

## CFPB Bites of the Month - 2024 Annual Review - Fintech

February 10, 2025 | [Catherine M. "Cathy" Brennan](#), [Eric L. Johnson](#), [Justin B. Hosie](#) and [Kristen Yarows](#)

In this article, we share a timeline of our monthly "bites" for 2024 applicable to companies in FinTech. The Consumer Financial Protection Bureau was on a tear in the months leading up to the election and the inauguration of Donald J. Trump as president, signaling to state attorneys general in Democratically controlled states what efforts they should undertake on behalf of consumers. Given the looming economic issues from Trump's most recent trade policies, we would expect state attorneys general to focus on efforts to ensure consumers' housing and wallets are protected. Data privacy and payments will also continue to be key issues, along with a focus on the use of artificial intelligence.

### **Bite 9: CFPB Issues Report and Consumer Advisory on Video Game Marketplaces**

On April 4, 2024, the CFPB [issued](#) a report on the growth of financial transactions in online video games and virtual worlds. The CFPB noted that many video games enable players to store and transfer valuable assets, including in-game currencies and virtual items such as cosmetic "skins" or collectibles. The report also identified several trends and purported risks associated with gaming, including claims that gaming companies provide little customer support when consumers experience financial harm from scams, phishing attempts, and account thefts. The report claimed that gaming companies assemble gamers' personal and behavioral details, such as financial data, purchasing history and spending thresholds, along with physical location data that can generate an accurate portrait of a player's daily routines. Because existing consumer protection laws apply to banking and payment systems that facilitate the storage and exchange of valuable assets, the CFPB stated that it will monitor markets where financial products and services are offered, including video games and virtual worlds. Numerous gaming platforms obtain licenses associated with these activities, usually money transmitter licenses.

About four months later, on August 28, 2024, the CFPB [issued](#) a consumer advisory warning that video games and virtual worlds increasingly resemble traditional banking and payment systems by facilitating storage and exchange of billions of dollars in assets. The CFPB warned consumers that games use in-game currency to conceal the real costs of transactions and use gambling-like design tricks to conceal odds and encourage compulsive spending. The CFPB encouraged consumers to use gift cards, with a finite

amount of dollars available, for in-game purchases to avoid surprise overcharging. The CFPB also recommended parental controls or specialized accounts for children that require a password prior to making transactions and considering games without in-game purchases. The CFPB advised consumers to consider opting out of data sharing and collection policies on accounts when possible. The CFPB mentioned how gaming technology has been found to collect and monitor a child's physical location and social media activity and that virtual or mixed-reality headsets can collect biometric data, such as iris scans, eye movements, pupil response, gestures, voice, and facial expressions as well as scanning the size of the room a player is in and if any other people are in range.

### **Bite 8: CFPB Publishes Issue Spotlight on Solar Energy Transactions**

On August 7, 2024, the CFPB published an issue spotlight addressing solar energy transactions, claiming the transactions have hidden markup fees and exaggerated savings claims. The CFPB's report claimed that solar lenders allegedly mislead homeowners about the terms and costs of their loans, misrepresent the energy savings, and add fees onto the loan balances. The report further asserted that fees often increase loan costs by 30% or more above the cash price and that providers misrepresent the impact of the federal tax credit for solar installation. The CFPB noted that the market for solar energy systems continues to rapidly grow and is now shifting toward less affluent communities. The CFPB identified four areas of risk, including: (i) hidden markup fees; (ii) misleading claims about what consumers will pay; (iii) ballooning monthly payments; and (iv) exaggerated savings claims. The CFPB also released a consumer advisory warning homeowners of allegedly "risky" practices in the solar lending market and sharing advice to borrowers who encounter illegal activity.

### **Bite 7: CFPB Issues Interpretive Rule on Buy Now, Pay Later, Promises Guidance**

On May 22, 2024, the CFPB issued an "interpretive rule" addressing "buy now, pay later" transactions. These are typically closed-end credit transactions that involve financing a purchase with 4 scheduled payments or less, and no finance charge. The CFPB's interpretive rule treats Buy Now, Pay Later companies as "credit card providers" under the Truth in Lending Act and Regulation Z. The CFPB claimed BNPL providers are subject to many of the key legal requirements that apply to credit cards including giving consumers the right to dispute charges and demand refunds after returning a product. According to the CFPB, BNPL providers must investigate disputes and pause payment requirements during the investigation. They are also now required to credit refunds when consumers return products or cancel services. Likewise, the CFPB said they must provide consumers with periodic billing statements. The CFPB was accepting public comments on the interpretive rule until August 1, 2024.

About two months later, on August 16, 2024, the CFPB announced that it planned to issue frequently asked questions on Buy-Now-Pay-Later products, and that it would not seek penalties for noncompliance with its recent interpretive rule on BNPL during a transition period. In this announcement, the CFPB indicated that for those BNPL providers working diligently and in good faith to move into compliance, it would not seek penalties for violations of the rules addressed in the interpretive rule. The CFPB also promised to provide FAQs in September 2024 to address how to transition into compliance, which it

did issue.

### **Bite 6: CFPB Proposes an Interpretive Rule on Paycheck Advance Products**

On July 17, 2024, the CFPB announced that it was proposing an interpretative rule on paycheck advance products, sometimes called "earned wage access" or "EWA." The CFPB's made this announcement about six months after a fintech trade association sent a letter to the CFPB asking the CFPB to establish rulemaking governing earned wage access transactions. In Director Chopra's prepared remarks announcing the interpreted rule, he noted that many employers have started partnering with companies to provide paycheck advance services. According to the CFPB, some financial companies offering EWA impose significant fees. The CFPB also claimed that it observed that direct-to-consumer paycheck advance product providers seek to convince borrowers to "tip" them, generating substantial revenue. The proposed interpretive rule claimed that these transactions are loans under federal law and addressed the practice of tipping or charging for "expedited" access to proceeds. Comments on the proposed interpretive rule were due August 30, 2024.

### **Bite 5: CFPB Orders Supervision over Technology Company's Payment Platform**

On December 6, 2024, the CFPB issued its second supervision order after a contested designation, this time concerning a tech company's payment platform. Back in 2022, the CFPB announced that it was planning to use a "dormant authority" to supervise entities that the CFPB determines pose risks to consumers. In February of 2024, the CFPB issued its first order establishing supervisory authority, in a matter involving an installment lender. Now, in this matter, the CFPB publicly released its second supervisory designation order in a contested matter, over a large technology company. The order designating the company for supervision pertains to a peer-to-peer payment product that is no longer available in the United States. The CFPB indicated that its order does not constitute a finding that the company engaged in wrongdoing and it does not require the CFPB to conduct a supervisory examination. The order allowed the company to petition for termination of the CFPB's supervisory authority no sooner than two years from the date of the order. The company has filed a lawsuit against the CFPB in the U.S. District Court for the District of Columbia, alleging that the CFPB's supervision would be a "burdensome form of regulation" imposed based on a "small number of unsubstantiated user complaints."

### **Bite 4: CFPB Finalizes Digital Consumer Payment Larger Participant Rule**

On November 21, 2024, the CFPB issued a final rule to supervise the largest nonbank companies that offer digital funds transfer and payment wallet apps. This rule is the sixth rulemaking by the CFPB to define "larger participants" operating in markets for consumer financial products and services. The rule applies to companies that handle more than 50 million transactions per year. The final rule has significant changes from the initial proposed rule, including increasing the threshold annual transactions from 5 million to 50 million transactions. The CFPB also limited the rule's scope to count only transactions conducted in U.S. dollars. The CFPB noted that it has always had *enforcement* authority over these companies, but the final rule gives the CFPB authority to conduct proactive

examinations to ensure the companies are complying with the law. The rule was scheduled to become effective on January 9, 2025.

### **Bite 3: CFPB Files Lawsuit Against Peer-to-Peer Lending Platform**

On May 17, 2024, the CFPB announced that it had filed a lawsuit against a peer-to-peer lending platform, alleging the platform used patterns the CFPB calls "dark patterns," to collect fees. The peer-to-peer lender facilitated small-dollar, short-term loans that the CFPB claimed misrepresent the actual cost of the loans, claiming the company illegally charges certain "tip" and "donation" fees, and engages in deceptive practices when servicing and collecting on the loans. The complaint alleged violations of the Consumer Financial Protection Act and the Fair Credit Reporting Act. The CFPB claimed the company threatened consumers that it would furnish negative information to credit reporting companies even though the company did not actually engage in credit reporting. According to the CFPB, the company has been the subject of state investigations for similar allegations. The complaint sought damages in the form of a permanent injunction against the company; monetary relief including restitution; disgorgement; and a civil money penalty.

### **Bite 2: CFPB Takes Action Against Fintech Company**

On May 7, 2024, the CFPB announced an action claiming a fintech company withheld account closure refunds from consumers. The fintech company offered checking and savings accounts to consumers that are held by FDIC-insured partner banks. The CFPB issued an order against a fintech company for allegedly withholding account-closure refunds to its consumers beyond the 14-day window established in the company's agreements with account holders. The CFPB claimed that the alleged delays constituted an unfair act under the CFPA. Under the order, the fintech company will: pay \$1.3 million in consumer redress to harmed consumers; pay a \$3.25 million penalty into the civil relief fund; cease certain practices; and improve post-closure refund procedures.

### **Bite 1: CFPB Takes Action Against Technology Company and Financial Firm**

On October 23, 2024, the CFPB issued consent orders against a technology company that partnered with a financial institution to provide a credit card and against the financial institution. The CFPB alleged the company unfairly failed to send transaction disputes to the financial institution and that the financial institution delayed in resolving the disputes. The CFPB alleged that the companies deceptively misled consumers to automatic enrollment in monthly installments through the card with interest-free payments. The CFPB alleged the parties abusively failed to display the interest-free installment in certain circumstances. The consent order required the technology company to pay a civil money penalty of \$25 million and the financial institution to pay a \$45 million civil money penalty. The consent order also required the financial institution to pay at least \$19.8 million in redress to victims and restricts it from introducing a new credit card without providing the CFPB with a plan of how it will comply with the law.

### **Extra Bite 1: FTC Announces Click to Cancel Rule**

On October 16, 2024, the FTC announced revisions to the Negative Option Rule, now

known as the "Rule Concerning Recurring Subscriptions and other Negative Option Programs" or "Click-to-Cancel Rule." The rulemaking began in 2019 and reflected input from over 16,000 public comments. The rule will apply to almost all negative option marketing, and will cover both business-to-business transactions and business-to-consumer transactions. The rule prohibits misrepresentations of any material fact before asking consumers to sign up. The rule requires obtaining proof of consent before imposing charges and maintaining evidence of compliance. The rule requires a cancellation process that is as easy as the sign-up process. Violators can be liable for redress and civil penalties. Most of the provisions of the final rule will go into effect in 180 days, with some in effect within 60 days after publication in the Federal Register. The CFPB issued a statement on the FTC rulemaking in which CFPB Director Chopra said that the "CFPB can enforce the new Click-to-Cancel Rule, which will further enable the CFPB to protect consumers from being tricked into paying for products or services they do not want or need."

### ***Extra Bite 2: FTC Takes Action Against Online Cash Advance App***

On November 5, 2024, the FTC announced an action against an online cash advance app, alleging the company charged undisclosed fees and tips. The FTC claimed in its complaint that the company used misleading marketing to deceive consumers about the amount of cash advances, charged consumers undisclosed fees, and charged "tips" to consumers without their consent. According to the FTC, the company's advertising falsely claimed that consumers could receive "up to \$500" and receive it "instantly." The complaint alleged that the consumers were often charged a "surprise fee" of 15% of their advance that is described as a "tip." The FTC also alleged that the company charged consumers a \$1 monthly "membership fee" without clearly and conspicuously disclosing it. It further alleged that the company led consumers to believe that for every percentage of tip they give, the company donates a healthy meal to a needy child, but the company was only donating 10 cents for each percentage in "tip." According to the FTC, "consumers who discover they can leave a lower tip and attempt to do so see food taken away from a cartoon child until the image of the child is finally replaced by an image of an empty plate." The complaint alleged violations of the FTC Act and the Restore Online Shoppers' Confidence Act.

**Still hungry?** Please join us for our next CFPB Bites of the Month. Here is our [lineup](#) for 2025. If you missed any of our prior Bites, [request a replay](#) on our website.

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