

June 19, 2023

CFPB Issues Spring 2023 Agency Rule List

By: [Michael Flynn](#)

As a part of Federal agencies' issuance of their semi-annual Spring 2023 Regulatory Agenda, the CFPB has published its Spring 2023 Agency Rule List ("2023 List"). In that List, the CFPB has set forth the status of its present rulemaking activities and its plans for such activities in the next 6 months. This 2023 List is worth reviewing – it provides a reminder of the progress made on pending CFPB rulemaking efforts, and discloses any new planned rulemaking initiatives. A copy of the 2023 List may be found [HERE](#).

To analyze the new 2023 List, this Client Alert will compare it to the CFPB's Fall 2022 List ("2022 List"), which was discussed in detail in the Buchalter January 10, 2023 client alert "CFPB Proposed Regulatory Activity Agenda Released, Focuses on Limitations on Bank and Credit Card Fees, Small Business Lending Data Collection, Fair Credit Reporting Act Requirements, and Other Areas", found [HERE](#).

Compared to the 2022 Fall List, the 2023 List adds one new matter the CFPB is planning, and eliminates one matter for which it recently issued a final rule. Otherwise, the 2023 List provides updates on the progress of the remaining matters on the 2022 List.

The lack of change between the 2022 and 2023 Lists should not be read as an indication of any lack of activity by the CFPB. Instead, it reflects the fact that the CFPB engaged in a large amount of new rulemaking activity on a number of subjects, with the rulemaking process taking significant time. The number of matters described in this Client Alert that are not completed or are in "pre-rule activity" shows the CFPB has a pipeline of subjects on which future rules and rule amendments can be expected.

NEW MATTER ON 2023 LIST

CFPB plans a "larger participant rule" for nonbank companies in the consumer payments market

Citing Dodd-Frank Act Section 1024(a)(1)(B), the CFPB noted that it is authorized to supervise "larger participants," which are certain nonbank covered persons, for compliance with federal consumer financial laws and for other purposes. The CFPB stated that it is considering issuing new regulations to further define the scope of the CFPB's nonbank supervision program, with an emphasis on larger participants in markets for consumer payments. In that regard, the CFPB plans on issuing a Notice of Proposed Rulemaking in July 2023.

COMPLETED MATTER NOT ON THE 2023 LIST – Section 1071 Small Business Lending Data Collection Rule

Section 1071 Small Business Lending Data Collection Rule

On the 2022 List, the creation of the Section 1071 Small Business Lending Data Collection Rule was shown as in progress. Recently, on March 30, 2023, the CFPB issued its final 1071 data collection rule. Accordingly, it is not shown on the 2023 List.

OTHER MATTERS NOT YET COMPLETED AND APPEARING ON BOTH LISTS

LIBOR Transition Interim Final Rule – Comment Period Has Ended

In April 2023, the CFPB issued an interim final rule that, for example, revised Regulation Z's commentary on when a modification to a closed-end loan constitutes a disclosable refinancing to address 12-month LIBOR. The 2023 List shows the CFPB's Interim Final Rule on LIBOR Transition as having a comment period ending on June 12, 2023. That date has now passed.

Notices of Proposed Rulemaking Completed and Comment Period Ended – Final Rule Expected Later This Year

The 2023 List identified three rulemakings where the Notice of Proposed Rulemaking has been issued, and the comment period has run, since the issuance of the 2022 List. The 2023 List shows that the CFPB intends to issue final rules later this year. The three subjects are:

- *Credit Card Penalty Fees* - limiting the amounts card issuers may charge card users for late payments and other card requirement violations
- *Registry of Supervised Nonbanks That Use Form Contract Terms That Seek to Waive or Limit Consumer Legal Protections*
- *Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders*

Notice of Proposed Rulemaking Completed, but Comment Period Still Open

The 2023 List identified one rulemaking where the Notice of Proposed Rulemaking is completed, but the comment period remains open:

- *Property Assessed Clean Energy Financing Rule* – the CFPB's proposed rule sets forth the coverage of Regulation Z/TILA to PACE loans. The comment period ends July 26, 2023.

The 2023 List identified one rule where the Notice of Proposed Rulemaking had not yet been published, but where since the publication of the 2023 List, the proposed rule has been published:

- *Implementing Amendments to FIRREA Concerning Quality Control Standards for Automated Valuation Models*

The 2023 List identified the interagency rulemaking regarding amendments to FIRREA concerning quality control standards for automated valuation models as not yet having a published Notice of Proposed

Rulemaking. In fact, the proposed rule has since been published on June 1, 2023. The comment period ends 60 days after the proposed rule is published in the Federal Register.

Issuance of Notice of Proposed Rulemaking Planned

The 2023 List identifies one matter where the CFPB plans to issue a Notice of Proposed Rulemaking this year:

- *Personal Financial Data Rights*

The 2023 List indicates that the CFPB intends to publish later this year (tentatively set for October 2023) a proposed rule that, once adopted, will require a covered entity to make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from the covered entity. The final rule will implement Dodd-Frank Section 1033.

Pre-Rule Activities Planned

The 2023 List identifies three subjects for which it presently anticipates engaging in “pre-rule activity” in 2023, but is not presently scheduled to issue an Advance Notice of Proposed Rulemaking or a Notice of Proposed Rulemaking this year:

- *Overdraft Fees*
- *Possible amendments to Regulations V (Fair Credit Reporting Act)*
- *Non-Sufficient Funds (NSF) fees*

ABOUT BUCHALTER. Buchalter is a leading nationally recognized financial services law firm, having served large, medium and small financial institutions for over 90 years. Buchalter’s Financial Services Regulatory Industry Group and its Consumer Financial Services/Mortgage Regulatory Industry Group provide counseling and analysis across the wide range of regulatory and compliance issues facing consumer financial services institutions, and the Group’s seasoned attorneys are experienced in counseling on CFPB rulemaking and consumer financial services law requirements.



Michael Flynn

Of Counsel
(303) 253-6750
mflynn@buchalter.com



Stephanie Shea

Shareholder
(949) 224-6463
sshea@buchalter.com



Melissa Richards

Of Counsel
(415) 227-3543
mrichards@buchalter.com



Jarrett Osborne-Revis

Senior Counsel
(916) 945-5190
josbornerevis@buchalter.com



Doug Prince

Shareholder
(206) 319-7041
dprince@buchalter.com