

## CFPB Bites of the Month - February 2024 - "I Got You, CFPB".

February 29, 2024 | [Justin B. Hosie](#), [Eric L. Johnson](#) and [Laura J. Bacon](#)

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

### Bite 10: News Organization Sends FOI Request to CFPB

On February 19, 2024, an online newspaper sent a Freedom of Information Act (FOIA) request to the CFPB, asking for details about recipients of funds from the CFPB's Civil Penalty Fund. When the CFPB collects funds as penalties for enforcement actions, it uses the money to compensate the victims of those alleged violations. However, if the CFPB determines that it cannot locate actual victims or if the amounts are too small to allocate, the CFPB may instead send the money to nonprofits and other organizations that foster consumer education and financial literacy. According to the news site, the CFPB's financial reports only provide the names of the companies who paid into the fund, and do not list the specific groups that received funds. The group sent its FOIA request on February 16th, seeking the names of all organizations that have received payments from the fund since the CFPB's formation in 2011.

### Bite 9: Fintechs ask CFPB to Regulate Earned Wage Access

On February 7, 2024, a fintech trade association sent a letter to the CFPB asking the CFPB to establish rulemaking governing earned wage access transactions. The trade group's letter to Director Chopra urged the CFPB to begin a rulemaking process to regulate the industry in a way that would be consistent across the states - a move that consumer advocates claim is designed to stall state efforts and head off revised advisory guidance from the CFPB. Various state legislatures are considering regulating earned wage access programs, some of them seeking to regulate the transactions as credit.

### Bite 8: The CFPB's Enforcement Work in 2023

On January 29, 2024, the CFPB published a summary of its 2023 enforcement actions, and noted its expanding capacity for enforcement going forward. The CFPB noted that in 2023, it filed 29 enforcement actions and resolved 6 previously filed lawsuits through final orders. Those orders led to agreements to pay \$3.07 billion dollars to consumers, and approximately \$498 million dollars in civil money penalties. The CFPB identified "key actions" from the past year, which included an order against an auto title lender that allegedly violated servicemember protections, an action against a large bank for alleged fee violations, an order against a different large bank for alleged discrimination practices, a lawsuit against a lender who the CFPB claims pushed consumers into refinances, an action against a credit reporting company, and a settlement with a credit repair firm. The CFPB noted that 2023 was the first time that a team of technologists dedicated to enforcement matters joined the CFPB, and that in

2024, the CFPB is significantly expanding its enforcement capabilities by hiring more attorneys, along with additional analysts, paralegals, e-litigation support specialists, economists, and more.

#### Bite 7: Report on Credit Card Rates by Institution Size

On February 16, 2024, the CFPB's Office of Markets issued a report based on results from its Terms of Credit Card Plans survey. The survey has been running since 1990, but the CFPB recently enhanced the survey to collect more details on the types of credit card plans issuers offer. According to the CFPB, larger banks offer credit card products with worse terms and interest rates than smaller banks and credit unions, regardless of the borrower's credit risk. The report found that the 25 largest credit card issuers charged customers interest rates of 8 to 10 points higher than small- and medium-sized banks and credit unions. The CFPB claimed that larger credit card issuers were also more likely to charge annual fees; 27% of these cards carried an annual fee, compared with 9.5% for cards offered by smaller issuers. The CFPB concluded that a lack of competition is likely responsible for the higher rates and charges at the largest issuers. The top 30 credit card companies represent about 95% of credit card debt, and, according to the CFPB, the top 10 dominate the market. The CFPB noted that these reports are a part of the CFPB's larger push to jumpstart competition in the credit card market, which will include the development of rules on open banking and increased scrutiny on comparison websites.

#### Bite 6: Statement of Principles on Appraisal Bias

On February 12, 2024, the Federal Financial Institutions Examination Council (FFIEC) issued a statement of principles to its member entities, which include the CFPB along with the other prudential regulators like the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, National Credit Union Administration, and the FFIEC's State Liaison Committee. The FFIEC noted that these principles were being communicated to mitigate risks that may arise due to potential discrimination or bias in appraisal and evaluation practices and to promote credible valuations. The statement focused on consumer compliance and safety and soundness examination principles. The FFIEC noted that valuation discrimination and bias can cause consumer harm, lead to violations of law, have a detrimental impact on communities, undermine an institution's credit decisions, and negatively impact its safety and soundness. According to the FFIEC, this statement of principles should not be interpreted as new guidance to supervised institutions or as evidence of an increased focus on appraisal practices. Rather, the statement is meant to offer transparency into the examination process and to support risk-focused examination work.

#### Bite 5: CFPB Issues Revised Supervisory Appeals Process

On February 16, 2024, the CFPB announced that it has issued a procedural rule, updating the process by which financial institutions can appeal supervisory findings. According to the CFPB, the new rule will broaden the group of CFPB officials who are eligible to evaluate appeals, will increase the options for resolving an appeal, and will make other clarifying changes. Under the revised appeals process, a Supervising Director will select an appeals committee of three CFPB managers with relevant expertise who did not work on the matter being appealed, instead of requiring managers from the Supervision department. There is now also a new option for resolving an appeal-- institutions can now remand the matter to Supervision staff for consideration of a modified finding, in addition to the existing options of upholding or rescinding the finding. Additionally, institutions may now file an appeal of any compliance rating or finding, not only an adverse rating.

#### Bite 4: CFPB Proposes Another Rule on Bank Fees

On January 24, 2024, the CFPB announced that it has proposed a rule on banking fees, which will stop new "junk fees" on bank accounts. This proposed rule would block financial institutions from charging fees on transactions that are declined at the time of a "swipe, tap, or click." According to the CFPB, these fees include those that are charged for declined debit card purchases and ATM withdrawals, as well as some declined peer-to-peer payments. The CFPB claims that fees that are declined at the time that the transaction is attempted are rare and that financial institutions almost never charge these fees, but this rule is a proactive step to make sure that financial institutions do not start imposing these fees as technology advances and real-time declinations are more feasible. Director Chopra said that they will "continue to rid the market of junk fees today and prevent new junk fees from emerging in the future." If finalized, this rule will apply to banks and credit unions, and certain peer-to-peer payment companies. The application of the rule to peer-to-peer payment companies will depend on how the payments are processed, as real-time payments or as ACH debits, and on whether the company offers a stored value account or links to a deposit account. Comments on the proposed rule are due by March 25, 2024.

#### Bite 3: CFPB Announces Funds Distribution in Debt Relief Case

On February 15, 2024, the CFPB announced that 8,571 consumers who were allegedly harmed by a student loan debt relief business and a related general debt settlement company will receive checks totaling more than \$10.9 million dollars. The CFPB sued the two companies and their shared CEO in 2020, alleging that consumers were charged illegal upfront fees in violation of the Telemarketing Sales Rule and that the companies used deceptive tactics in violation of the Consumer Financial Protection Act (CFPA). The alleged illegal conduct occurred from 2015 until 2022, when a district court entered an order that imposed civil penalties and required consumer redress, along with injunctions. The CEO is banned from debt-relief services for five years, and the two companies were permanently banned from debt-relief services and from obtaining referrals from companies purporting to make or arrange loans. The funds distribution will come from the Civil Penalty Fund as well as CFPB- administered redress.

#### Bite 2: CFPB Announces Resolution of Long-Running Suit

On February 8, 2024, the CFPB announced that it has entered into a settlement on an enforcement suit against a foreclosure relief firm that dates back to 2014. The case was originally brought by the CFPB, the FTC, and 15 states against a foreclosure relief operation and four individual attorneys, who allegedly charged millions of dollars in advance fees for legal representation that was never provided. The CFPB won a judgment in 2019, but due to multiple appeals by the defendants, had not come to a resolution until this settlement was reached. The settlement agreement will require the defendants to pay \$10.9 million in consumer redress and a \$1.1 million penalty into the CFPB's Civil Penalty Fund. The individual defendants are covered by 8- or 5-year bans from the mortgage assistance industry, under the district court's original order.

#### Bite 1: CFPB Announces Joint Action Against Debt Relief Company

On January 19, 2024, the CFPB, along with the attorneys general of 7 states, announced that that they filed a lawsuit against a debt relief company, two individuals, and "a web of affiliated shell companies." Allegedly, the company advertised that it provided loans to help pay down debts, but when consumers called to inquire about the loans, they were told they didn't qualify and were instead encouraged to enroll in debt relief services, which required immediate payment into an escrow account. The CFPB

alleges that the companies provided little or no debt relief. The CFPB and the involved states alleged that the companies collected hundreds of millions of dollars in fees in advance of any settlement payments, in violation of the Telemarketing Sales Rule. The lawsuit also alleges that the company falsely led consumers to believe that attorneys were conducting the debt-relief negotiations, when those were actually done by the debt-relief firm and its employees. The CFPB claims that this is a violation of the CFPB's prohibition on unfair, deceptive, and abusive acts or practices.

#### *Extra Bite:* FTC Charges Cash Advance Provider

On January 24, 2024, the FTC announced an action against an online cash advance provider and its founders. According to the FTC, the online cash advance company claimed it would charge consumers \$1.99 per month to subscribe to services, and that consumers could access up to \$50 instantly. But, the FTC claimed that consumers could only access \$20 and were charged a \$4 for instant cash. Allegedly the company told consumers requesting the larger advance that an algorithm could increase the advance amount over time, but the FTC claims the algorithm didn't exist. The FTC also alleged that the company engaged in practices it calls "dark patterns" to make it difficult to cancel subscriptions. The FTC also alleges the company did not consider public assistance income, declining advances to public assistance recipients, but nevertheless charging them for a monthly subscription. In a settlement order, the parties agreed to (i) pay \$3 million in consumer refunds; (ii) stop deceiving consumers about the use of an algorithm or artificial intelligence; (iii) get consumers' express, informed consent for charges; (iv) provide an easy method for cancellation; (v) stop deploying discriminatory practices; (vi) enact a fair lending program; and (vii) create and maintain records of consumer testing.

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