

TCFA Board Meeting

Legal Update

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Today's Topics



CFPB Open Banking Rule



CFPB Coercive Debt Proposal



Corporate Transparency Act Update



Other CFPB Activity

CFPB Open Banking (Personal Financial Data) Rule

- Gist: would force banks and fintech firms to share their info about consumers with competitors
 - Final rule adopted October 2024
 - Lawsuit challenging rule was immediately filed
- **PROVISO:** will any current CFPB activity (or defense of rules) continue under the new administration?

CFPB Open Banking (Personal Financial Data) Rule

- **Applicability – Why the Rule likely does not apply to installment lenders**
 - Applies to “data providers” = “financial institutions”, “credit card issuers,” and “entities that control or possess information concerning a covered consumer financial product or service.”
 - Not “financial institutions” under the Rule, as neither directly hold consumer accounts nor issue EFT devices.
 - Not “credit card issuers” because do not issue credit cards.
 - Not “entities that control or possess information concerning a covered *consumer financial product or service.*”
 - Checking, savings, or consumer asset accounts. And, although you process loan payments from consumer accounts, payments handled by third-party payment processors and lenders don’t directly access or possess info in the account.
 - Even if TCFA members could be considered “data providers,” Rule specifically excludes first-party payments, which are transfers initiated by lender or agent acting on their behalf. Since third-party processor is facilitating payments for you, payments qualify as first-party payments.

CFPB Open Banking (Personal Financial Data) Rule

- **Summary of burdensome requirements if Rule did apply**
 - Provide access to financial data securely and reliably upon request from consumers or authorized third parties
 - Share data in a standardized electronic format (with technical requirements)
 - Obtain consumer's written consent for data access and maintain a straightforward process for consumers to revoke data access
 - Verify that third parties adhere to privacy and security standards

CFPB Coercive Debt Proposal

- **What**

- Proposal to redefine term “identity theft” to include instances of debts incurred without consumer’s “effective consent,” such as by “force, threat, fraud or coercion” or by exploiting a person’s “incapacity or youth.”
- Would allow abuse survivors to access Fair Credit Reporting Act’s remedies to mitigate negative effects of coerced debt (CRAs would block the info)
- Furnishers of information would need to treat coerced debt as a form of identity theft
- Practically, a customer could claim they were coerced into a loan (and thereby block the information from appearing in credit reports)

CFPB Coercive Debt Proposal

- **Potential Applicability: Would proposal cover traditional installment lenders? Yes, at least indirectly.**
 - Regulation V applies broadly to anyone furnishing data to CRAs. 12 CFR § 1022.41(c)
 - Any change to Regulation V's definitions (like including coerced debt as identity theft) would impact all such entities furnishing information
 - Could affect underwriting (what appears in reports), what you report, and direct disputes

CFPB Coercive Debt Proposal

- **Timeline**

- Comments on ANPR and specific questions due by March 7, 2025
- CFPB will review comments and prepare proposed rule based on public input and its findings (
- Proposed rule for further public comment likely in late 2025 or early 2026, with final rule likely in 2026
- ***Again, if the Trump administration continues the effort***

Corporate Transparency Act Update

- Reports originally due by Jan. 1, 2025, for pre-existing companies
- Lawsuit enjoined enforcement of rule on Dec. 3, 2024
 - FinCEN confirmed on its website that filings not currently required
- Appellate court (US 5th Cir.) stayed injunction on Dec. 23, 2024
 - FinCEN gave companies until Jan. 13, 2025 to file
- Appellate court lifted stay (putting injunction back in place) on Dec. 26, 2024
- FinCEN website: <https://fincen.gov/boi>

CFPB Constitutionality Lawsuits

- **CFPB v. Cmty. Fin. Servs. Ass'n of Am. vs. CFPB, United States Supreme Court, May 16, 2024**
 - **Case is over**
 - Following Supreme Court's decision, 5th Circuit affirmed the district court's ruling, which it had originally reversed
 - Trade groups then sought rehearing of other argument the Supreme Court did not reach
 - District court ruled in favor of CFPB, granting motion for summary judgment and issuing final judgment against trade groups, resolving all matters in case
 - Trade groups appealed, but 5th Circuit denied petition for rehearing
 - CFPB says Payday Loan Rule will go into effect Mar 30, 2025, which 5th Circuit confirmed
- **CFPB v. Acima Holdings LLC (Rent-a-Center), No. 2:24-cv-00525, US Dist Ct of Utah**
 - **Acima argues 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 has raised it

Other Recent CFPB Activities

- Rule on supervision of larger nonbank personal lenders (1.8.25 announcement)
 - Specifically identifies installment lenders
 - Alleges unlevel playing field between these entities and banks that make personal loans
- Ban on certain contract clauses (proposed rule 1.13.25)
 - Those that allegedly waive consumer rights or remedies
 - Those that allegedly limit free expression
- Buy Now, Pay Later (study released 1.13.25; usually leads to rule)
- Digital Payments Privacy (study and interpretive rule 1.10.25)
- Digital Payment Apps Rule (larger participants) (11.21.24)

Covington/Heights Finance Lawsuit

- **Discovery is ongoing**

- Lawsuit filed on August 22, 2023
- The District Court of South Carolina stayed the case on March 26, 2024, pending the Supreme Court's ruling on the constitutionality of the Bureau's funding structure (*CFPB v. Cmty. Fin. Servs. Ass'n of Am. vs. CFPB*)
- Supreme Court ruled in Bureau's favor on May 16, 2024
- On May 24, 2024, Heights Finance notified the district court that it had filed for bankruptcy under Chapter 11 of the Bankruptcy Code. District court automatically stayed case on May 30, 2024, pending bankruptcy proceedings
- District court lifted stay on July, 24, 2024, finding that the automatic stay does not apply to proceedings by governmental units to enforce police or regulatory power
- On July 30, 2024, Defendant Heights Holding Co. filed a Rule 12(c) motion on the pleadings, which the district court has yet to rule on. The parties are currently engaging in discovery