates could vary across lender types, including variation in borrowers' access to information, financial sophistication, variation in business practices, and variation in incentives.

The third report, the Semi-Annual Report to Congress covered CFPB activity between October 1, 2020, through March 31, 2021. The report highlighted the fact that the CFPB had rescinded its prior "Statement of Policy Regarding Prohibition on Abusive Acts or Practices," issued under prior CFPB leadership. It also noted that the CFPB would return to supervising violations of the Military Lending Act. The report also quantified that through enforcement actions the CFPB had ordered approximately \$880 million in total consumer redress and \$200 million in penalties.

Bite #7 – The Senate confirmed Chopra and he was sworn in.

On September 30, after a nomination process that started back in January, the U.S. Senate approved the new CFPB Director, Rohit Chopra, along party lines, 50-48. Director Chopra most recently served as an FTC Commissioner and before that served five years as the CFPB's Student Loan Ombudsman under former CFPB Director Cordray. Chopra was then sworn in on October 12. He published [this letter](#) to the CFPB staff, the Board of Governors of the Federal Reserve System, the Board of Governors of the Federal Deposit Insurance Corporation (FDIC), and Members of the Financial Stability Oversight Council.

Bite #6 – The CFPB published debt collection rule FAQs.

The CFPB issued Debt Collection Rule FAQs related to Regulation F. The FAQ topics are: limited content messages, telephone call frequency generally, telephone call frequency presumptions, telephone call frequency excluded calls, and rebutting presumptions related to telephone call frequency. The FAQs serve as a CFPB issued [Compliance Aid](#).

Bite #5 – The deadline to request initial COVID hardship forbearance was extended.

The CFPB extended the deadline to request initial COVID hardship forbearance. Under the

extension, mortgage servicers are authorized to approve initial COVID hardship forbearance requests for home loans backed by HUD/FHA, USDA, or VA until the COVID-19 National Emergency is officially over. Previously, the deadline was set for September 30, 2021. If a home loan is backed by Fannie Mae or Freddie Mac, there is not currently a deadline for requesting an initial COVID hardship forbearance.

Bite #4 – The U.S. Supreme Court declined a petition challenging the CFPB’s enforcement action authority.

RD Legal Funding LLC challenged the CFPB’s authority to pursue enforcement actions brought before the decision in *Seila Law LLC v. CFPB*. The *Seila* ruling had left open the question of what should happen to cases brought before the decision. By declining to hear the RD Legal Funding case, the Supreme Court signaled that CFPB enforcement actions prior to *Seila* will be allowed to proceed.

Bite #3 – The CFPB took action against a reverse mortgage company.

The CFPB filed a complaint and proposed a consent order alleging that a mortgage company used inflated and deceptive home estimates to lure consumers into taking out reverse mortgages. The CFPB also alleged that the company’s conduct violated a 2016 administrative consent order that addressed its deceptive advertising of reverse mortgages. If entered by the court, the proposed consent order would prohibit the company from future unlawful conduct and require it to pay \$173,400 in consumer redress and a \$1.1 million civil money penalty.

Bite #2 – The CFPB’s Rulemaking on Payday, Title, and High-Cost Installment Loans is delayed.

On October 14, the U.S. Court of Appeals for the Fifth Circuit sided with the Community Financial Services Association of America (CFSA) and Consumer Service Alliance of Texas in their appeal to delay the rule’s implementation until the appeals process is completed. The rule was set to go into effect on June 13, 2022.

Bite #1 – The CFPB took action against a prison debit card provider.

In the first new action since Director Chopra was sworn in, the CFPB took action against a prison financial services company. The company allegedly violated the CFPA by charging consumers to access their own money on prepaid debit cards required by the prison system. The CFPB also alleged that the company violated the Electronic Fund Transfer Act (EFTA) when it required consumers to sign up for the company’s debit card as a condition of receiving government benefits – in particular, “gate money,” which is money provided under state law to help people meet their essential needs as they are released from incarceration.

The consent order severely limits the fees the company can charge on release cards going forward, allowing only inactivity fees after 90 days without card activity. The order also requires the company to pay \$4 million for consumer redress and a \$2 million civil money penalty.

Extra Bite – Acting Director Ueijo announced new advisory committee members, and new Director Chopra named key senior positions.

Shortly before the Senate approved new Director Chopra, Acting Director Dave Ueijo announced

the appointment of new members to the Consumer Advisory Board (CAB), Community Bank Advisory Council (CBAC), Credit Union Advisory Council (CUAC), and Academic Research Council (ARC). Committee members will advise CFPB leadership on a broad range of consumer financial issues and emerging market trends. Dodd-Frank and the Consumer Protection Act charge the CFPB with establishing a CAB to advise and consult with the CFPB's Director on a variety of consumer financial issues. The CFPB also created three councils: the CBAC, CUAC, and ARC. The CBAC and CUAC advise and consult with the CFPB on consumer financial issues related to community banks and credit unions. Committee members include experts in consumer protection, financial services, consumer lending, economic justice, and consumer financial products and services as well as representatives of community banks and credit unions.

After his swearing-in, Director Chopra announced several new senior positions at the CFPB, including:

- Zixta Q. Martinez will serve as Deputy Director, and in that role will oversee the CFPB's Operations Division.
- Karen Andre will serve as Associate Director for Consumer Education & External Affairs.
- Jan Singelmann is returning to the CFPB to serve as Chief of Staff. He previously served as Senior Litigation Counsel in the CFPB's Office of Enforcement.
- Erie Meyer is returning to the CFPB to serve as Chief Technologist. She served on the implementation team that launched the CFPB and became a founding team member of the CFPB's Office of Technology and Innovation.

Still hungry?

Tune in on November 17 and December 15 for our next Bites of the Month [webinars](#). You won't want to miss our special one-hour December 15 Year in Review!