



CFPB Bites of the Month – September Top 10

September 16th, 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 September 15 webinar.

So what happened at the CFPB in the past month?

Bite #10 – Trade groups submitted a letter to the House Subcommittee supporting HR 4773

Nearly 30 trade groups, led by the Consumer Bankers Association (CBA), submitted a [letter](#) to Rep. Blaine Luetkemeyer, Ranking Member of the Subcommittee on Consumer Protection and Financial Institutions on the House Financial Services Committee, expressing strong support for H.R. 4773, the Consumer Financial Protection Commission Act.

The Act would transition the CFPB's governance structure from a sole director to a five-person, bipartisan commission. The CBA-led coalition included nearly 30 trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes. The letter outlines the negative impact the current leadership structure has had over the last decade, due to the scope and influence of its single director. The letter also identifies the strong public support for replacing the single director structure at the CFPB.

Bite #9 – Consumer groups seek summary judgment in their challenge to the legality of the CFPB's Taskforce on Federal Consumer Financial Law

Back in June 2020, advocacy groups filed a lawsuit in the Massachusetts federal district court challenging the legality of the CFPB's Taskforce on Federal Consumer Financial Law. The plaintiffs alleged the CFPB failed to comply with the Federal Advisory Committee Act (FACA), a federal law that governs the creation, operation, and management of advisory committees to federal agencies. On August 20, 2021, the plaintiffs moved for summary judgment.

The plaintiffs requested that the Court: bar the CFPB from any future use of the Taskforce's Report or other work product; require the CFPB to place a disclaimer on the Report whenever it is disseminated; and release remaining Taskforce records, not just the limited documents available online or otherwise. The plaintiffs also seek a declaration that the creation of the Taskforce violated FACA.

Bite #8 – Decline in auto finance-related complaints

According to the CFPB's Consumer Complaint Database, complaints regarding auto-finance declined 3.7% from June to July. August continued the downward trend, with complaints filed as of August 22, down 67% from July.

Since the end of May, 83% of auto finance complaints were related to vehicle "loans" and 17% were lease issues. Of the issues reported, 31% were linked to managing a loan or lease including billing, fees and problems with additional products or services purchased with the loan. Issues at the end of the loan or lease included not receiving the certificate of title and challenges with paying off the loan; these accounted for 23% of the complaints.

Auto finance made up 13.5% of complaints across all credit product complaints, totaling 125,434 since the end of May.

Bite #7 – The CFPB issued specifications for credit card agreement and data submission

The CFPB issued technical specifications for complying with credit card agreement and data submission requirements under the Truth in Lending Act and the CARD Act. Credit card issuers will be required to use the CFPB's new "Collect" website to submit required information to the CFPB. Card issuers must register to use the Collect site by emailing a registration form to collect_support@cfpb.gov.

Credit card issuers who are required to make quarterly credit card submissions to the CFPB pursuant to 12 CFR 1026.58(c) must register for Collect by Nov. 1. Once card issuers receive their login credentials, starting on Dec. 1, they will be able to review their current submissions and make the required submissions for the fourth quarter of calendar year 2021 using Collect.

Bite #6 – The CFPB published information about trends in consumer credit outcomes during the pandemic

In the fifth and final blog post in a series addressing the pandemic, the CFPB focused on the share of new credit applications that resulted in new accounts, and the amount of credit that was extended to consumers who opened new accounts. Access to new credit tightened for credit cards but loosened for mortgages and auto loans. Credit limits on new credit card accounts have declined, but principal amounts on new auto loans and mortgages have risen.

Bite #5 – The 2021 mortgage servicing COVID-19 rule took effect on August 31, 2021

The new mortgage servicing rule aims to prevent avoidable foreclosures as protections expire. Under the new rule, most mortgage servicers are required to take certain steps to help homeowners in forbearance find options for repaying their loan.

Before January 1, 2022, most servicers cannot start the foreclosure process—except in limited circumstances—without first reaching out to the homeowner with the following information:

- Date the forbearance program will end;
- Options for repaying missed payments and avoiding foreclosure; and
- Information on how to contact free housing counseling services.

The new rule applies regardless of whether the mortgage is federally backed. However, it only applies to closed-end loans on principal residences, and does not apply to home-equity lines of

credit, open-end lines of credit, investment properties, or reverse mortgages. “Small servicers,” as defined by the servicing rules, are not required to comply with this rule.

Bite #4 – The CFPB released a Notice of Proposed Rulemaking to amend Regulation B

The CFPB released a Notice of Proposed Rulemaking (NPRM) to amend Regulation B. The proposal would implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of Dodd-Frank.

The CFPB is proposing to require covered financial institutions to collect and report data on applications for credit for small businesses, including those that are owned by women or minorities. The proposed rule uses the term “covered financial institution” to refer to those financial institutions that would be required to comply with section 1071’s data collection and reporting requirements. The CFPB is proposing that a covered financial institution is a financial institution that originated at least 25 covered credit transactions for small businesses in each of the two preceding calendar years.

The proposal also addresses:

- its approach to privacy interests and the publication of section 1071 data;
- shielding certain demographic data from underwriters and other persons;
- recordkeeping requirements;
- enforcement provisions; and
- the proposed rule’s effective and compliance dates.

In a related [report](#), the CFPB described its methodology for estimating how many banks would be required to report under the proposed rule and for producing market-level estimates of the costs associated with implementing the proposed rule. Comments will be due 90 days after the proposal is published in the *Federal Register*.

Bite #3 – The compliance date for CFPB’s final Small-Dollar Rule takes effect on June 13, 2022

In 2018, trade associations had filed a complaint challenging the CFPB’s 2017 [Final Rule](#) governing Payday, Vehicle Title, and Certain High-Cost Installment Loans. On August 31, 2021, the U.S. District Court for the Western District of Texas issued an order in that case, *Community Financial Services Association of America, LTD. v. Consumer Financial Protection Bureau*. The order granted the CFPB’s motion for summary judgment and set the date for complying with the rule for 286 days from the date of the order.

In staying the compliance date, the court was “persuaded by the Associations’ arguments that they should receive the full benefit of the temporary stay and that a more substantial compliance date allows time for appeal.” As a result of the decision, the new compliance date for the rule is currently June 13, 2022, though an appeal may impact the ultimate timing.

Bite #2 – The CFPB took action against an organization offering Income Share Agreements

The CFPB took an action alleging that an organization failed to provide disclosures required by federal law (TILA, Regulation Z, CFPA) and violated a prepayment penalty prohibition for private education loans. CFPB Acting Director Dave Uejio indicated that Income Share Agreements

(ISAs) are *credit* products and therefore must comply with federal consumer protections. The alleged violations involved the companies' origination activities, which allegedly included:

- Falsely representing that its ISAs are not loan products and do not create debt.
- Denying consumers information necessary to fully evaluate their financial options.
- Subjecting consumers to fees or penalties for early repayment or prepayment.

The consent order requires the company to:

- Stop stating that its ISAs are not loans or do not create debt for consumers;
- Provide disclosures required by the Truth in Lending Act;
- Continue its practice of not objecting to any discharge of a student's ISA in bankruptcy;
- Not impose a prepayment penalty on a private education loan; and
- For certain ISAs, recalculate the payment caps to eliminate a prepayment penalty.

The CFPB did not impose financial penalties after considering the organization's responsible conduct, noting that it demonstrated good faith and substantial cooperation beyond that required by law.

Bite #1 – The CFPB sued an online lender for violating a 2016 consent order

The CFPB filed a lawsuit in federal district court accusing an online lender of violating a 2016 consent order and deceiving tens of thousands of borrowers. Back in 2016, the CFPB had previously ordered the company to pay \$1.83 million in consumer redress, pay a \$1.8 million civil penalty, and to stop misleading consumers with false claims about the cost of loans and the benefits of repeated borrowing. The company is also subject to a 2021 stipulated final judgment that resolved the CFPB's claims that the company violated the Military Lending Act in connection with its extensions of credit.

In this most recent action, the CFPB alleges that, in violation of the 2016 order, the company has continued engaging in illegal and deceptive marketing. The CFPB also alleges that the company failed to properly provide notices to denied applicants. Specifically, the CFPB alleges that the company:

- Deceived consumers about the benefits of repeat borrowing,
- Violated the CFPB's 2016 consent order, and
- Failed to provide timely and accurate adverse-action notices.

The CFPB is seeking an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty.

Still hungry?

[Tune in October 20 and November 17 for our next Bites of the Month webinars.](#)

You also won't want to miss our special December 15 CFPB Year in Review!