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The State of the CFPB During a Fraught Transition Period: Part II

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It has been a little over two months since President Donald Trump returned to office, and since then, the Consumer Financial Protection Bureau (CFPB) has been in flux—to put it mildly. As of this writing, it is unclear whether the CFPB is a **functioning** administrative agency.

In Part I of the Legal Update, we summarized recent events affecting the agency, focusing primarily on the lawsuit filed by the CFPB employees' union to halt actions they allege were taken by new agency leadership to unwind the agency. In this, Part II, we discuss recent enforcement activity, policy developments, and congressional action related to the CFPB and attempt to forecast how the agency will emerge out of the transition and into the remainder of 2025.

The CFPB's enforcement docket

Since the commencement of the second Trump administration, the CFPB has rolled back its enforcement docket significantly. As of this writing, we have identified 11 cases that the CFPB has dismissed or withdrawn as a plaintiff since Acting Director Russell Vought took over the agency, while through public filings the CFPB has indicated its intent to proceed with only six. For the approximately 25 remaining cases, the CFPB has either requested a stay to consider its options or has not made any public statements or taken any actions yet. Based on the trend to date, it is possible that the CFPB will dismiss most or all of the pending actions initiated under prior administrations other than those potentially affecting discrete, politically-sensitive populations, such as service members, or where procedural complexities are present.

Cases dismissed with prejudice:

Capital One: The CFPB accused Capital One of deceptive practices and violating the Truth in Savings Act regarding its 360 Savings account.

Rocket Homes: The CFPB alleged that Rocket Homes violated RESPA Section 8 by providing incentives to real estate brokers for directing homebuyers to Rocket Mortgage.

Pennsylvania Higher Education Assistance Agency: The CFPB accused PHEAA of illegally collecting on student loans that had been discharged in bankruptcy and sending false information about consumers to credit reporting companies.

Vanderbilt: The CFPB accused Vanderbilt of violating TILA's mortgage ability-to-repay requirements regarding underwriting of manufactured home borrowers.

Heights Finance: The CFPB alleged that Heights Finance identified borrowers that were struggling to repay their existing loans and then pushed them to refinance.

SoLo Funds: The CFPB alleged that fintech company SoLo Funds deceived borrowers about the true costs of loans on its peer-to-peer lending platform.

1st Alliance: The CFPB alleged that 1st Alliance engaged in deceptive mortgage lending practices by letting unlicensed consultants create and manage the borrower's loans.

Zelle: The CFPB alleged that Early Warning Services, Chase, Wells Fargo, and Bank of America failed to protect consumers from fraud on the Zelle peer-to-peer network.

TransUnion/John Danaher: The CFPB alleged that the credit reporting agency used deceptive "digital dark patterns" to lure customers into buying subscription products.

Acima Holdings: The CFPB accused a rent-to-own company of deceptive practices.

MoneyGram: The CFPB and the New York State Attorney General alleged that MoneyGram violated the remittance transfer rules under EFTA and Regulation E, and UDAAP. The CFPB withdrew from the case on April 7.

Cases in which CFPB has indicated an intent to proceed:

MoneyLion: The CFPB alleged that MoneyLion violated the Military Lending Act (MLA) and engaged in deceptive acts or practices.

StratFS: The CFPB and seven state attorneys general alleged that StratFS operated a debt-relief scheme that violated the Telemarketing Sales Rule (TSR) and UDAAP.

Cash America West: The CFPB alleged that a pawn store operator violated the MLA.

FDATR: The CFPB alleged that a credit repair company violated the TSR and UDAAP.

Comerica Bank: The CFPB alleged that Comerica violated the EFTA and UDAAP in its administration of the U.S. Department of Treasury Direct Express program.

National Collegiate Master Student Loan Trusts: The CFPB alleges that the trusts engaged in deceptive and unfair acts and practices by bringing certain debt collection lawsuits for private student loan debt.

Congressional Review Act (CRA) resolutions

On March 5, the Senate approved 51-47 a CRA resolution to nullify the CFPB's Larger Participant (LP) Rule for digital payment apps. The nullification of the LP Rule was then approved by the House of Representatives on April 9 by a vote of 219-211. The resolution is expected to be signed into law by President Trump. The LP Rule's disapproval has serious implications for the CFPB's future jurisdiction over Big Tech. Under the CRA, agencies are precluded from enacting a rule in "substantially the same form." Thus, a future CFPB may struggle to assert supervisory authority over Big Tech providers.

The CFPB's final Overdraft Rule also faces a CRA resolution, which was introduced in parallel on February 13 by House Financial Services Committee (HFSC) Chairman French Hill (R-AR) and Senate Banking Committee Chairman Tim Scott (R-SC). The resolution passed the Senate 52-48 on March 27 and the House on April 9 by a vote of 217-211. A nullification of the Overdraft Rule, while impactful, may not have the same future implications as disapproval of the LP Rule. The final Overdraft Rule relied on TILA authority; thus, it is possible therefor that the CFPB could potentially address overdraft practices using other authorities such as UDAAP.

Senator Mike Rounds (R-SD) also introduced a joint CRA resolution on March 11 regarding the final Medical Debt Rule. It is unclear whether this resolution has enough support for passage.

As of this date, we are not aware of efforts to introduce CRA resolutions addressing other CFPB final rules from late 2024, including the 1033 Personal Financial Data Rights Rule. Once Jonathan McKernan is confirmed as CFPB Director, the CFPB is likely to go through the rulemaking and policy docket and make decisions about which other rules would be kept in place versus reconsidered, and how to handle the "guidance" issued under the Biden administration—likely a broad repeal.

Other recent developments

CFPB to Rescind BNPL Guidance: The CFPB has announced its plan to withdraw its May 2024 interpretive rule (IR) that subjects buy-now, pay-later (BNPL) providers to TILA and Regulation Z. The CFPB had interpreted “credit card” under Regulation Z to include digital user accounts used to access BNPL loans for purchases. In a March 26 court filing, the CFPB stated that it is planning on revoking the IR and requested a stay from litigation regarding the rule until the revocation.

CFPB Reopens Settlement Agreement in Townstone Mortgage: In a surprising twist, the CFPB released a statement announcing its intent to vacate its November 2024 consent order with Townstone Mortgage and its owner, Barry Sturner, and return the \$105,000 civil monetary penalty. The CFPB called out prior CFPB leadership for pursuing an “abusive, unjust case,” contending the investigation never had a valid predicate and that the agency had used “radical equity arguments” to “persecute[] and extort[]” a small Midwest firm which “made their life hell.” Two of the authors previously wrote about the Seventh Circuit’s significant post-Loper Bright decision in that matter, which preserved the CFPB’s authority under Regulation B to prohibit discrimination against prospective applicants. It is unclear whether CFPB leadership intends to reopen other consent orders for similar reasons.

CFPB Will Not Enforce Payday Lending Rule: On March 28, the CFPB indicated that it will not prioritize enforcement or supervision of the provisions of the 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule that became effective on March 30. Specifically, those provisions limit the number of payment attempts that lenders may initiate on the consumer’s bank account when prior payment attempts have failed. The payment provisions were ratified by former Director Kathy Kraninger in 2020 at the same time the agency revoked the underwriting requirements of the 2017 Rule and were upheld in the Supreme Court’s 2024 CFSA v. CFPB decision. The CFPB noted that it was contemplating a new rulemaking to narrow the rule.

CFPB Suspends All DEI Activities: On March 12, Acting Director Vought issued a memo to staff instructing the cessation of all agency Diversity, Equity, Inclusion, and Accessibility activities. This includes disbanding employee affinity groups and halting related training and resource allocation. It is unclear how this new position reconciles the CFPB’s statutory mandate under the Dodd-Frank Act to staff an Office of Minority and Women Inclusion or enforce fair lending laws.

Section 1071 Small Business Data Collection Rulemaking Update: On April 3, the CFPB filed a response motion in one of the pending lawsuits challenging the 1071 Final Rule where the agency stated that “CFPB’s new leadership has directed staff to initiate a new Section 1071 rulemaking [and] anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible” which the CFPB believes may moot or otherwise resolve the litigation.

Post-transition forecast

The CFPB's recent turmoil is both unique to the agency, which was born of controversy in 2011 and has long had critics, and consistent with what is happening right now across the federal government, where mass layoffs and budget cuts initiated by the Department of Government Efficiency (DOGE) are prevalent. All in all, despite the existential threat the CFPB has faced over the past two months, it is anticipated that the agency will be refreshed rather than deleted. Agency operations appear to be partially restarted due to the NTEU lawsuit holding the administration's feet to the fire, and CFPB leadership's legal position is that only Congress can wind down the agency. If NTEU loses on appeal, CFPB leadership may continue to take action to significantly hobble the agency. But McKernan's pending confirmation combined with Judge Jackson's broad injunction make it more likely that by late spring, the CFPB will return to a more-than-minimally functioning agency that fulfills its statutory duties and pursues other statutory objectives, albeit at reduced headcount. That said, we do anticipate an ongoing reversal of the prior administration's actions and a renewed focus on innovation. And it is possible that the administration, potentially acting through Vought at OMB, will continue to exert pronounced influence on the CFPB's policies and structure due to Executive Order 14215 which asserts more control over independent regulatory agencies.

What this means to you

Even if the CFPB were to turn into a zombie agency for four years, the laws and regulations under its purview will remain on the books unless Congress changes them. A CFPB revitalized in 2029 under new leadership could look back and enforce violations occurring during the next four years. Moreover, the Dodd-Frank Act generally authorizes state attorneys general and bank regulators to enforce federal consumer law, and a recent RESPA lawsuit by the Pennsylvania AG illustrates well how states may take the lead. The states are very publicly touting their beefed up enforcement capabilities, with ex-CFPB officials sometimes leading the charge. Prior CFPB leadership also released a playbook during the transition which some more aggressively-inclined states, like New York and California, already are acting on. Finally, since many federal consumer finance laws have private rights of action, plaintiffs' attorneys will be emboldened to fill the void. As one of the authors argued recently in a different article, the CFPB now has an opportunity to offer a stabilizing voice at the federal level when states and plaintiffs' attorneys try to fill the void.

Consequently, regardless of whether the CFPB emerges from this fraught period completely neutered or bloodied-but-functional, this is not the time to shirk compliance obligations.

Flash webinar on the state of the CFPB

REGISTER NOW

Husch Blackwell's Ryan DiClemente, Mike G. Silver, Christopher Friedman, and Marci Kawski will present a webinar summarizing the unusual series of recent events, analyzing the current state of play, forecasting how the CFPB will emerge out of the transition, and discussing how this uncertainty affects compliance obligations. The one-hour webinar will take place Monday, April 14, 2025, at noon Central time (rescheduled from April 8).

The webinar will be beneficial to consumer finance industry participants and service providers, including legal, compliance, and business professionals; and anyone with an interest in consumer law, federal legal developments, and administrative law issues.

The program is pending approval for Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Carolina, South Carolina, Tennessee, Texas, and Wisconsin continuing legal education credit.

The webinar recording will be available after the event date. Simply register using this on-demand link to access the recorded program.

Contact us

If you have any questions about the CFPB or other consumer financial services issues, contact Chris Friedman, Marci Kawski, Mike G. Silver, Jakob Seidler, or your local Husch Blackwell attorney.