

CFPB Bites of the Month - April 2024 - Won't Get Fooled Again, CFPB

May 2, 2024 | [Justin B. Hosie](#) and [Eric L. Johnson](#)

In this month's article, we share some of our top "bites" covered during the April 2024 webinar.

Bite 12: Director Chopra's White House Remarks on Data Protection

On April 2, 2024, Director Chopra delivered remarks at an event organized by the White House Office of Science and Technology Policy. There he discussed how the CFPB's Fair Credit Reporting Act (FCRA) enforcement can protect national security. Director Chopra stated that data breaches not only lead to consumer losses in the form of identity theft and misuse of account information but that major breaches have been linked to activity entities based in China. He stated that the President's Executive Order to Protect Americans' Sensitive Personal Data asks the CFPB to protect Americans from data brokers that are assuming and selling very sensitive data, including that of U.S. military personnel. Director Chopra said that the CFPB plans to propose rules to ensure that data brokers comply with the FCRA, restricting certain business practices and ensuring higher levels of accountability.

Bite 11: Director Chopra's Prepared Remarks on Credit Cards

On March 27, 2024, CFPB Director Rohit Chopra delivered remarks at CBA LIVE on the CFPB's work towards ensuring that consumer financial markets, including the credit card market, are competitive. Director Chopra said that the credit card industry has grown rapidly, fueled by advances in automated underwriting and technology, but that despite this success, the fees and interest on credit cards have never been higher. He claimed that the large discrepancy between the costs of credit cards offered by large institutions and smaller ones is a sign that the marketplace is not competitive, and suggested that this may be due to difficulty in shopping for cards and comparing rates. Director Chopra said that the CFPB is going to issue a rule addressing personal financial data rights to "jumpstart competition across banking" by making it easier for consumers to access their data and switch providers. He said that the CFPB is also working on another initiative to improve the costs of credit cards through its newly finalized rule that limits credit card late fees, which he said the CFPB will continue to defend against court challenges.

Bite 10: CFPB Sends Letters on Medical Debt to State Legislatures

On March 25, 2024, CFPB Director Chopra sent a letter to a California state senator in support of her proposed legislation to prohibit the inclusion of medical bills on credit reports. He stated that medical debt is categorically different from many types of consumer tradelines because consumers frequently incur medical bills in unique circumstances that differ from other forms of credit extension, and CFPB research has found that medical debt is less predictive of future consumer credit performance than other tradelines. Director Chopra also said that unpaid medical bills frequently contain unreliable data, that CFPB complaints indicate that more than 40% of consumers with medical debt have received inaccurate bills, and that nearly 70% of these consumers have been billed for costs that insurance should have covered. According to Director Chopra, the credit reporting system should assess credit risk, and it should not be used to coerce people into paying debts that they may not owe. Director Chopra said that the CFPB has initiated a rulemaking process on medical debt, and that strong state action like the proposed California law provides essential support for federal policymaking. On April 11, 2024, CFPB Assistant Director Brian Shearer sent a similar letter to Connecticut State Senator Matt Lesser in support of a Connecticut State Senate bill that would prohibit healthcare providers from reporting medical debt to consumer reporting agencies for use in a consumer report.

Bite 9: CFPB Drafts Letter to Illinois Committee

On April 9, 2024, Deputy Director Zixta Martinez sent a letter to the Illinois Joint Committee on Administrative Rules, commenting on proposed rules under the state's Community Reinvestment Act (CRA). The letter supported proposed appraisal-related changes to the state CRA which indicate that it is a violation of the Equal Credit Opportunity Act (ECOA) for a lender to rely on or give force or effect to discriminatory appraisals to deny loan applications when the lender knew or should have known of the discrimination. The letter claimed that these provisions accurately describe ECOA, and noted that the CFPB and Department of Justice have previously taken the same position.

Bite 8: New Mortgage Data Shows Trends in Discount Points

On April 5, 2024, the CFPB's Office of Mortgage Markets released a data spotlight on its analysis of data collected pursuant to the Home Mortgage Disclosure Act (HMDA). The CFPB used quarterly data to look at characteristics of homeowners that paid discount points over the past few years. According to the CFPB's data, most recent borrowers, including nearly 90% of cash out refinance borrowers, paid discount points. More borrowers paid discount points as interest rates rose over this period, and borrowers with lower credit scores were more likely to pay discount points. According to the CFPB, discount points may provide advantages to some borrowers, but the financial tradeoffs involved in discount points are complex and may create risks for consumers. The data spotlight claims that lenders may be offering borrowers with low credit scores mortgages with discount points to ensure that these borrowers qualify for a mortgage by lowering their monthly payments, and therefore lowering debt-to-income ratio. The CFPB says it will continue to analyze the data to understand the factors driving the increase in discount points and how borrowers end up paying for them.

Bite 7: CFPB Issues Report on Video Game Marketplaces

The CFPB issued a report on April 4, 2024, that examined the growth of financial transactions in online video games and virtual worlds, which the CFPB says increasingly resemble traditional financial products. The CFPB claims 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 claims that gaming companies are also assembling 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. The CFPB claims that existing consumer protection laws apply to banking and payment systems that facilitate the storage and exchange of valuable assets, and that the CFPB will monitor markets where financial products and services are offered, including video games and virtual worlds.

Bite 6: CFPB Issues Spring 2024 Supervisory Highlights

On April 8, 2024, the CFPB issued a new edition of its Supervisory Highlights for Spring 2024, focusing on examinations in connection with credit reporting and furnishing from April through December 2023. According to the CFPB, examiners have found deficiencies in credit reporting companies' compliance with the accuracy and identity theft requirements of the FCRA and Regulation V. These include automatically declining the implementation of identity theft blocks, failure to notify affected consumers when a block is declined or rescinded, and failure to follow reasonable procedures to assure maximum possible accuracy. The CFPB also claims that it has found deficiencies in furnishers' compliance with the accuracy and dispute investigation requirements of the FCRA and Reg. V, including violations of the FCRA duty to promptly update or correct information about fraudulent accounts, to conduct reasonable investigations of direct disputes, and to provide notice of account delinquency. The CFPB also claims that consumer reporting companies and furnishers failed to comply with a rule implemented in June of 2022 to help survivors mitigate the financial consequences of human trafficking, and noted that the involved consumer reporting companies and furnishers are taking corrective actions.

Bite 5: CFPB Issues New Circular to Money Transfer Providers

On March 27, 2024, the CFPB issued a circular to warn remittance transfer providers that false advertising about the cost or speed of sending a remittance transfer can violate federal law. According to the CFPB, companies that operate in this industry are charging "junk fees" on international money transfers that are not properly disclosed in advertisements and are also making false claims about the speed of transfers. The Circular addressed three practices that may violate the CFPA or the Remittance Rule that it has observed through its market monitoring and through consumer complaints. The first is alleged false marketing of "no fee" or "free" services when consumers are actually charged fees. The second is advertising promotional pricing while not disclosing whether the offer is limited or temporary. Third, the CFPB alleges companies are engaged in deceptive advertising by claiming that transfers will arrive within a certain time frame, when they actually take longer.

Bite 4: CFPB Updates Supervision Designation Procedure

On April 16, 2024, the CFPB issued an update to its procedural rules for designating nonbank covered persons for supervision. The new procedural rules clarify that (1) a consent agreement does not constitute an admission by the respondent; (2) that when a respondent voluntarily consents to supervisory authority, they are not subject to the public release process; and (3) that orders issued because a respondent failed to file a response or defaulted are subject to public release. Under the prior procedural rule, the term for certain consent agreements was limited to a two-year period of supervision. Under the new procedural rule, the duration of the supervision will be on a case-by-case basis. The CFPB noted that it still expects most of the consent agreements to create a two-year supervision period. The new rule codifies that the initiating official may withdraw a notice of reasonable cause and also request supplemental briefing, along with other changes to the CFPB's internal structure. The procedural rule is effective upon publication in the federal register and the CFPB indicated it is exempt from notice and comment requirements. However, the CFPB is accepting comments on the rule.

Bite 3: CFPB Files Amicus Brief in Credit Reporting Case

On March 29, 2024, the CFPB, along with the FTC, filed a friend of the court brief in a case before the U.S. Court of Appeals for the Eleventh Circuit. In this case, the company in question has taken the position that the FCRA requirement to investigate disputed information does not apply to personal identifying information, like name, address, and Social Security number. The plaintiff in the case claims she filed three disputes with a company asking it to correct several errors in her personal identifying information, and that the company responded each time by telling her to contact the source of the inaccurate information without identifying who that source was. The plaintiff sued and the trial court rejected the company's argument that the FCRA does not apply to this information, but waived liability because it said that the law was unclear. The company appealed, and the agencies' amicus brief supports the court's holding that the company was required to investigate these disputes.

Bite 2: CFPB Files Amicus Brief in Servicemember Case

On April 11, 2024, the CFPB and DOJ filed a joint brief in the U.S. Court of Appeals for the Fourth Circuit in support of servicemembers' claims that a large bank charged them too much interest on credit card debt during active service. The Servicemembers Civil Relief Act (SCRA) gives servicemembers the right to reduced interest during active-duty military service, and includes a provision that provides that anyone who has suffered a violation may be a representative party or a member of a class, notwithstanding any previous agreement to the contrary. In this case, four servicemembers sued their bank for interest violations, and the bank responded by saying that the arbitration provisions in the credit card agreements require the plaintiffs to arbitrate their cases instead of bringing them to court. The District Court agreed with the plaintiffs, and the bank appealed that ruling. The DOJ and CFPB stated in their amicus brief that the District Court was correct.

Bite 1: Online Payment Company Wins in Court Against CFPB

On April 1, 2024, media outlets reported that U.S. District Judge Richard J. Leon agreed with an online payment company that sued the CFPB in 2019 over the "prepaid rule" saying that the CFPB had no rational justification for enforcing certain fee disclosure requirements against digital wallets. The "prepaid rule" went into effect 5 years ago and requires that issuers of prepaid cards provide disclosures before a cardholder receives the card. When the rule was promulgated, the online payments company told the CFPB that online digital wallets do not work in the same way as reloadable debit cards and that the disclosure rules are misleading and confusing when applied to its products. The company said that the CFPB dismissed its arguments, and it then petitioned the D.C. Circuit to rule that the prepaid rule's application to the company's products was unconstitutional. The Judge said that the CFPB was "arrogant" in its application of the rule to digital wallets based on speculation that these wallets may someday be subject to fees like those imposed on prepaid cards, instead of basing its decision on a cost-benefit analysis or evidence of actual consumer harm.

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