

Articles + Publications | November 10, 2022

# Troutman Pepper State Attorneys General Monitor – November 2022

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## REGULATORY OVERSIGHT BLOG

Make sure to visit Troutman Pepper's *Regulatory Oversight* blog to receive the most up-to-date information on regulatory actions and [subscribe](#) to our mailing list to receive a monthly digest.

*Regulatory Oversight* will provide in-depth analysis into regulatory actions by various state and federal authorities, including state attorneys general and other state administrative agencies, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC). Contributors to the blog will include attorneys with multiple specialties, including regulatory enforcement, litigation, and compliance.

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## 2022 STATE AG ELECTION

### 2022 STATE AG ELECTION ROUND-UP — MULTIPLE NEW AGS ON THE BLOCK

By [Ashley L. Taylor, Jr.](#), co-leader, [Clay Friedman](#), co-leader, & [Tim McHugh](#)

This election cycle has been one of multiple historic firsts, including several states seeing their first African American and female attorneys general (AG). As of publication of this round-up, 11 jurisdictions have also elected new, first-time AGs that displaced retiring or defeated incumbents. Several other races are still too close to call. Below, we cover in detail the 11 newest AGs thus far and offer our initial insights into their regulatory leanings. Ongoing and updated AG election coverage is also available on Troutman Pepper's *Regulatory Oversight* blog.

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### 2022 ELECTION: ATTORNEY GENERAL RACES TO WATCH THIS SEASON

By Ketan Bhirud, [Chris Carlson](#) & [Namrata Kang](#)

*Although the elections have already taken place and the results are pouring in, we are including this article as it provides valuable insight to many of the elected officials.*

*This article was published in [Reuters](#) and [Westlaw Today](#). It is republished here with permission.*

While pundits are fixated on the midterm elections and who will control Congress in 2023, 31 state attorneys general (AG) races could dramatically impact the country's political landscape. State AGs continue to extend their influence nationally. They are now viewed as much more than a state's top law enforcement official, investigating and taking actions on issues affecting not only their states but extending outside their state borders.

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## **STATE ATTORNEY GENERAL CALLS ON CFPB TO HEED FIFTH CIRCUIT'S RULING**

### **STATE ATTORNEY GENERAL CALLS ON CFPB TO HEED FIFTH CIRCUIT'S RULING IN *COMMUNITY FINANCIAL SERVICES ASSOCIATION OF AMERICA***

By [Clayton Friedman](#), James Kim, [Stephen C. Piepgrass](#), [Chris Willis](#), Ketan Bhirud & [Chris Carlson](#)

In response to the [Fifth Circuit's ruling](#) in *Community Financial Services Association of America, Ltd. v. Consumer Financial Protection Bureau* (CFS) that the Consumer Financial Protection Bureau's (CFPB) funding mechanism is unconstitutional, West Virginia Attorney General Patrick Morrisey sent a [letter](#) on October 24th to the CFPB, calling its continued operations into question and foreshadowing potential state challenges to its actions. While some state AGs and financial regulators are likely to help offset any reduction in CFPB activity through their own investigations and coordination with the CFPB, the dark cloud of the CFS opinion hangs over the agency.

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## **ESG DATA USAGE**

### **TEXAS AG JOINS WAVE OF INVESTIGATIONS INTO CREDIT RATINGS COMPANIES' ESG DATA USAGE IN FINANCIAL DECISION-MAKING**

By [Michael Yaghi](#), Christina Sava & Carson Cox

*Texas Attorney General (AG) Ken Paxton co-signed two letters to Morningstar, Inc. and its subsidiary Sustainalytics, joining multistate investigations into the credit ratings giant, as part of a growing trend among attorneys general and state legislatures to target the use of environmental, social, and governance (ESG) data in financial decision-making.*

The lone star state's AG recently [joined](#) an investigation into Morningstar, Inc., a financial services firm providing independent research, ratings, and tools for investment management. Texas AG Paxton states, in no uncertain terms, that companies and ratings agencies cannot violate state and federal laws when deploying ESG tools to the marketplace.

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## AUTO-RENEWAL SUBSCRIPTIONS

### WASHINGTON AG SURVEYS CONSUMERS ABOUT AUTO-RENEWAL SUBSCRIPTION SERVICES WITH ENFORCEMENT ACTIONS LIKELY TO FOLLOW

By [Clayton Friedman](#), [Michael Yaghi](#), [Chris Carlson](#) & [Namrata Kang](#)

On October 10, Washington Attorney General Bob Ferguson issued a [consumer alert](#), sharing a consumer survey that revealed 59% of Washingtonians may have unintentionally enrolled in subscription plans. The press release encouraged consumers to file complaints with AG Ferguson's office (OAG). Coupled with past enforcement efforts, the announcement sends a clear message that the OAG is prepared to take additional enforcement actions against companies marketing auto-renewal services that do not comply with the law.

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## SERVICEMEMBERS CONSUMER PROTECTIONS

### CALIFORNIA LEGISLATION STRENGTHENS CONSUMER PROTECTIONS FOR SERVICEMEMBERS

By Anthony Kaye & [Michael Yaghi](#)

On September 27, California Governor Gavin Newsom signed [Senate Bill 1311](#), the Military and Veteran Consumer Protection Act of 2022 (the Act), into law. The Act takes direct aim at, among other things, the Military Lending Act's (MLA) exceptions for loans obtained to purchase motor vehicles and other forms of personal property. It goes into effect on January 1, 2023.

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## CFPB UPDATES

### CFPB SIGNALS INTEREST IN HIGHER EDUCATION LENDING PRACTICES

By [Stefanie Jackman](#), [Stephen C. Piepgrass](#) & [Bonnie Gill](#)

The Consumer Financial Protection Bureau (CFPB) recently [issued a report](#), focused on the current student loan servicing market that laid out the results of several supervisory efforts related to student lending. Higher education lenders and loan servicers should pay close attention to the report's findings, which signal the CFPB's interest in enforcing the Consumer Financial Protection Act (CFPA) and other federal laws in the higher education context.

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### FTC AND CFPB PROVIDE GUIDANCE ON BUY NOW, PAY LATER PRODUCTS AFTER STATE AGS URGE CFPB FOR OVERSIGHT

By [Mark Furletti](#), [Stefanie Jackman](#), [Ketan Bhirud](#), [Chris Carlson](#) & [Namrata Kang](#)

In March 2022, state attorneys general provided comments to the Consumer Financial Protection Bureau (CFPB)

concerning the CFPB's inquiry into companies that offer consumers the opportunity to divide the cost of their purchases into multiple installments, also referred to as "buy now, pay later" (BNPL) products. In response, the CFPB issued a [report](#) in September to which the Federal Trade Commission (FTC) has now issued its own [guidance](#).

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## SEC NEWS

### SEC WARNS AUDITORS TO TAKE THEIR ROLE AND INDEPENDENCE SERIOUSLY

By [Ryan J. Strasser](#) & [Abbey M. Thornhill](#)

The Securities and Exchange Commission (SEC) protects investors and maintains a fair, orderly, and efficient marketplace. While the SEC has historically focused its enforcement efforts on public companies, recent announcements from Acting Chief Accountant Paul Munter suggest the SEC is taking a closer look at other actors who play a role in fair and efficient markets: auditors. In the past decade, the SEC has brought only four enforcement actions for standalone violations of the "auditor independence" rule—a rule that requires auditors to exercise objective and impartial judgment on all issues encompassed by an auditor engagement as evaluated by a fully informed investor. But perhaps more enforcement in this area is on the horizon.

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## ALCOHOL UPDATES

### WASHINGTON BREWERIES AND DISTRIBUTORS SUE OREGON OVER BEER SHIPPING AND DISTRIBUTION LAWS

By [John West](#) & [Nick Ramos](#)

Several Washington breweries and beer distributors filed suit in federal court against the Oregon Liquor and Cannabis Commission, the State Attorney General, and the Governor. The out-of-state breweries are challenging Oregon laws that (1) allow resident breweries to sell, ship, and deliver beer directly to Oregon consumers with a direct shipper permit, but only allow nonresidents to obtain a permit if their home state offers the same privilege to Oregon permittees; and (2) allow resident breweries to self-distribute beer to resident retailers without selling through distributors. See [Or. Rev. Stat. §§ 471.200, 471.221, 471.282](#). The Washington breweries and beer distributors allege that, because neither law provides a mechanism for a non-resident brewery to obtain the same privileges as a resident brewery, the Oregon laws violate the U.S. Constitution by discriminating against interstate commerce and protecting resident businesses.

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## CISA UPDATE

### CISA'S EXPANDED AUTHORITY AND FEDERAL REQUIREMENTS: TIME FOR ENERGY, WATER, AND OTHER CRITICAL INFRASTRUCTURE TO RECHARGE THEIR CYBER POLICIES

By [Ronald I. Raether, Jr., Ashley L. Taylor, Jr. & Daniel Waltz](#)

## **Critical Infrastructure Must Soon Report Cyber Incidents to CISA Immediately**

In March, President Biden signed the “Cyber Incident Reporting for Critical Infrastructure Act” (CIRCIA) into law. CIRCIA applies to the Critical Infrastructure Sector, which includes entities that are “vital to the United States” and whose incapacitation or destruction would have an adverse effect on national security, the economy, or public health and safety. Entities subject to these requirements (Covered Entities) are those which operate in certain sectors of the economy such as, chemical manufacturing, communications, critical manufacturing, dams, defense industrial base, emergency services, energy, financial, food, government facilities, healthcare, information technology, nuclear energy, transportation, and water systems.

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## **CANNABIS UPDATES**

### **FDA HIRES CANNABIS POLICY EXPERT: IS A NEW CBD REGULATORY FRAMEWORK AROUND THE CORNER?**

By [Michael Jordan & Agustin Rodriguez](#)

FDA has [hired](#) Norman Birenbaum, an experienced cannabis policy expert, as a senior public health advisor at the Center for Drug Evaluation and Research (CDER). The move signals the agency may soon develop a regulatory framework for cannabis-derived products, including cannabidiol (CBD) products — something that CBD stakeholders have been anxiously awaiting.

[Read more](#)

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*\*Carson Cox is not admitted to practice law in any jurisdiction; bar application pending in Virginia. Our Cannabis Practice provides advice on issues related to applicable federal and state law. Marijuana remains an illegal controlled substance under federal law.*

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