

CFPB Deputy Director Takes Aim at “Rent-a-Bank Schemes”

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In a keynote address at the Consumer Federation of America's *2022 Consumer Assembly*, CFPB Deputy Director Zixta Martinez squarely took aim at “rent-a-bank schemes” in some of the first (if not the first) such comments by a senior CFPB official. Historically, the CFPB has confined itself to “true lender” litigation against participants in high-rate programs involving Native American tribal parties (and not banks) already challenged by state enforcement authorities. We view Deputy Director Martinez's comments as potentially signaling more widespread pursuit of this theory by the CFPB.

In her remarks, Ms. Martinez referenced a rise in installment loans and lines of credit with lenders that supposedly “attempt to use [relationships with banks] to evade state interest rate caps and licensing laws by making claims that the bank, rather than the non-bank, is the lender.” Notably, Ms. Martinez seems to have accepted the premise that the nonbank participant in these programs is the “true lender.”

Additionally, Ms. Martinez went on to criticize “unusually high default rates” on these loans, “which raise questions about whether their products set borrowers up for failure.” This comment echoes the philosophy of the “mandatory underwriting provisions” of the CFPB Rule on Payday, Vehicle Title, and Certain High-Rate Installment Loans (provisions revoked by the Trump-era CFPB) and UDAAP claims the CFPB previously asserted in cases involving ITT and Corinthian Colleges, which state attorneys general began making shortly after the subprime mortgage crisis.

Finally, Ms. Martinez added, without specification of the nature or frequency of the complaints, that the CFPB's database reveals “a range of other significant consumer protection concerns with certain loans associated with bank partnerships.” She promised the CFA that “we are taking a close look” at these partnerships.

We take Deputy Director Martinez' speech to the CFA as an important indicator of CFPB priorities, and in particular, the shift in emphasis on criticizing “rent-a-bank” arrangements. These comments may suggest that the CFPB is poised to follow in the footsteps of state attorneys general and state financial services regulators in asserting “true lender” claims against the nonbank parties in these relationships.

We will continue to closely monitor these developments and their implications for those in the consumer financial services space, including lenders, servicers, and banks.

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