

CFPB Bites of the Month Webinar Recap: The CFPB and the Dust of June

July 10, 2024 | [Justin B. Hosie](#), [Eric L. Johnson](#) and [Kristen Yarows](#)

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

Bite 13: CFPB Director Addresses House Financial Services Committee

On June 13, 2024, Director Chopra [addressed](#) the House Financial Services Committee. Director Chopra claimed that there was a pressing need for Congress and the CFPB to protect "personal data and financial privacy in an increasingly digital marketplace." Director Chopra noted that the CFPB has worked to develop data sharing standards and privacy protections. He urged Congress to act to protect financial data. Director Chopra also sought "opportunities to advance legislation to accelerate open and decentralized banking in our country that can also protect personal data." Director Chopra highlighted that the CFPB has finalized a key part of the framework for Section 1033 and that he anticipates finalizing the rule in the fall. Director Chopra also noted that the CFPB is proposing a rule under the Fair Credit Reporting Act to restrict data brokers' use of certain sensitive data.

Bite 12: CFPB Launches Inquiry Into "Junk Fees" in Mortgage Closing Costs

On May 30, 2024, the CFPB [announced](#) that it launched an inquiry into so called "junk fees" in mortgage closings, which the CFPB claims increase closing costs. The inquiry includes a Request for Information Regarding Fees Imposed in Residential Mortgage Transactions. The request seeks input about how mortgage closing costs may be inflated and constraining the mortgage lending market. The CFPB asked which fees are subject to competition, how fees are set, who profits from the fees, how fees are changing, and how they affect consumers. Comments are due on or before August 2, 2024. The announcement came 10 days after Director Chopra [addressed](#) the Mortgage Bankers Association, focusing on credit reports and credit scores on May 20, 2024.

Bite 11: CFPB Issues Circular on Deception in Fine Print

On June 4, 2024, the CFPB [issued](#) a new Circular on Deception in Contract Fine Print. The Circular addressed whether including unlawful or unenforceable terms in consumer financial contracts violate the Consumer Financial Protection Act's prohibition on deception. The Circular responded that such terms may violate the CFPA's prohibition on

deception, when applicable law renders such terms unlawful or unenforceable. The CFPB gave examples of contract terms purporting to waive rights that cannot be waived, including the use of qualifiers such as "subject to applicable law" or "except where unenforceable." According to the CFPB, such qualifiers are unlikely to cure a provision's misleading or material nature. The CFPB is expected to finalize a proposed rule later this summer which will require certain supervised nonbank companies to register certain contractual terms with the CFPB.

Bite 10: CFPB Releases 1071 Compliance Deadlines

On May 17, 2024, the CFPB issued a notice that it plans to issue an interim final rule to extend the compliance deadlines for its small-business data collection rule. The compliance deadlines were previously stayed pending the outcome of the *CFSA v. CFPB* Supreme Court case. The interim final rule will extend compliance so that Tier 1 institutions have a new compliance date of July 18, 2025, Tier 2 institutions have a new compliance date of January 16, 2026, and Tier 3 institutions have a new compliance date of October 18, 2026.

Bite 9: CFPB Issues Interpretive Rule on Buy Now, Pay Later

On May 22, 2024, the CFPB issued what it calls 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 issued an interpretive rule claiming to confirm that Buy Now, Pay Later companies are "credit card providers" under the Truth in Lending Act and Regulation Z. The CFPB claims 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 says they must provide consumers with periodic billing statements. The CFPB is accepting public comments on the interpretive rule until August 1, 2024.

Bite 8: CFPB Proposes Rule to Ban Medical Bills from Credit Reports

On June 11, 2024, the CFPB proposed a rule that stop creditors from obtaining and using information about medical debt in underwriting and prohibit credit reporting companies from including medical debt on credit reports sent to creditors. The proposal also seeks comment about practices related to medical devices used as collateral. The proposal comes a year after the three nationwide credit reporting agencies voluntarily removed medical bills from credit reports, and two major credit scoring companies decreased the impact of medical bills on consumer scores. Comments must be received on or before August 12, 2024.

Bite 7: CFPB Establishes Final Rule for Data Sharing Standard Setting Body Under Open Banking Standards

On June 5, 2024, the CFPB announced a final rule, establishing a process for recognizing data sharing standards. The final rule formalizes the qualifications to become a

recognized industry standard setting body under the CFPB's forthcoming Personal Financial Data Rights Rule. The rule also includes a guide for how standard setters can apply for recognition and how the CFPB plans to evaluate applications. The standard setters must apply for recognition from the CFPB and display openness, transparency, balanced decision-making, consensus, plus provide for due process and appeals. The rule also provides a way for the CFPB to revoke recognition of standard setters and creates a maximum recognition duration of five years.

Bite 6: CFPB Issues a Final Rule Creating a Repeat Offender Registry

On June 3, 2024, the CFPB issued a final rule that requires covered nonbanks to report orders and judgments to the CFPB. A covered order is a final, written public order (including consent orders) effective on or after January 1, 2017, obtained by a federal, state, or local agency and issued by an agency or court with public provisions requiring or limiting certain actions based on alleged violations of covered laws. Covered laws are enumerated in the rule, and include federal consumer financial laws, other laws enforced by the CFPB (e.g., Military Lending Act), and certain federal and state unfair, deceptive, or abusive acts or practices (UDAP or UDAAP) laws. Some larger entities will be required to provide an attestation from a senior executive that confirms compliance with the relevant orders. The CFPB's press release also touted the Bureau's Repeat Offender Unit. The Final Rule is effective on September 16, 2024, and has a phased initial registration period by nonbank type that begins as early as October 16, 2024.

Bite 5: Lawsuit Over CFPB's Credit Card Late Fee Rule is Again Transferred

On May 29, 2024, it was reported that the lawsuit over the CFPB's Credit Card Late Fee Rule was again transferred. Back in March, several banking and trade groups filed a lawsuit in the U.S. District Court for the Northern District of Texas challenging the CFPB's credit card late fee rule. The banking and trade groups asserted that the new rule capping credit card late fees punishes customers who pay on time. The lawsuit was transferred from the Northern District of Texas to the District Court for the District of Columbia and then back to the Northern District of Texas. After the Supreme Court released its decision in the *CFSA* case, Judge Pittman moved to transfer the lawsuit for a second time to the District of Columbia. Plaintiffs challenged Judge Pittman's transfer order. The 5th Circuit issued an order staying the District Court's transfer order until June 18th.

Bite 4: CFPB Sues Student Loan Servicer

On May 31, 2024, the CFPB sued a student loan servicer alleging violations of the CFPA, FCRA, and Regulation V. The CFPB claimed the student loan servicer collected on student loans that had been discharged in bankruptcy and sent false information to consumer reporting agencies. The lawsuit alleged that the student loan servicer failed to maintain policies and procedures to identify when loans were discharged in bankruptcy, that the servicer illegally collected on and furnished inaccurate information about discharged loans, and the servicer improperly told borrowers that they still owe payments on discharged loans. In early May 2024, the CFPB filed a different complaint and proposed stipulated judgment against the student loan servicer. The lawsuit seeks an injunction,

consumer redress, and a civil penalty, and other relief.

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 facilitates small-dollar, short-term loans that the CFPB claims 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 alleges violations of the Consumer Financial Protection Act and the Fair Credit Reporting Act. The CFPB claims 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 seeks 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 Student Loan Debt Relief Telemarketer

On May 20, 2024, the CFPB announced a settlement with a telemarketing company that offers student debt relief services. The CFPB alleged that: the company misrepresented that it was affiliated with the U.S. Department of Education; fees paid to the company would go towards the consumer's debt balance; and the company would help customers consolidate their loans, reduce their monthly payments, or achieve loan forgiveness. The CFPB also alleged that the company charged initial and monthly fees regardless of whether the company was able to receive debt relief results on the customer's behalf. The CFPB alleged that the company engaged in deception under the Consumer Financial Protection Act and the Telemarketing Sales Rule. The consent order requires the company to permanently cease operations, void all consumer agreements, and pay a \$400,000 penalty to the CFPB's victims relief fund.

Bite 1: CFPB Prevails at Supreme Court 7-2

On May 16, 2024, the U.S. Supreme Court, by a vote of 7-2, rebuffed a challenge to the constitutionality of the CFPB's funding structure, reversing a Fifth Circuit decision holding the CFPB's funding was unconstitutional. The Supreme Court held that Congress' statutory authorization allowing the Bureau to draw money from the "earnings" of the Federal Reserve System to carry out the Bureau's duties satisfies the Appropriations Clause. The Court stressed that "an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes" and that the CFPB's funding scheme "fits comfortably" within that framework, consistent with historical practice.

That same day, the CFPB Director issued prepared remarks on the decision, claiming that the Supreme Court rejected a "radical theory" that would have rattled financial markets. He also said that the ruling makes clear that "the CFPB is here to stay." The Chair of the House Financial Services Committee, Patrick McHenry issued a statement

vowing to revisit the CFPB's authority through reform legislation. Several CFPB investigations and enforcement actions were stayed pending resolution of this case, and the CFPB appears to be ready to move those matters forward.

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