

CFPB Bites of the Month - January 15, 2025 - June in January with the CFPB

February 25, 2025 | [Justin B. Hosie](#), [Eric L. Johnson](#) and [Kristen Yarows](#)

In this month's article, we share some of our top "bites" covered during the January 2025 webinar.

Bite 17: CFPB Announces Civil Penalty Inflation Adjustments

On January 7, 2025, the CFPB announced its annual civil penalty inflation adjustments, which went into effect on January 15, 2025. These adjustments are made under the Civil Penalties Inflation Adjustment Act of 1990. According to the CFPB, these adjustments serve to maintain the deterrent effect of civil penalties and to promote compliance with the law. For tier 1 penalties the new penalty amount is \$7,217, for tier 2 penalties it is \$36,083, and tier 3 it is \$1,443,275.

Bite 16: CFPB Releases Buy Now, Pay Later Study

On January 13, 2025, the CFPB announced that it was releasing a study addressing the buy-now-pay-later industry. According to the CFPB study, more than 20% of consumers with credit cards used BNPL in 2022. The CFPB had issued market monitoring orders to several companies offering Buy Now, Pay Later (BNPL) in March 2023. The CFPB described BNPL as a type of deferred payment option that allows the consumer to split a purchase into smaller payments. The CFPB matched transaction information it received with consumer credit records to study the prevalence of BNPL use in 2022. Among consumers with a credit record, 21.2% financed at least one purchase with a BNPL transaction. Approximately 63% of borrowers originated multiple simultaneous transactions at some point during the year and 33% took out transactions from multiple BNPL providers. Among the applicants with subprime or deep subprime credit scores, BNPL providers approved 78% of transactions in 2022. BNPL consumers were more likely to hold higher balances on other credit accounts. Among BNPL consumers ages 18-24, BNPL purchases made up 28% of total unsecured consumer transactions compared to an average of 17% among consumers of all age groups, during the months in which they entered transactions.

Bite 15: CFPB Issues Report on Mortgage Issues

On December 17, 2024, the CFPB issued a report on issues after divorce or the death of an original borrower. The report provided an overview of the most common problems

homeowners encountered with mortgage servicing companies after the divorce or death of an original borrower. Consumer complaints to the CFPB highlighted significant challenges with servicers' handling of requests to get information and assume the existing loan terms with certain loans. The CFPB identified the following four areas of concern based on consumer complaints: (1) Pressure from servicers to take out higher-interest loans even though federal mortgage guidelines allow them to maintain existing loan terms; (2) Repeated delays for servicers to process consumer's requests and servicers repeatedly requesting the same documentation or failing to respond to inquiries; (3) Servicers denying requests to remove the original borrower from the mortgage, such as what a divorce decree may require, even when the successor homeowner has been making all payments on the mortgage for years; and (4) Domestic violence survivors reported that servicers continue sending account information to their abusers and require their abusers' consent for account changes, creating potential safety threats. The Report also included examples of consumer complaints to the CFPB organized by these themes. Finally, the CFPB outlined steps that "investors" can do to reduce the risk of harm to successor homeowners.

Bite 14: CFPB Approves FDX to Issue Standards for Open Banking

On January 8, 2025, the CFPB announced an approval to issue standards for open-banking, its first under the Personal Financial Data Rights rule. The CFPB released the Personal Financial Data Rights rule in October 2024. The rule will require financial providers to transfer personal financial data other providers at a consumer's request, without charge. Under the rule, the CFPB established an application process to become recognized as an industry standard setting body. The CFPB approved Financial Data Exchange, Inc. or FDX, subject to several conditions, including requiring FDX to: (1) Develop standards to promote open banking without regard to sponsorships or other financial incentives to give certain market players secret information or any other advantage; (2) Report to the CFPB on market use and/or maintain a publicly available recourse that allows companies to disclose their standards and certifications of adherence to the standards; and (3) Make any consensus standards that it adopts and maintains open to the public.

Bite 13: CFPB Announcements Regarding Credit Card Rewards Programs

On December 18, 2024, the announced several activities related to credit card rewards programs, including publishing a circular, new research, and an online comparison tool. With respect to the circular, the CFPB addressed whether credit card issuers violate the law if they or their rewards partners devalue earned rewards or otherwise inhibit consumers from obtaining or redeeming promised rewards. The circular answered that yes, covered persons may violate the prohibition against UDAAP in various circumstances and provided the following examples: (1) The redemption values of rewards that consumers have already earned or purchased are devalued; (2) Consumers' receipt of rewards are revoked, canceled, or prevented based on buried or vague conditions, such as criteria disclosed only in fine print or up to the operator's discretion; and (3) Consumers have reward points deducted from their balance without receiving the corresponding benefit of the rewards, including due to technical failures when redeeming rewards points on merchant partners' systems. The CFPB also published new research

indicating that retail credit cards are more expensive than general purpose cards, with 90% of retail cards reporting a maximum APR above 30%, compared to only 38% of non-retail general purpose cards in one CFPB survey sample. The CFPB also launched "Explore Credit Cards," a tool to help consumers compare credit cards using open data. Consumers can enter their credit score range, their state of residence, and their goal with the card, whether it is paying less interest, transferring a balance, making a big purchase, avoiding fees, building credit, or earning rewards. Once entered, the CFPB tool provides results for consumers to see cards that fit their situation.

Bite 12: CFPB Solicits Comments on Digital Payment Privacy

On January 10, 2025, the CFPB issued a Request for Information and a Proposed Interpretive Rule. The CFPB requested comments in order to better understand how companies collect, use, share, and protect consumer financial data, including data from consumer payments. The Request for Information ("RFI") seeks comments about the effectiveness of current regulations, including the existing model form, privacy notices, and opt-out mechanisms. Comments on the RFI are due on or before April 11, 2025. The CFPB also proposed an interpretive rule on how the Electronic Fund Transfer Act and Regulation E would apply to new and emerging digital payment mechanisms. The proposed interpretive rule provides a framework for determining when the EFTA's protections apply to emerging digital payment mechanisms. Comments on the proposed are due by March 31, 2025.

Bite 11: CFPB Issues Proposed Rule Banning Certain Contract Provisions

On January 13, 2025, the CFPB issued a proposed rule that prohibits covered persons from including in their contracts any provisions purporting to waive substantive consumer legal rights and protections—or their remedies — granted by State or Federal law. The proposed rule would prohibit companies from fining, suing or deplatforming based on comments, reviews, or political or religious views. The CFPB claims that the proposed rule would ensure that companies cannot use form contracts to opt out of statutes passed by Congress or state legislatures, including protections for servicemembers, laws prohibiting elder fraud, and accountability for corporate lawbreaking. The CFPB indicated that the proposed rule would not prohibit clauses with regard to procedural rights, like venue clauses, arbitration clauses, or class action waivers. The proposed rule proposes to codify the same credit practices that are in the FTC's Credit Practices Rule and apply them to covered persons subject to the CFPB. By doing so, the CFPB claims this would give Attorneys General the authority to enforce the prohibitions against national banks. Comments are due by April 1, 2025.

Bite 10: CFPB Finalizes Rule Applying Mortgage Protections to PACE Loans

On December 17, 2024, the CFPB announced its final rule applying Truth in Lending mortgage protections to Property Assessed Clean Energy financing transactions, known as PACE transactions. These transactions allow consumers to finance upgrades to their real property through an assessment on their real property and are often marketed to homeowners through door-to-door sales. The transactions are secured by a lien on the consumer's real property. According to CFPB research, PACE consumers are typically

eligible for other forms of financing, often at cheaper costs. The CFPB claims that PACE consumers were more likely to fall behind on their first mortgage than people who chose not to finance home improvements with PACE. The CFPB claims that the rule ensures that PACE consumers have the right to receive standard mortgage disclosures, which allow them to compare the cost of the PACE transaction with other forms of financing. The rule amended the Regulation Z commentary to narrow the exclusion of tax liens and tax assessments from being considered credit, and assuming the rule takes effect as scheduled, PACE transactions will be considered credit for TILA purposes.

Bite 9: CFPB Finalizes Rule Removing Medical Bills from Credit Reports

On January 7, 2025, the CFPB issued a final rule amending Regulation V, which implements the Fair Credit Reporting Act, concerning medical information. Through the rule, the CFPB is removing a regulatory exception that had permitted creditors to obtain and use information on medical debts. The CFPB claims that the rule will remove an estimated \$49 billion in medical bills from the credit reports of about 15 million Americans. The rule provides that a consumer reporting agency generally may not furnish to a creditor a consumer report containing information on medical debt and would prohibit creditors from using medical information in their lending decisions. The final rule also prohibits lenders from using information about medical devices, such as a prosthetic limb, which could be used to require that the device serve as collateral for a loan for the purposes of repossession. Lenders will continue to be able to consider medical information to verify medical-based forbearances, verify medical expenses that a consumer needs a loan to pay, consider certain benefits as income when underwriting, and other legitimate uses. The final rule was scheduled to be effective on March 17th, but that timing is subject to lawsuits challenging the rule.

Bite 8: CFPB Sues Financing Company over Manufactured Home Loans

On January 6, 2025, the CFPB announced a lawsuit against a financing company over manufactured home loans. In the lawsuit, the CFPB claims that starting in 2014, a non-bank manufactured-home-financing company made loans without making a reasonable, good faith determination of the consumer's ability to repay. The lawsuit claims that the company manipulated lending standards when borrowers did not have sufficient income or assets, fabricated unrealistic estimates of living expenses, and in some cases, violated its own lending policies. The CFPB filed the lawsuit in the U.S. District Court for the Eastern District of Tennessee. The lawsuit sought to stop conduct which the CFPB claims is unlawful, to provide redress, and impose a civil money penalty.

Bite 7: CFPB Sues Real Estate Brokerage over Alleged Kickbacks

On December 23, 2024, the CFPB announced that it sued a real estate brokerage over alleged kickbacks, claiming the brokerage violated RESPA. According to the CFPB, the brokerage pressured real estate brokers and agents not to share information with their clients concerning products not offered by the brokerage, such as the availability of down payment assistance programs. The CFPB also alleges that the brokerage violated the Real Estate Settlement Procedures Act by providing kickbacks in exchange for referrals and requiring brokers and agents to steer consumers to the brokerage. The

CFPB also alleges that the named individual offered gift cards to the agents who made the most referrals to favored partners. In this action, the CFPB sued an individual, his real estate brokerage firm, and the individual real estate brokerage companies in 40 states and DC where it does business. The CFPB filed the lawsuit in the U.S. District Court for the Eastern District of Michigan. The lawsuit sought to bring the defendants into compliance with the law, consumer redress, and the imposition of civil money penalties.

Bite 6: CFPB Sues Multinational Corporation and FinTech Company

On December 23, 2024, the CFPB filed a lawsuit alleging that a multinational retail corporation forced its delivery drivers to use costly deposit accounts to get paid and misled workers about the availability of access to their accounts. The CFPB sued the retail corporation and the fintech company that offered the deposit account. The CFPB alleges that for approximately two years, starting in June 2021, the retail corporation and the fintech violated federal law by: (1) Opening accounts for new drivers by using the drivers' information without getting the drivers' consent; (2) depositing drivers' pay into an account without authorization and forcing the driver to use these accounts; (3) Charging drivers more than \$10 million in junk fees to the fintech to instantly transfer their earnings to an account of their choice; and (4) Misrepresenting to drivers that the accounts would give them "instant access" to pay as well as their ability to stop payments or make certain transfers using the accounts. The CFPB action sought to stop unlawful conduct, provide consumer redress, and impose a civil money penalty.

Bite 5: CFPB Sues Banks and Peer-to-Peer Payment Network

On December 20, 2024, the CFPB filed a lawsuit in the U.S. District Court for the District of Arizona against the operator of a peer-to-peer payment network and three of its owner national banks for allegedly failing to protect consumers from fraud on network. The CFPB alleges that the operator and the banks rushed the peer-to-peer payment network to market to compete against other payment apps without implementing effective consumer safeguards to protect against fraud. The CFPB claims that customers lost more than \$870 million over the network's 7-year existence due to these safeguards failures. The CFPB alleges that the defendants violated the Consumer Financial Protection Act's prohibition on unfairness by allegedly failing to take timely, appropriate, and effective measures to prevent, detect, limit, and address fraud on the peer-to-peer payment network. The CFPB claimed they received hundreds of thousands of fraud complaints. The CFPB also alleges that the three banks violated the Electronic Fund Transfer Act and Regulation E for failing to conduct reasonable investigations of consumer error notices, and for failing to treat incorrect and unauthorized transfers as errors under the law. The CFPB sought to halt unlawful conduct, obtain consumer redress, and obtain a civil money penalty.

Bite 4: CFPB Sues Nationwide Consumer Reporting Agency

On January 7, 2025, the CFPB filed a lawsuit against a nationwide consumer reporting agency, alleging that the CRA violated the Fair Credit Reporting Act's requirements for handling consumer disputes. The CFPB filed the lawsuit in the U.S. District Court for the Central District of California. The CFPB alleged that the CRA did not take sufficient steps

to process, investigate, and notify consumers about consumer disputes, and that by doing so, it resulted in incorrect information being included on consumers' credit reports. The lawsuit alleged that the CRA failed to implement matching tools that prevent or greatly reduce the likelihood of reinsertion by a new furnisher of a previously deleted tradeline. The lawsuit also alleged that the CRA violated the Consumer Financial Protection Act by failing to fully and accurately convey consumers' disputes to furnishers, relying on furnishers to resolve disputes, and improperly reinserting tradelines to credit reports. The CFPB sought to bring the CRA into compliance with the law, consumer redress, and civil money penalties.

Bite 3: CFPB Takes Action Against National Bank Over Savings Accounts

On January 14, 2025, the CFPB announced an action against a national bank alleging the bank misled consumers about its "high interest" savings accounts. According to the CFPB, the bank misrepresented that its flagship savings account provided one of the nation's "best" and "highest" interest rates, but the bank froze the interest rate at a lower level than advertised while competitor's rates rose nationwide. The CFPB also alleged that bank representations created the net impression that the savings product would be its only high interest savings product with its features, but in 2019 the bank started offering a new high-interest savings product without converting the old accounts. The CFPB alleges that the bank misled consumers about its "high interest" accounts and didn't inform consumers with the older accounts about the new accounts, in order to maintain a two-tier system. The lawsuit alleges that the bank violated the Consumer Financial Protection Act's prohibition on deceptive and abusive acts and practices and violated the Truth in Savings Act. The CFPB filed the lawsuit in the U.S. District Court for the Eastern District of Virginia. The CFPB sought to stop the alleged unlawful conduct, provide redress for consumers, and impose civil money penalties.

Bite 2: CFPB Obtains \$42M Judgment Against Auto Servicer

On January 14, 2025, it was reported that the CFPB had obtained a \$42 million default judgment against a defunct auto servicer. Back in August 2023, the CFPB sued the auto servicer, shortly before it, the dealership group and four other affiliated companies filed for bankruptcy. The CFPB had alleged that the servicer mishandled GAP refunds, double billed for collateral protection insurance (CPI), failed to apply excess customer payments to interest, and illegally repossessed vehicles. The U.S. District Court for the Northern District of Georgia issued an order granting the CFPB's motion for default judgment for \$25.5 million in compensatory damages; \$5.8 million in restitution, plus \$1.2 million in prejudgment interest, and a civil penalty of \$10 million. The court found that the "police power" exception to the bankruptcy automatic stay applied to the continuation of the case and entered the judgment. The order addresses the CFPB's calculations to determine penalties, estimating the harm per wrongful repossession at \$5,000, per erroneous vehicle disablement at \$500, and \$100 per day for harm caused by erroneous warning tones.

Bite 1: Appellate Court Affirms CFPB's \$134 Million Award from Lender

On January 10, 2025, media outlets reported that an appellate court affirmed the CFPB's

\$134 million award in an action involving a consumer lender. Previously the CFPB had brought an action alleging that the consumer lender had engaged in UDAAP by attempting to collect fees to which it was not legally entitled. A trial court had ordered the lender to pay \$134 Million in restitution, and the consumer lender appealed the decision. The lender argued that the district court's order triggered its Seventh Amendment right to a jury trial. The appellate court concluded that the consumer lender waived that right by voluntarily participating in a bench trial. The lender did not dispute that it waived its jury trial right, but noted that it did so based on the CFPB's statements that it only sought equitable restitution, which was incorrect. But the court said the error was "perhaps understandable" because the Supreme Court had not yet drawn a fine distinction between restitution at law and in equity. The court also noted that it was an error shared by the lender and the CFPB, and that the lender had told the district court that it understood the CFPB to be seeking an equitable monetary award. The appeals court noted that it has never held that a party's legal error can vitiate its waiver of a jury trial right or that a party must demonstrate a correct understanding of the law for its waiver to be effective.

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