

CFPB Bites of the Month - July 2024 - The CFPB Shines Like the 4th of July

July 29, 2024 | [Eric L. Johnson](#), [Justin B. Hosie](#) and [Kristen Yarows](#)

In this month's article, we share some of our top "bites" for the prior and current month covered during the July 2024 webinar.

Bite 12: The CFPB Announces 2023 Data on Mortgage Lending

On July 11, 2024, the CFPB and federal banking agencies announced publication of the 2023 Home Mortgage Disclosure Act ("HMDA") data. The data covered 2023 mortgage lending transactions reported under the HMDA. The CFPB noted that for 2023, the number of reporting institutions increased by about 14.6% from 4,460 in the previous year to 5,113. For 2023, the data include information on 10 million home loan applications, a decrease from the 14.3 million reported in 2022. The share of mortgages originated by non-depository, independent mortgage companies accounted for 63.1% of first lien, one- to four-family, site-built, owner-occupied closed-end home-purchase loans in 2023, up from 60.2% in 2022. In 2023, Black or African American applicants were denied for first lien, one- to four-family, site-built, owner-occupied conventional, closed-end home purchase loans at a rate of 16.6%. Hispanic-White applicants had a denial rate of 12.0%. Asian applicants were denied in 9% of transactions. Non-Hispanic-White applicants were denied in 5.8% of transactions.

Bite 11: CFPB's Auto Finance Data Pilot Report - Negative Equity

On June 17, 2024, the CFPB released its first report in a series using data collected from 3 banks, 3 captive finance companies, and 3 independent finance companies that received "market monitoring" orders from the CFPB in February of 2023. Key findings from the report include:

- More than 10% of consumers financed negative equity from a prior vehicle financing transaction into a new one.
- Consumers who financed negative equity from a prior vehicle transaction into a new transaction were more likely to have their account assigned to repossession within two years.
- Consumers who financed negative equity financed larger transactions than consumers with a positive equity trade-in, which resulted in higher average

monthly payments.

- Consumers who financed negative equity had lower credit scores, lower household income, longer terms and were more likely to have a co-borrower than consumers with no trade-in or a positive equity trade-in.
- Consumers who financed negative equity had larger LTV and payment-to-income ratios.
- Nearly a quarter of consumers financing less expensive vehicles financed negative equity into their transactions, compared to nearly 16% of consumers who purchased more expensive vehicles.
- The percentage of negative equity financed compared to the prices paid for the vehicle was larger for consumers who financed less expensive vehicles.

Bite 10: CFPB Issues 2023 Fair Lending Annual Report to Congress

On June 26, 2024, the CFPB issued its 2023 Fair Lending Annual Report to Congress. The Dodd Frank Act requires the CFPB to annually report on public enforcement actions taken under the Equal Credit Opportunity Act and to report on HMDA data. The CFPB reported that it took action against a so-called "repeat offender" national bank for allegedly discriminating against Armenian Americans applying for credit cards. The CFPB also reported that the CFPB and Department of Justice sued a developer for allegedly targeting Latinos with inferior mortgage products. The CFPB further reported that it identified "significant issues" with inaccurate HMDA data and filed two enforcement actions for reporting inaccurate data. The CFPB and its interagency partners continued to address appraisal bias by filing court briefs, issuing proposed guidance, and carrying out rulemaking. The CFPB finalized the Small Business Lending rule, issued a circular on adverse action notice requirements, and issued numerous fair lending-related reports and data.

Bite 9: CFPB Publishes Summer 2024 Supervisory Highlights

On July 2, 2024, the CFPB published its Summer 2024 Supervisory Highlights. The report shared key findings from recent supervisory examinations of auto finance servicing, student loan servicing, and debt collection. The CFPB examiners found that auto servicers engaged in unfair practices by failing to debit consumers' final payment via their autopay system without adequate notification to consumers enrolled in autopay that they needed to pay their final payment manually. The CFPB examiners reportedly discovered that student loan servicers failed to provide adequate avenues for communication due to excessive hold times, misrepresented which forms consumers should use to enroll in certain programs, and failed to notify consumers of preauthorized funds transfers that exceeded the previous transfer amount. The CFPB examination of debt collection institutions identified alleged violations of Regulation F and unfair practices related to the statute of limitations in credit card collections. The CFPB's examination of medical payment products, such as medical credit cards, revealed that consumers frequently complained of healthcare providers misrepresenting the specifics

of "deferred interest" promotions and feeling pressured to open a credit card account while receiving treatment. The CFPB's examination of deposit and prepaid accounts revealed that entities allegedly engaged in unfair practices with respect to account freezes and observed issues related to failing to provide periodic statements for allotment accounts.

Bite 8: CFPB Publishes its Spring Rulemaking Agenda

Recently the CFPB published its Rulemaking Agenda addressing which rules may be forthcoming this year. The CFPB describes its "final rule stage" as including rules on overdraft, FIRREA, personal financial data rights, PACE Financing, the Repeat Offender Registry, the Form Contracts Registry, Fees for Instantaneously Declined Transactions, and the Larger Market Participant Rule for Digital Consumer Payment Applications. Those rules in the proposal stage include FCRA Rulemaking, Mortgage Servicing Rulemaking, Financial Data Transparency Act rulemaking, and Regulation AA Rulemaking. The Pre-rule phase includes rulemaking on mortgage closing costs. With respect to the Regulation AA proposal, the CFPB noted that before the Dodd-Frank Act, the "Federal Reserve Board's Regulation AA made it unlawful for banks to include or enforce certain provisions in consumer credit contracts," and that when the "Dodd-Frank Act created the CFPB, it removed the Board's responsibility for issuing Regulation AA." The CFPB went on to say that it "is considering whether to issue regulations regarding the inclusion or enforcement of certain provisions in contracts for consumer financial products or services."

Bite 7: CFPB Proposes Mortgage Servicing Rules

On July 10, 2024, the CFPB proposed new mortgage servicing rules. In 2022, the CFPB requested information from the public regarding improving protections for borrowers facing financial hardship. The CFPB claims that both the mortgage industry and borrower advocates responded that a simpler, more flexible approach to mortgage assistance would be helpful. Many commenters noted that both borrowers and servicers benefited from the adjustments made during the COVID-10 pandemic that allowed leniency from the 2014 regulatory framework. The CFPB's proposal, if finalized, would limit the fees a servicer can charge a borrower while the servicer is reviewing possible options to help the borrower avoid foreclosure. The proposal would also allow servicers to have more flexibility to review borrowers for each option individually through streamlined loan modifications and fewer paperwork requirements. Moreover, the proposal would require servicers to provide more tailored notices to borrowers, including changing the notices that borrowers receive shortly after missing a payment to include information about who the loan investor is and how to get information regarding available assistance. The proposal would also require servicers to provide notices in English and Spanish. It would also give borrowers who received marketing materials in another language the option to request mortgage assistance communications in that same language. The CFPB will accept public comments on the rule until September 9, 2024.

Bite 6: CFPB Extends Compliance Dates for Section 1071

On June 25, 2024, the CFPB issued an *interim final rule* to extend the compliance deadlines for the small business lending rule. The compliance deadlines were previously

stayed pending the outcome of the *CFSA v. CFPB* Supreme Court case. The interim final rule extends the compliance dates by 290 days, which is the time that elapsed during the stay of the rule pending the CFSA decision. The interim final rule will extend compliance as follows: *Tier 1 institutions*: new compliance date of July 18, 2025; *Tier 2 institutions*: new compliance date of January 16, 2026; and *Tier 3 institutions*: new compliance date of October 18, 2026.

Bite 5: CFPB Settles with a Nonbank Mortgage Company

On June 18, 2024, the CFPB reached a proposed settlement with a nonbank mortgage originator and servicer to resolve allegations that the company violated the HMDA, its implementing Regulation C, the Consumer Financial Protection Act, and a 2019 CFPB consent order. In the 2019 CFPB consent order, the CFPB alleged that the company intentionally misreported certain data fields concerning borrower race, ethnicity, and sex from 2014 through 2017. In the current case, the CFPB alleged that the company's HMDA data continued to be deficient after the 2019 settlement, and that the company did not implement adequate changes to its compliance management system. The nonbank mortgage company agreed to pay a \$3.95 million penalty, and agreed to regularly audit, test, and correct its HMDA data among other remedial actions.

Bite 4: CFPB Takes Action Against Reverse Mortgage Servicing Contractor and its Affiliates

On June 18, 2024, the CFPB took an action against a reverse mortgage servicing contractor and its affiliates alleging violations of the CFPA and RESPA. In this action, the CFPB alleged that the companies failed to maintain staffing adequate to handle as many as 150,000 borrowers per year, preventing borrowers from fulfilling their annual occupancy requirements, obtaining loan payoff statements, and finding foreclosure alternatives. The consent orders permanently ban three of the four servicers from reverse mortgage servicing and requires the remaining entity to develop a compliance plan before engaging in reverse mortgage servicing again. The consent order requires the subcontracting entities to pay \$11.5 million in consumer redress and a \$5 million civil money penalty, the entity that was holder of the reverse mortgage servicing contract must pay a nominal civil penalty of \$1, based on its inability to pay.

Bite 3: CFPB Takes Action Against Owners of Online Lending Company

On June 17, 2024, the CFPB took action against owners of an online lending company. The CFPB alleges that they fraudulently concealed assets to avoid paying a judgment of more than \$43 million to the CFPB. The CFPB sued the online lending company and its owner back in 2015 for allegedly lying to consumers about the cost of short-term loans and withdrawing money from borrowers' accounts without permission. In April 2023, the CFPB filed a fraudulent transfer action alleging that the couple transferred funds to hinder, delay, or defraud the CFPB, in violation of the Federal Debt Collection Procedures Act. The CFPB alleged that the husband fraudulently transferred \$12.3 million to his wife through a series of revocable trusts. The CFPB's order will require the husband and wife to pay \$7 million of an imposed \$12.3 million judgment, with the remaining suspended due to demonstrated inability to pay more.

Bite 2: CFPB Takes "Repeat Offender" Action Against National Bank

On July 9, 2024, the CFPB issued a consent order against a national bank alleging unlawful repossessions. The CFPB claims the bank repossessed vehicles when the delinquency was caused by the bank charging allegedly unnecessary and duplicative fees for insurance coverage when the consumers already had insurance. The CFPB alleged that the national bank conducted unlawful sales practices by charging fees that allegedly provided no value to the consumers. The CFPB further alleges the bank opened unauthorized accounts and enrolled customers in products without their consent. The CFPB claims the bank violated the Fair Credit Reporting Act; the Electronic Fund Transfer Act/Regulation E; and the Consumer Financial Protection Act. The consent order requires the bank to pay redress to 35,000 consumers, pay a \$5 million penalty, and pay a \$15 million penalty for opening unauthorized accounts. The bank will also be prohibited from setting employee sales goals that incentivize opening accounts without customer authorization.

Bite 1: Appeals Court Rules in Favor of CFPB in Redlining Case

On July 11, 2024, it was reported that a three-judge panel of the U.S. Court of Appeals for the 7th Circuit ruled that the Equal Credit Opportunity Act applies not just to credit applicants but also to *prospective* applicants. The CFPB filed a redlining lawsuit against a Chicago mortgage lender in 2020, alleging that the company's CEO made disparaging remarks on a radio show that could have discouraged Black potential customers from submitting applications, in violation of the ECOA and Regulation B. The district court dismissed the CFPB's lawsuit, and the 7th Circuit reversed that decision. The 7th Circuit judges held that the Illinois federal court should not have dismissed the lawsuit because "[w]hen the text of the ECOA is read as whole, it is clear that Congress authorized the imposition of liability for the discouragement of prospective applicants." The 7th Circuit wrote, "The district court held that ECOA does not authorize the imposition of liability for the discouragement of prospective applicants. We take a different view." The case was reversed and remanded back to the district court. The mortgage lender could appeal the case to the full 7th Circuit or to the Supreme Court.

Extra Bite: FTC Takes Action Against Online Used Car Dealer

On July 2, 2024, the FTC proposed a settlement with an online used car dealer to resolve allegations that the company violated the FTC Act, the Used Car Rule, the Pre-sale Availability Rule, and the Mail, Internet, and Telephone Order Rule ("MITOR"). The FTC alleged that the company failed to deliver purchased cars within the advertised timeframe, failed to conduct the thorough inspection process as advertised, and failed to provide the requisite Buyers Guide until late in the purchase process. The FTC alleged that the company's website and advertising told consumers that cars would be delivered in 14 days or less, but that the company often did not meet this delivery timeline. The FTC also alleged that the company regularly failed to give consumers the opportunity to consent to a longer delivery timeline or to cancel their purchase and receive a refund, as required by MITOR. The company neither admitted nor denied the allegations, but agreed to pay \$1 million to the FTC for consumer refunds, agreed to document all claims

about promises it makes regarding shipping times, agreed to refrain from making misleading claims about inspections and shipping times, and agreed to abide by the rules at issue in this case.

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