

CFPB Bites of the Month - September 2024 - Wake Me Up When September Ends, CFPB

October 21, 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 September 2024 webinar.

Bite 10: CFPB Publishes Report on Cash-Back Fees

On August 27, 2024, the CFPB issued a report indicating that large retail store chains charge cash-back fees to customers using debit and prepaid cards, costing Americans millions of dollars in fees. The CFPB noted that these cash-back fees are occurring as various bank merger and branch closures have reduced the supply of free cash access points for consumers. The CFPB sampled eight large retail companies and assessed their practices for charging cash-back fees. The report found that the three large retail companies in the sample charged cash-back fees resulting in an estimated \$90 million in fees annually. The report also indicates that many merchants pre-determine the withdrawal options, commonly between \$5 and \$50. The report indicates that three major retail chains (out of the eight sampled), like dollar stores and a grocery store chain, charged cash-back fees, while the 5 others in the sample didn't. The report noted that consumers with lower incomes or fewer banking choices encounter cash-back fees disproportionately. For example, some stores are frequently located in small rural towns, communities of color, and low-income communities. Those areas, the CFPB claimed, are more likely to have fewer bank branch locations and more residents relying on cash for daily transactions.

Bite 9: CFPB Publishes Report on Medical and Rental Debt Collection

On September 5, 2024, the CFPB released its Annual Report to Congress on debt collection, focusing on medical and rental debt. In 2023, consumer complaints about medical debt in collections made up about 11% of all collections complaints to the CFPB. The CFPB stated that many of the same collection problems have persisted since last year's report. The CFPB's research and the complaints include claims that some debt collectors attempt to collect medical bills consumers already paid or bills eligible for financial assistance programs. The CFPB claimed it continues to receive complaints about medical financing products, and that debt collectors pursue patients for these bills even when the bills should never have been incurred in the first place. The CFPB started collecting complaints about rental debt collection in August 2023. From August 2023 through the end of 2023, the CFPB received more than 1,700 rental debt complaints. The

CFPB's research and the complaints include claims that some debt collectors collected on bills that are inflated due to illegal price fixing and tacked on rental fees, such as fees the CFPB calls rental "junk" fees from payment processing servicers.

Bite 8: CFPB Issues Consumer Advisory on Video Games

On August 28, 2024, the CFPB issued a consumer advisory concerning video games. 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 purchase to avoid surprise overcharging. The CFPB also recommended parental controls or specialized accounts for children that require a password before making transactions and considering games without in-game purchases. The CFPB also advised consumers to consider opting-out of data sharing and collection policies on accounts when possible. The CFPB claims that gaming technology collects and monitors a child's physical location and social media activity, 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. The CFPB has continued monitoring developments in the video game market and previously released a report on banking in video games in April 2024. A series of Hudson Cook articles on the CFPB's activities involving gaming can be found [here](#).

Bite 7: CFPB Publishes Guidance on Overdraft Fees

On September 17, 2024, the CFPB published guidance on overdraft fees, clarifying that financial institutions cannot charge overdraft fees without affirmative consent. Specifically, the CFPB published a circular that addressed whether financial institutions violate the law if there is no proof that the financial institution obtained a consumer's affirmative consent before levying overdraft fees for ATM and one-time debit card transactions. The circular concluded that "yes," a financial institution may violate the Electronic Funds Transfer Act and Regulation E, if there is no proof that it obtained affirmative consent to enrollment in covered overdraft services. Under the EFTA, banks cannot charge overdraft fees on ATM and one-time debit card transactions unless consumers have affirmatively opted in. Based on its supervisory and enforcement work, the CFPB has determined that some institutions have been unable to provide evidence that consumers had opted into overdraft coverage before they charged overdraft fees. CFPB Director Chopra said, "No Americans should be hit with bank account fees that they never agreed to."

Bite 6: CFPB Wins Small-Business Data Rule Challenge

On August 26, 2024, a federal judge upheld the Small Business Data Rule after trade associations challenged the CFPB's authority. The CFPB issued the rule in March of 2023, requiring financial institutions to collect and report several types of data from small business credit applications and to create a database of such applications. In July of 2023, a federal judge blocked the CFPB from enforcing the rule nationwide after the 5th Circuit decision on the CFPB's funding structure. After the Supreme Court upheld the

CFPB's funding structure, the rule's injunction was slated to end, and the American Bankers Association and Texas Bankers Association argued that the judge should block the rule on other grounds. The banking groups argued that the CFPB violated federal administrative law by adopting a rule whose data collection was so flawed that the rule undercut the statute's purpose and increased costs for small businesses. The judge held that the groups' arguments were disagreements over the CFPB's determinations rather than a dispute over its statutory authority to adopt the rule. The CFPB previously extended the deadlines for lenders to comply with the rule. Those with the highest volume of small business loans are required to collect data by July 2025.

Bite 5: CFPB Takes Action Against Company Selling its Membership Card

On September 13, 2024, the CFPB sued a company and its CEO for allegedly tricking consumers into signing up for an expensive membership based credit card. The CFPB alleges that card charged almost \$300 in annual fees, on a card with a \$500 credit limit, and that the card could only be used to purchase goods from the company's overpriced online store. The CFPB alleged that between 2017 and 2021, the company enrolled nearly 900,000 consumers in its membership program who collectively paid more than \$51 million in fees. The CFPB alleged that 93% of these consumers never used any of the company's products but accounted for over \$45 million in fees. The complaint alleges that the company violated the Consumer Financial Protection Act and the Truth in Lending Act. The complaint also alleges that the company failed to mention the membership card's considerable limitations, that the company's fees exceeded the caps set by TILA and regulation Z, and that customers had a hard time canceling their memberships. The CFPB is requesting an injunction, an order to pay a civil money penalty, and redress to consumers.

Bite 4: CFPB Takes Action Against Mortgage Lender

On August 29, 2024, the CFPB issued a consent order in an action alleging that a mortgage lender violated the CFPA by misleading consumers about the cost of its cash-out refinances. According to the consent order, the company provided side-by-side cost comparisons, but the comparisons included only principal and interest payments for its refinance loans, whereas the original loan payment amount included principal, interest, taxes, and insurance. The company did not admit nor deny the allegations but agreed to pay a \$2.25 million civil money penalty and to comply with applicable laws. In 2015, the CFPB entered into a consent order with the Company for allegedly deceiving consumers about a veterans' organization's endorsement of its products and participating in a kickback scheme for customer referrals. The previous consent order terminated in 2020.

Bite 3: CFPB Takes Action Against a Mortgage Servicer

On August 21, 2024, the CFPB issued a consent order against a residential mortgage servicer alleging that the company violated a 2017 CFPB Consent Order, the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Homeowners Protection Act, and the Consumer Financial Protection Act. According to the CFPB, the servicer took prohibited foreclosure actions against borrowers and interfered with loss mitigation relief

options. The CFPB alleged that the company: flouted the 2017 consent order and continued to engage in prohibited foreclosure activities, failed to timely place holds on foreclosures, and failed to develop written policies and procedures to ensure compliance. The CFPB also claims the servicer failed to provide full information to borrowers about their loss mitigation options, overcharged for private mortgage insurance, and charged late fee amounts that were higher than allowed by the mortgage contract. The consent order requires the company to pay \$3 million in consumer redress and a \$2 million penalty into the civil penalty fund. The consent order also includes "corporate responsibility provisions" requiring the company to invest \$2 million to update its servicing technology and compliance management systems. The consent order also puts limits on compensation to the company's Chairman and CEO if he doesn't take actions necessary to ensure compliance.

Bite 2: CFPB Takes Action Against National Bank

On September 11, 2024, the CFPB issued a consent order against a national bank for allegedly sharing inaccurate information about its customers to consumer reporting agencies. The CFPB alleged that the bank violated the Fair Credit Reporting Act, Regulation V, and the Consumer Financial Protection Act. The CFPB alleged that the bank failed to fix reporting errors, shared fraudulent information with consumer reporting companies, and failed to investigate and resolve consumer disputes. The bank agreed to pay \$7.76 million in consumer redress and a \$20 million penalty to the CFPB's victims relief fund. The CFPB noted that this is the second enforcement action against the bank.

Bite 1: CFPB Takes Action Against Federal Student Loan Servicer

On September 12, 2024, the CFPB announced that it had taken action against a federal student loan servicer, issuing an order requiring the servicer to pay \$120 Million and banning the servicer from acquiring or servicing certain loans. The CFPB alleges that the servicer and its debt collection subsidiary violated the Consumer Financial Protection Act, the Fair Credit Reporting Act, and the Fair Debt Collection Practices Act. According to the CFPB's 2017 complaint, the organization steered borrowers into forbearance instead of income-based repayment plans, misled borrowers who were enrolled in income-based repayment plans, misallocated and misapplied loan payments, furnished inaccurate negative credit information to consumer reporting agencies, and misled consumers about certain fees and the impact of a credit rehabilitation program. The settlement bans the company from acquiring or servicing certain direct federal student loans and Federal Family Education Loan Program loans. The settlement also requires the company to pay \$100 million in redress for affected consumers and an additional \$20 million civil money penalty to the CFPB's Civil Penalty Fund. The CFPB's press release claimed that the student loan servicer is a "repeat offender."

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