

# *TCFA 2025 Annual Convention*

*Legal Update*  
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# Today's Topics



Texas Legislation



Litigation of Interest



CFPB Update

Regulatory Changes  
Enforcement Activity  
Congressional Action?

# **Texas Legislation**

# Texas Legislation – HB 1902 (Jugging)

## – HB 1902 – Criminal Offense of Jugging

- Criminal offense for when a person, with intent to commit theft of another person's money:
  - Travels from “commercial business” or financial institution on same path/route as another person without substantially deviating, and
  - Is in possession of two or more criminal instruments (something that can be used to threaten, like a blunt object, gun, knife, etc.).
- Commercial business is not defined, but should include your offices

# Texas Legislation – HB 4238 (Identity Theft)

## – HB 4238 – No Collection from Victim of Identity Theft

- IF you receive from a consumer a specific type of court order declaring the consumer a victim of identity theft,
- THEN you can't collect a debt or portion of a debt that is the result of that identity theft described in the order
  - Cease collection efforts not later than 7<sup>th</sup> business day after receipt of notice/order
  - Send notice to a person that received report relating to debt (i.e., credit bureaus) that debt is disputed and not collectible from victim
  - May not sell or transfer the debt for consideration, except to collect it from the thief
  - But, you can enforce a security interest in the disputed debt (although not any deficiency from the victim)
  - Can collect from or pursue an action against the thief
- Type of court order
  - Requires a hearing and proof by a preponderance of evidence
  - Must contain information about the financial account or transaction affected by the identity theft, including name of financial institution, relevant account numbers, dollar amount, and date of alleged identity theft.

# Litigation

# Convenience Fees Litigation

- ***Glover v. Ocwen Loan Servicing, LLC* (Eleventh Circuit)**
  - Ocwen serviced mortgages after plaintiffs defaulted. Ocwen charged a \$7.50 to \$12 “convenience fee” for online or phone payments; there was no fee for mailed payments.
    - Convenience fee was not mentioned in the plaintiffs’ mortgage agreements.
  - Plaintiffs sued under FDCPA in Florida
    - FDCPA 1692f prohibits collection of any “amount” by a “debt collector” unless such amount is “expressly authorized by the agreement creating the debt or permitted by law.”
      - District court ruled in favor of plaintiffs; Ocwen appealed.
  - Eleventh Circuit Court of Appeals
    - Ocwen argued: fees were for a separate service, not debt collection; optional and thus lawful under state/federal law
    - Court ruled: Ocwen qualified as “debt collector” under FDCPA; convenience fees were “amounts” collected in connection with a debt
    - Because fees were not authorized by a loan agreement or permitted by law, Ocwen violated FDCPA.
- **Distinctions for your Texas business**
  - Decision based on federal law, not Texas law (although similar language appears in Texas law)
  - Third party charges and receives the convenience fee, not the lender

# Fair Credit Reporting Act Litigation

- ***Generally, continuing litigation activity in the FCRA context***
  - Reporting incorrect information to CRAs
  - Failure to investigate or address a consumer dispute, particularly when dispute submitted to the CRA
    - Need to have written policies and procedures, training
    - Make sure you have a way to identify and respond to complaints forwarded by the CRAs



# CFPB Updates

# CFPB – Regulatory Changes

## Corporate Transparency Act

- 3/2/25 - Treasury Department will not enforce penalties or fines for failure to report beneficial ownership information (BOI)
- Treasury plans to propose narrowing the rule's scope to cover foreign reporting companies only
- 03/26/25 - FinCEN's site confirms that all U.S.-created entities and their beneficial owners are now exempt from BOI reporting

## CFPB Coercive Debt Proposal

- 12/24 - CFPB issued ANPR to address coerced debt (e.g., from domestic violence or elder abuse)
- Expand definitions of "identity theft" and "identity theft report" under Reg V (FCRA) to include debts incurred w/out effective consent
- Victims could request that coerced debts be blocked from their credit reports under 15 U.S.C. § 1681c-2.
- CFPB extended public comment period for the ANPR to 4/7/25, to allow more public input.

## Open Banking Rule

- 10/22/24 - CFPB finalized a rule under Dodd-Frank § 1033 requiring financial institutions, credit card issuers, and payment apps (e.g., Venmo) to transfer consumer financial data for free at the consumer's request.
- The rule likely does not apply to TCFA members
  - Not "financial institutions" or "credit card issuers";
  - Do not "control or possess" consumer financial data; and
  - Rely on third-party processors for payments, which qualify as excluded first-party payments.
- Reports indicate CFPB may revise or rescind rule, requiring a new notice-and-comment process; non-enforcement is also possible.

# CFPB – Regulatory Changes (cont'd)

## Credit Card Late Fee Vacated

- 3/5/2024 – final rule reduced safe harbor for late fees—from \$30 for first missed payment and \$41 for subsequent late payments—to \$8.
- Chamber of Commerce sued CFPB in federal court arguing the rule exceeded CFPB's statutory authority under the CARD Act.
- On 4/14/25, parties filed a [joint motion](#) to vacate the Credit Card Late Fee Rule and dismiss all other claims with prejudice.

## Registration Requirements for Small Dollar Lenders

- 2024 – Rule requires certain nonbank financial entities to register with CFPB and provide identifying information about the company, including the agency or court orders concerning consumer protection violations.
- 4/11/25 - CFPB [announced](#) it will not prioritize enforcement or supervision actions against entities that fail to meet registration deadlines.

## CFPB Contract Rule

- 1/25 - proposed rule to prohibit financial companies from including contract clauses that limit or waive consumer's fundamental or constitutional rights.
- Rule has not been finalized and likely will not be issued.

## Biden-Era Rules of Practice scrapped

- 5/13/25 - CFPB proposed rule to rescind its 2022 "rules of practice" that were viewed as concentrating power in the CFPB Director.

# CFPB – Regulatory Changes (cont'd)

## Internal Memo

- An [internal memo](#) released on X states that the CFPB plans to cut examinations by half, pull back on use of fines, and cut back policing of nonbank financial firms

## Withdrawal of Guidance Documents

- 5/9/25 - CFPB issued [formal notice](#) withdrawing 67 regulatory guidance documents in Federal Register. Among them:
  - **Authority of States to Enforce CFPA (87 FR 31940)** – states have broad authority to enforce federal consumer financial protection laws and can bring concurrent actions with the CFPB
  - **FCRA Preemption of State Law (87 FR 41042)** – states can enact stronger consumer reporting laws given the FCRA's limited preemptive scope
  - **Unanticipated Overdraft Fees (87 FR 66935)** – charging unexpected overdraft fees could be unfair under the CFPA, even if technically compliant with other laws
  - **Small Business Lending Rule Statement (88 FR 34833)** – informs covered financial institutions that CFPB intends to focus on ensuring that covered lenders do not discourage small business loan applicants from providing responsive data, including responses to lenders' ECOA-mandated demographic data requests
  - **Overdraft Opt-In Violations (89 FR 80075)** – a bank or credit union can violate the EFTA and Reg. E if it lacks proof of affirmative consent for enrollment in overdraft services

# CFPB – Enforcement Activity

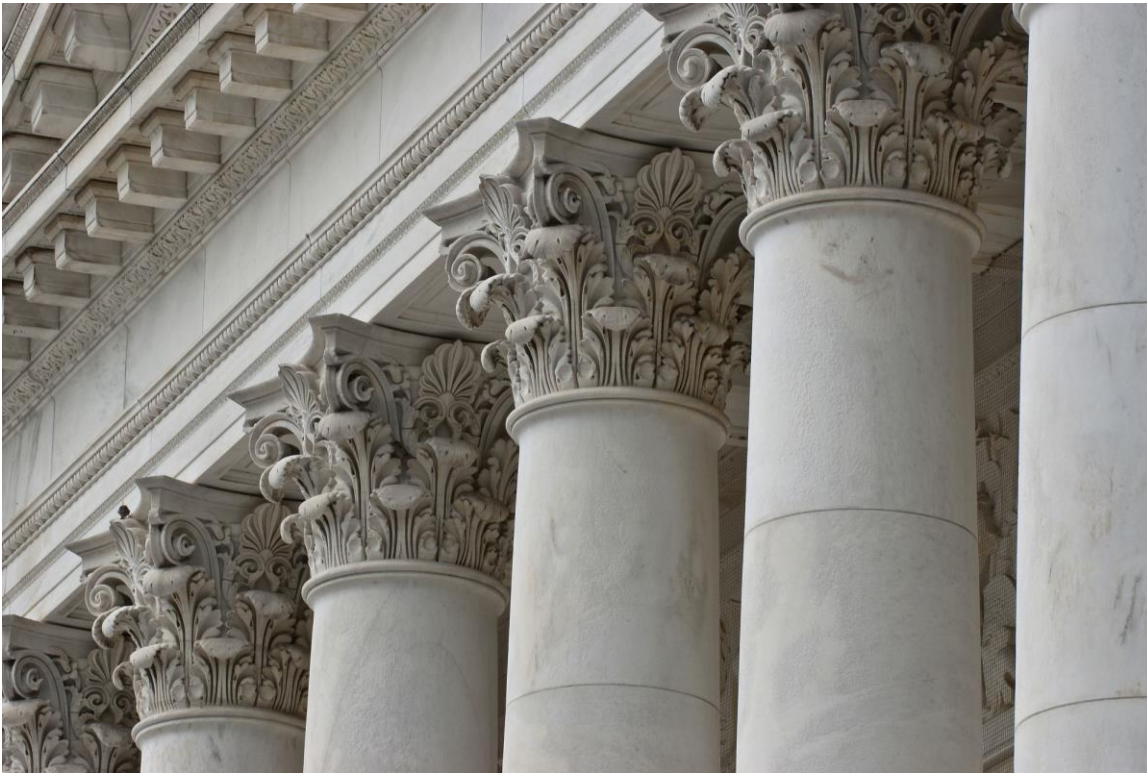
- Administration has halted or withdrawn enforcement actions against numerous corporations. Of particular interest:
- ***CFPB v. Acima Holdings LLC (Rent-a-Center)*, No. 2:24-cv-00525, US Dist Ct of Utah**
  - Allegation: Acima deployed deceptive digital dark patterns to obscure key terms
  - Acima argued its lease to own transactions are not credit
  - Also raised issue about “combined earnings” of Federal Reserve
    - CFPB only allowed under Dodd-Frank Act to be funded out of “combined earnings of the Federal Reserve System”
    - No combined earnings of Federal Reserve System beginning Sept 2022
    - This issue was left open in the payday case; Acima raised it
  - **CFPB filed to dismiss on 3/6/25**
- ***CFPB v. Heights Finance Holding Co. et al.*, No. 6:23-cv-04177, US Dist Ct of South Carolina**
  - Allegation: Induced struggling customers into a fee-harvesting and loan-churning scheme
  - **CFPB filed to dismiss on 2/27/25**

# CFPB – Executive Actions

- Administration has sought to downsize CFPB, with some efforts tied up in court.
  - New Acting Director: Rohit Chopra terminated; Russel Vought appointed CFPB's new acting director.
  - Zeroing out CFPB Funding: Vought refused to seek quarterly funding from the Federal Reserve in February. Internal emails suggested Vought intended to return CFPB reserve funds to the Fed, but a federal district judge [issued](#) a temporary restraining order against the CFPB prohibiting it from doing so.
  - Reduction in Force: On 4/17/25, Vought announced plans to fire 1,483 federal employees and cut off their access to CFPB work systems. A federal district court judge [blocked](#) the CFPB from firing these employees.
  - Halt all work: Acting director ordered a halt to all work at the agency in early February.
  - Rule-Making: Under EO 14215, independent agencies like CFPB must regularly consult with and receive approval from the president before passing significant regulations.
  - Rescinding Guidance: Vought used a rescinded executive order [EO 13891] from Trump's first presidency to [withdraw](#) 67 guidance materials issued since 2011.

# CFPB – Congressional Actions

## House Resolution 1



## CFPB Budget

- H.R. 1 (the One Big Beautiful Bill Act) seeks to reduce CFPB's budget from 12% of Federal Reserve's operating budget (as established by Dodd-Frank) to 5%.
- This is a 70% reduction in CFPB's budget and would return the agency to funding levels in 2011, when it first started.