

CFPB Bites of the Month - February Top 10

February 28, 2022 | [Justin B. Hosie](#) and [Eric L. Johnson](#)

We thank you for reading our Top 10 and listening to our CFPB Bites of the Month webinars over the past two years. We are pleased to continue the series in 2022. In this month's article, we share some of our top "bites" for the prior month covered during the February 16 webinar.

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

Bite #10 - The CFPB's Office of Minority Women and Inclusion released a report on diversity and inclusion within financial services.

Under Section 342 of the Dodd-Frank Act, the CFPB's Office of Minority and Women Inclusion (OMWI) is charged with developing standards for assessing diversity and inclusion at the financial entities the CFPB regulates. To further that effort, the CFPB engaged in an analysis of 2020 public data and compiled a report to share its findings.

OMWI analyzed the financial services' industry commitment to diversity and inclusion by assessing publicly available information of entities regulated by the CFPB. Based on the research and analysis, the CFPB has outlined recommendations for large, midsize, and small institutions. The [Report](#) addresses diversity and inclusion initiatives and various options available to entities of different sizes. The report also highlights the activities that financial institutions have engaged in to advance diversity, equity, and inclusion.

The CFPB indicated that it will use the data collected to provide examples of diversity and inclusion best practices, resources, and success stories to encourage the adoption of diversity and inclusion best practices.

Bite #9 - The CFPB's Acting General Counsel says some EWA products may be loans.

On January 18, CFPB Acting General Counsel Seth Frotman sent a response [letter](#) to advocacy groups who previously asked the CFPB to rescind its guidance on earned wage access products (EWA). In his response letter, Frotman said that some EWA products *may* qualify as "credit" under state and federal laws and that those charging fees (or accepting voluntary gratuities) may qualify as "loans" under the Truth in Lending Act. He further indicated that he would ask Director Chopra for clarification on the CFPB's stance on the products.

Bite #8 - The CFPB outlined steps it will take on credit card interest and "junk fees."

From 2018 to 2020, the CFPB estimates that Americans paid roughly \$120 billion per year in credit card

interest and fees. As a result, the CFPB is looking to ensure that there is robust and fair competition in the credit card market by

- Uncovering unfair, anti-competitive practices.
- Using rulemaking under Section 1033 of the Dodd-Frank Act to make it easier to compare, switch, or refinance credit cards.
- Scrutinizing fees the CFPB has dubbed "junk fees."

While we're on the topic of so-called "junk fees"...

Bite #7 - The CFPB launched its initiative to save money on "junk fees."

According to the CFPB, companies are increasingly charging fees that the CFPB believes conceal the true price of products from the competitive process. The CFPB's research has found several areas where back-end fees might obscure the true cost of a product and undermine a competitive market. According to the CFPB:

- In 2019, the major credit card companies charged over \$14 billion in punitive late fees.
- In 2019, bank revenue from overdraft and non-sufficient funds fees surpassed \$15 billion.

As a result, the CFPB is seeking input from the public through a [Request for Information](#) about experiences with fees associated with their bank, credit union, prepaid or credit card account, mortgage, loan, or payment transfers, including:

- Fees for things people believed were covered by the baseline price of a product or service
- Unexpected fees for a product or service
- Fees that seemed too high for the purported service
- Fees where it was unclear why they were charged

The CFPB indicated that it will use responses in order to craft rules, issue industry guidance, and focus supervision and enforcement resources related to reducing junk fees.

Bite #6 - The CFPB will examine colleges' in-house lending practices.

The CFPB announced it will begin examining the operations of post-secondary schools, such as for-profit colleges that extend private loans directly to students. The CFPB is issuing an update to its exam procedures including a new section on institutional student loans. The exam [procedures](#) address practices that CFPB examiners will review, including placing enrollment restrictions, withholding transcripts, improperly accelerating payments, failing to issue refunds, and maintaining improper lending relationships.

Specifically, CFPB examiners will be looking at:

- Placing enrollment restrictions;
- Withholding transcripts;
- Improperly accelerating payments;
- Failing to issue refunds; and
- Maintaining improper lending relationships

While schools have not historically been subject to the same servicing and origination oversight as traditional lenders, the CFPB expressed concern due to past abuses at schools where students were subjected to higher interest rates and strong-arm debt collection practices.

Bite #5 - The CFPB identified consumer reporting companies the public can hold accountable.

The CFPB released its annual list of consumer reporting companies. The list identifies dozens of specialty reporting companies that create consumer reports. Using the list, people can see what information these firms have, dispute inaccuracies, and exercise various rights related to the Fair Credit Reporting Act (FCRA).

While the three nationwide consumer reporting companies allow consumers to check their reports, many of the specialty companies charge a fee to access data. The CFPB claims the published list allows people to see which companies provide this information for free, as well as search for those that provide specialized reporting by specific markets, including employment, tenant, insurance, and medical markets.

Bite #4 - A CFPB report shows that the criminal justice financial ecosystem exploits families.

The CFPB published a review of the financial issues facing people and families who come in contact with the criminal justice system. The report, "Justice-Involved Individuals and the Consumer Financial Marketplace," describes a difficult and costly ecosystem impacting families of those involved. Specifically, the report raises issues about:

- Burdensome fees;
- Lack of consumer choice; and
- Shifting financial burdens.

This is the CFPB's first study of the criminal justice financial ecosystem. In October 2021, the CFPB took action against a prison financial services company for allegedly taking advantage of people transitioning out of the system by charging them fees to access money.

Bite #3 - The CFPB issued a joint letter to The Appraisal Foundation.

The CFPB joined senior staff from across the federal government to submit a joint letter to The Appraisal Foundation (TAF) to emphasize that federal prohibitions against discrimination under the Fair Housing Act and Equal Credit Opportunity Act extend to appraisals. The CFPB expressed an ongoing

concern that some appraisers may be unaware of these federal discrimination bans and urged TAF to provide clear guidance on the existing legal standards as they relate to appraisal bias. The CFPB indicated that it was deeply troubled by the discriminatory statements the Federal Housing Finance Agency recently identified in some home appraisals, and the appraisal disparities for communities and borrowers of color recently found in both Freddie Mac and Fannie Mae studies.

The CFPB is carefully reviewing the findings of a report identifying biases and barriers funded by the Federal Financial Institutions Examination Council's Appraisal Subcommittee. According to the CFPB, the report raises serious concerns regarding existing appraisal standards and provides recommendations with respect to fairness, equity, objectivity, and diversity in appraisals and the training and credentialing of appraisers.

Bite #2 - The CFPB published research on overdraft fees and policies.

The CFPB published recent research on banks' reliance on overdraft fees and a perceived lack of competition on overdraft terms. The CFPB also published a table that provides a snapshot of large banks' overdraft and non-sufficient fund (NSF) practices. Banks have recently announced changes to their overdraft programs, including:

- eliminating NSF fees charged when transactions bounce;
- reducing the size of the overdraft fee;
- reducing the number of overdraft/NSF fees the bank can charge each day;
- providing or increasing the amount a customer's account can go negative before charging an overdraft fee;
- providing a grace period for consumers to bring the account back to positive before charging an overdraft fee; and
- eliminating "extended" or "sustained" overdraft fees charged when the account is not brought back to a positive balance after a certain period of time.

The CFPB's work on overdraft/NSF fees is part of the CFPB's larger initiative on reducing "junk fees."

Bite #1 - The CFPB took action to halt prepaid card providers who are charging fees on government benefits.

The CFPB issued a compliance bulletin outlining the existing prohibitions against prepaid cards being the sole method for distributing government benefits. The bulletin underscores rules intended to protect market competition and to protect people's right to have a choice in how they receive their money under the Electronic Fund Transfer Act (EFTA). The EFTA and Regulation E prohibit companies from forcing consumers to receive government benefits at a specific financial institution as a condition of receiving government benefits.

Extra Bite: DC Attorney General announced a settlement with an online lender.

The DC Attorney General Karl A. Racine announced a settlement with an online installment lender,

alleging the company charged rates above the District's legal cap of 24%. As part of the settlement agreement the company will be required to:

- Pay a minimum of \$3.3 million in restitution to refund impacted District consumers;
- Waive over \$300,000 in past-due interest owed by District consumers who took out loans from the company;
- Pay a total of \$450,000 to the District;
- Follow District law that protects consumers by not engaging in any act or practice that violates the Consumer Protection Procedures Act (CPPA) in its offer, servicing, advertisement, or provision of loans or lines of credit to District consumers;
- Cease charging rates above the District's legal cap of 24% APR;
- Delete negative credit reporting associated with the loans and lines of credit previously reported to credit bureaus; and
- Accurately represent its company to consumers by not representing that it is permitted to offer loans or lines of credit in the District without possessing any required District money lender license.

Still hungry?

Join us for our next [CFPB Bites of the Month: March Madness](#) on March 16. If you missed any of our previous Bites, [request a replay on our website](#).

Hudson Cook, LLP, provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP, does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP, website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

SUBSCRIBE TO INSIGHTS

HUDSON COOK

Celebrating its 25th anniversary in 2022, Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

www.hudsoncook.com

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

