



CONSUMER FINANCIAL SERVICES PRACTICE

2025 Consumer Financial Services Year in Review & A Look Ahead

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Executive Summary



We are pleased to present to our readers the tenth edition of the *Consumer Financial Services Year in Review & A Look Ahead*.

2025 was another consequential year in the consumer finance industry. On the federal level, President Donald Trump started his second term in January and since then has led an unprecedented rollback of federal agency oversight, impacting everything from the Consumer Financial Protection Bureau to the Federal Trade Commission. The rollback was especially visible in fair lending and unfair, deceptive, or abusive acts or practices, student lending, and fast-evolving markets like digital assets and fintech, where the administration has embraced a more openly pro-innovation posture toward digital assets and related technologies.

At the same time, the U.S. Supreme Court's *Loper Bright* decision accelerated a shift away from deference to agency interpretations, and state legislatures, regulators, and attorneys general moved quickly to fill the resulting void. States expanded their roles in areas such as debt collection (including medical and coerced debt), fair lending and artificial intelligence, student loan servicing and income share agreements, earned wage access, "buy now, pay later" products, and Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) opt-outs, while consumer protection litigation and complaint volumes rose against this backdrop of regulatory retrenchment in Washington and growing activity in the states. Federal courts saw a 25% spike in the number of consumer protection case filings in 2025.

Looking ahead to 2026, we expect these trends to deepen: a leaner and more constrained federal enforcement posture, increasing reliance on courts rather than agencies to interpret core consumer statutes, and an even more complex state-by-state patchwork governing credit, collections, digital assets, and emerging products. In this environment, compliance and litigation strategies will need to account not only for today's reduced federal scrutiny but also for future administrations and private litigants who will review 2025–2026 conduct in hindsight.

This publication is greatly informed by the work we do for our clients, which we hope will be a valuable resource for you throughout the coming year. Our goal with this publication is to provide succinct insight into critical legal issues so you can focus on achieving your business goals.

We would appreciate your feedback on this year's publication. Please feel free to contact us at any time with any questions, comments, or suggestions.

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Consumer Financial Services Practice Group

About Our Practice

Troutman Pepper Locke's Consumer Financial Services Practice Group provides comprehensive legal services to clients across the financial services industry and beyond. With more than 150 attorneys and professionals nationwide, we are one of the largest consumer protection practices in the entire country. Our nationally ranked litigation, regulatory enforcement, and compliance teams bring industry-specific knowledge and practical advice throughout the business life cycle. Our results-oriented approach proactively mitigates risk for our clients with a keen focus on achieving their business objectives.

Our national litigation team has resolved thousands of individual and class-action lawsuits involving every federal and state consumer protection statute, including precedent-setting issues with industry-wide implications. In the past five years, we have defended more consumer protection cases and class actions nationwide than nearly any other firm.

Our team's litigation experience and insights contribute to our best-in-class approach to compliance and regulatory services. Our regulatory enforcement team has a long track record of handling the Consumer Financial Protection Bureau's (CFPB) oversight inquiries, civil investigative demands, audits, supervision, examinations, and enforcement actions and proceedings, including requests for the production of privileged and highly confidential information routinely demanded by the CFPB to assess compliance and procedures.

We are also well equipped to handle Federal Trade Commission (FTC) investigations concerning a variety of matters, including consumer privacy and data security breaches. When necessary, our team moves seamlessly from negotiation to litigation, utilizing highly skilled litigators with exceptional depth in regulatory enforcement litigation matters.

Whether launching a new product or revisiting established best practices, our approach to compliance helps clients avoid costly government audits, investigations, fines, litigation, and damage to their brands and reputations. Our clients rely on us to address a variety of matters, including facilitating compliance audits (both on-site and off-site), performing due diligence reviews, drafting training and compliance manuals and policies, and conducting multistate analyses of state and federal laws.

Our team publishes a variety of resources to help clients remain knowledgeable and stay ahead of consumer finance law. Please refer to pages 57-58 for information on our blog, *The Consumer Financial Services Law Monitor*; our weekly and monthly podcasts; and our webinar offerings. You will also find a link to sign up for notifications and the content you wish to receive.

Auto Finance

2025 saw massive change in auto finance, including the demise of the Federal Trade Commission's (FTC) Combating Auto Retail Scams Trade Regulation Rule (CARS Rule), the emergence of California's CARS Act, and shifting regulatory emphases at both the federal and state levels.

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In our 2024 *Year in Review*, we highlighted the FTC's CARS Rule, which was under review by the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit reached its decision in early 2025, finding fault with the FTC's rulemaking process (discussed [here](#)). Specifically, the court held that the FTC failed to issue an advance notice of proposed rulemaking as required. The FTC did not appeal the decision to the U.S. Supreme Court and, as a result, the CARS Rule returned to the FTC for reconsideration under new leadership with a different regulatory agenda.

Despite this upheaval over the past year, the Consumer Financial Protection Bureau (CFPB) continued to scrutinize the auto finance market. In January 2025, the CFPB issued a report (discussed [here](#)) finding that servicemembers face heightened financial risks compared to civilians in the auto lending market, including higher loan amounts, higher interest rates, and higher monthly payments. Frequent moves, deployments, and the geographic isolation of bases limit vehicle financing options for servicemembers and increase vulnerability to deceptive practices. Auto-related debt can endanger security clearances and lead to military discipline, career delays, or termination. Existing protections under the Servicemembers Civil Relief Act (SCRA) and the Military Lending Act (MLA) are limited, particularly for auto loans. The findings were based on 33.8 million loans from 2018–2022, including 200,000 servicemember loans. Although the CFPB released this report prior to then-Director Rohit Chopra's resignation, the CFPB has since highlighted servicemember protections as a key supervision and enforcement priority.

In August, the CFPB proposed rules (discussed [here](#)) to redefine what constitutes a “larger participant” by amending existing thresholds in several markets, including the auto financing market, to better align with current market conditions and regulatory priorities. Under § 1024 of the Consumer Financial Protection Act, the CFPB’s supervisory authority extends to larger participants offering consumer financial products or services. Regarding the automobile financing market, the CFPB is evaluating whether to significantly raise the current threshold for a larger participant. Currently, a nonbank covered person is considered a larger participant if it has at least 10,000 annual originations. The proposed rule suggests raising the threshold significantly, with options ranging from 300,000 to 1,050,000 aggregate annual originations, with the goal of focusing on the most active market participants.

STATE

California CARS Act

As we foreshadowed, while the Fifth Circuit invalidated the CARS Rule, California took up the FTC’s mantle. In October, California Governor Gavin Newsom signed into law the California CARS Act (discussed [here](#)). The CARS Act imposes extensive new compliance obligations on auto dealers, including the following:

- **Prohibition of Misrepresentations:** Dealers are prohibited from misrepresenting material information about vehicle sales, including costs, financing terms, and the benefits of add-ons.
- **Clear and Conspicuous Disclosures:** The Act mandates that dealers provide clear disclosures regarding, among other things, the “total price” and the voluntary nature of add-ons.
- **Ban on “Valueless” Add-Ons:** Dealers are barred from charging for add-ons that do not benefit the purchaser, such as unnecessary warranties or services.
- **Three-Day Right to Cancel:** For used vehicle sales under \$50,000, the Act provides consumers with a three-day right to cancel, offering a cooling-off period.
- **Record Retention Requirement:** Dealers must retain records demonstrating compliance with the Act for two years, a reduction from the initially proposed seven years.

The bill takes effect on October 1, 2026.

While the California CARS Act is a significant development, it was not the only notable state action in 2025. In September, Oregon passed House Bill 3178 (discussed [here](#)), which requires dealers to inform consumers of their rights under retail installment contracts (RICs) and lease agreements (through use of a model form) and provides consumers with express grounds for voiding contracts and lease agreements if the “lender” (which is the person purchasing the RIC or lease agreement from the originating party) does not agree to purchase the RIC or lease agreement on the exact negotiated terms within 10 calendar days after the buyer takes possession of the motor vehicle.

On the regulatory front, in July the New Jersey Division of Consumer Affairs (NJDCA) issued reminder letters to more than 3,000 dealerships, putting those dealerships on notice of their compliance obligations under the New Jersey data deletion law (discussed [here](#)). The law, enacted in January 2024, requires automobile dealers to offer data deletion services for personal information stored in vehicles taken in for resale or lease. According to the NJDCA, the law responds to growing privacy concerns and risks arising from modern vehicle infotainment systems that store call logs, texts, and navigation history.

Under the law, dealerships must offer data deletion services to prevent unauthorized access to consumer information, and failure to comply can result in civil penalties of up to \$1,000 per violation. Dealerships are advised to follow the National Institute of Standards and Technology’s Guidelines for Media Sanitization to ensure data is deleted. They may charge a reasonable fee for the service, provided the fee is disclosed to consumers up front. Dealerships must also advise consumers of the option to delete their personal information themselves or through a vendor.

New Jersey’s law is among the first in this space, aligning with broader federal and state trends toward stricter auto data privacy requirements, and several states have since proposed similar legislation. Manufacturers and dealers must stay informed of evolving regulatory privacy obligations to ensure efficient compliance.

LOOKING AHEAD

For 2026, we expect the aftershock of “Trump 2.0” to continue, with state regulators and legislatures further increasing their efforts in the wake of changes at the federal level. One key question is whether other states will follow California’s lead and pass their own versions of the CARS Act. If so, we could see yet another expanding patchwork of state laws that require dealers and finance companies to develop more robust and adaptable compliance systems to tackle them.

Background Screening

In 2025, background screening litigation and regulation continue to focus on the boundaries of reportable information, the contours of Article III standing, the operational risks associated with continuous monitoring, and the emerging role of artificial intelligence (AI). Recent decisions from the U.S. Courts of Appeals for the Ninth and Eleventh Circuits, as well as trial courts, refine how the Fair Credit Reporting Act's (FCRA) obsolescence rules apply to ongoing sanctions, when consumers suffer a concrete injury, and what constitutes reasonable procedures in complex matching scenarios. At the same time, industry shifts toward direct-to-consumer reports, continuous monitoring products, and AI-enabled investigations are expanding both compliance expectations and potential exposure — trends that are likely to accelerate in 2026 and beyond.

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NINTH CIRCUIT PARSES OBSOLESCENCE RULE NUANCES AND PROVIDES NARROW ESCAPE FROM FCRA LIABILITY

This year, the Ninth Circuit issued an opinion exploring the nuances of how to apply the seven-year obsolescence rule in the FCRA and demonstrating that a technical violation of the FCRA does not support liability if the violation is neither negligent nor willful, thereby giving the background screener defendant a narrow escape from liability.

In *Grijalva*, (9th Cir. 2025), the Ninth Circuit drew a distinction between reporting an ongoing adverse status and the underlying cause of that status for purposes of the FCRA's seven-year "obsolescence" rule. The case involved a background report showing that the applicant was excluded from federally funded health care programs based on a nursing license revocation that had occurred more than seven years before the report. The court held that the exclusion itself is a continuing adverse status similar to an unpaid lien and therefore may be reported during the period of the exclusion and for seven years after it ends. However, the court concluded that the underlying nursing license revocation was a separate "adverse item of information" that had become time-barred under § 1681c(a)(5) and thus could not be reported — even as the stated reason for the still-current (and reportable) exclusion.

Importantly, although the court found that including the underlying revocation violated the FCRA, it nonetheless concluded that the defendant was not liable because the violation was neither willful nor negligent. Given the statute's ambiguity, the lack of guidance on this issue, and evidence that the defendant's approach was consistent with industry practice, the court found the defendant's interpretation was not objectively unreasonable.

Looking ahead to 2026 and beyond, *Grijalva* signals that background screeners must treat ongoing sanctions, exclusions, and similar statuses as distinct from the older events that caused them, with each "adverse item" carrying its own reporting clock. While *Grijalva* gave the defendant a skin-of-the-teeth escape on liability as a matter of first impression, that same reasoning will be much harder to invoke in the Ninth Circuit now that the court of appeals has spoken directly on how the seven-year limitation applies in this context.

ELEVENTH CIRCUIT AFFIRMS NO STANDING FOR BACKGROUND REPORT ISSUED ONLY TO THE APPLICANT

The Eleventh Circuit's September 2025 decision in *Peeples* underscores how standing doctrine continues to limit FCRA litigation where disputed reports are never shared beyond the consumer. This decision is notable, particularly as direct-to-applicant, portable background screening reports are becoming more common.

The plaintiff applied to a pre-med program that required a criminal background report prepared by the defendant. Rather than sending the report directly to the school, the defendant's service was set up to provide the report directly to the consumer, which the consumer could then share with the school. That fact regarding issuance directly to the consumer was key to the outcome of the case.

The plaintiff's initial report reflected a South Carolina conviction she believed had been expunged. After she disputed the report, the defendant issued an updated version noting the offense had been expunged. The plaintiff argued that even this notation violated South Carolina's expungement statute because expunged records become "nonpublic" and should not appear in a consumer report at all. The district court granted summary judgment to the defendant, but the Eleventh Circuit never reached the merits. Instead, it held that the plaintiff lacked Article III standing because the disputed report was sent only to her, not to any third party, and any time, money, or distress spent correcting a report seen only by the consumer is not a concrete injury. Her "lost opportunity" theory based on the alleged injury of not being able to attend the school also failed, because she voluntarily chose not to submit the corrected report to her school, making her alleged harm speculative and self-imposed and her related emotional distress insufficient.

The court vacated the judgment and remanded with instructions to dismiss for lack of jurisdiction, signaling that in the Eleventh Circuit, FCRA plaintiffs face a high bar to establish standing where inaccurate or sensitive information never leaves the consumer's hands. Given the increasing trend (and growing state and local requirements) toward portable tenant screening reports provided directly to the applicant, this issue regarding the lack of harm without issuance to a third party will likely surface again in 2026 and beyond.

COURT GRANTS SUMMARY JUDGMENT TO TENANT SCREENING COMPANY WHERE MISMATCHED SEX OFFENDER RECORD WAS DUE TO PLAINTIFF'S OWN USE OF ALIAS

In a July 2025 decision, *Arnold*, the U.S. District Court for the Eastern District of Michigan held that a tenant screener defendant did not violate the FCRA by reporting a sex offender record that did not belong to the plaintiff, because the plaintiff did not show that the matching error was a result of the defendant's failure to follow reasonable procedures.

The defendant used the plaintiff's first and last names, date of birth, and Social Security number as provided by the plaintiff's prospective housing provider to engage in its matching analysis. The name on the sex offender record matched to an alias that was associated with the plaintiff's Social Security number — an alias which the plaintiff conceded he had used in the past, along with many other aliases. The defendant's ability to correct the match was further hindered by a security freeze that the plaintiff himself placed on his credit file. The court noted that the defendant acted quickly to remedy the reporting once it received the plaintiff's dispute and after the plaintiff had lifted the security freeze from his credit file, with the defendant issuing a corrected report the very next day.



Given the defendant’s reliance on a reliable source for the information it reported and the lack of notice of any contrary information that would disqualify the match, the court held that the plaintiff failed to establish any genuine dispute of material fact sufficient to preclude summary judgment on his § 1681e(b) claim.

ARTIFICIAL INTELLIGENCE COULD CUT EITHER WAY

As with so many aspects of the consumer financial services landscape, AI is a powerful new tool whose capabilities are rapidly expanding. In the realm of background screening, it is already significantly streamlining analysis of records and increasing accuracy for a fraction of the cost of human-only analysis.

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INDUSTRY TREND TOWARD CONTINUOUS MONITORING COULD INCREASE LITIGATION EXPOSURE

At the trial level, we saw litigation trends in 2025 indicating that some plaintiffs’ counsel are trying to conjure a “duty to update” a background screening check ordered as of a particular date in time, under the FCRA and potentially state statutes as well. For example, if an individual’s driver’s license was suspended on September 1, a background screen was performed on September 15, and the license was reinstated on October 1, some plaintiffs’ counsels are filing lawsuits against the screening company for not “updating” the report to reflect the license reinstatement.

While we think this theory of liability lacks merit and is unlikely to gain any traction as the law currently stands, it nonetheless coincides with a larger industry trend toward so-called “continuous monitoring.” Background screeners, data aggregators, and others in the industry that are offering (or considering whether to offer) continuous monitoring services should be aware of a potentially increased risk of litigation exposure associated with ongoing reporting — not only because the more iterations of a particular screen, the greater the likelihood of errors being introduced — but also because notions of a “duty to update” could potentially gain better traction in a continuous monitoring scenario than in the current “one-off” context.

Whether AI will become industry standard with respect to reasonable investigations remains to be seen — in other words, someday there could be a world in which a *failure* to use AI technology would fall short of what constitutes a reasonable investigation for FCRA purposes. But the flip side is also true — whether AI *suffices*, for FCRA purposes, to constitute a reasonable investigation, with little to no human involvement, is not clear either.

At the moment, in our view, the best approach to minimize litigation exposure would combine the use of new technology (for example, using AI tools to analyze large datasets and generate summaries) with more traditional methods of manual review to ensure accuracy and detect mistakes.

Bankruptcy

Bankruptcy filings continued to rise in 2025, with both consumers and businesses feeling the impact of higher debt burdens, elevated interest rates, and ongoing economic uncertainty. Consumers are increasingly turning to bankruptcy protection as household debt and delinquencies climb, while businesses — particularly in industrial sectors — struggle with higher financing costs and supply-chain instability. The U.S. Supreme Court’s recent decision in *United States v. Miller* has also narrowed trustees’ ability to claw back certain tax payments, with implications for creditor recoveries. Looking ahead to 2026, filings are expected to remain elevated, and financial services companies should anticipate continued pressure on bankruptcy-related compliance, litigation, and recovery strategies.

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OVERALL FILING TRENDS

Once again, bankruptcy filings increased year over year, reflecting the state of the economy for many individuals.

In 2025, U.S. bankruptcy filings totaled 557,376 cases, marking a 10.6% rise from 2024.¹ In fact, every state except South Dakota, Alaska, and Delaware saw a year-over-year increase, with Rhode Island leading the way with a 27.6% jump from 2024 to 2025.² Although this is the third consecutive increase in filings since 2022, the numbers remain below the post-2008 downturn levels that peaked in 2010, likely due to stronger employment, a less pronounced housing market decline in 2025 compared to 2008, and continued (if uneven) economic growth.

CONSUMER BANKRUPTCY PRESSURES

For consumers, household debts reached record levels. Credit card delinquencies rose, with roughly 14% of credit card balances at least 30 days overdue during 2025. In addition, the resumption of student loan payments after the end of COVID-era forbearances contributed to distress, as roughly 11% of federal student loan dollars — owed by nearly 6 million borrowers — were 90 or more days past due.³ These strains appear to be significant factors in consumers needing the protection of the Bankruptcy Code. Notably, these challenges differ from what prompted consumer bankruptcy filings during the peak post-2008 downturn, which often included numerous filings due to mortgage defaults and potential property losses.

Another factor likely making bankruptcy more appealing for consumers is the increase in the Bankruptcy Code’s statutory amounts for exemptions and priority claim limits, which benefits debtors by allowing them to retain more funds during and after bankruptcy.

¹ *Bankruptcy Filings Increase 10.6 Percent*, United States Courts, <https://www.uscourts.gov/data-news/judiciary-news/2025/11/24/bankruptcy-filings-increase-10-6-percent>

² *Id.* at Table F-5A.

³ Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit, https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2025Q2

RISK EXPOSURE FOR FINANCIAL SERVICES COMPANIES

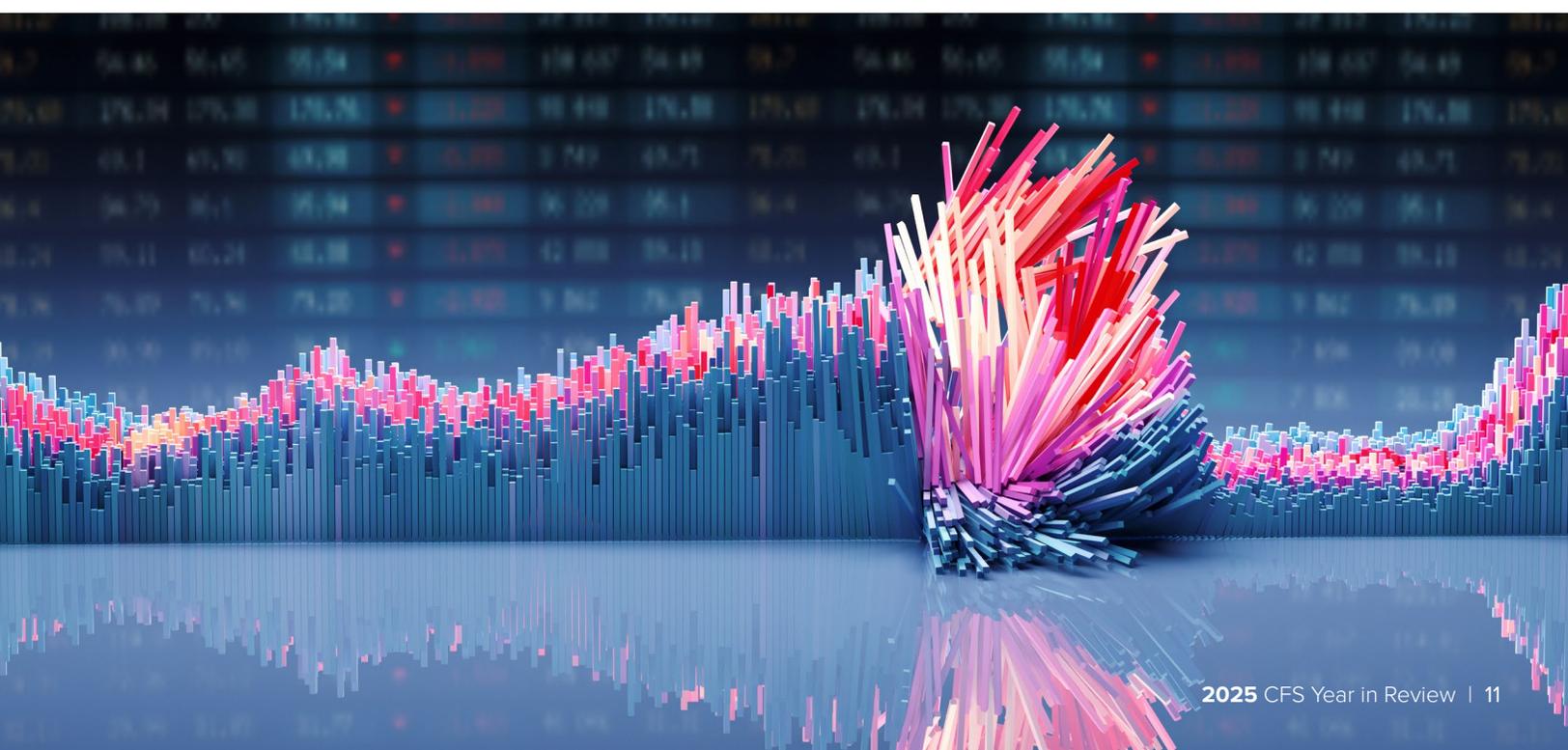
The high volume of consumer bankruptcy filings has increased risk exposure for financial services companies, including exposure to claims alleging violations of the automatic stay and inaccurate credit reporting. Consumer finance companies should remain vigilant and regularly review their bankruptcy compliance procedures to mitigate these increased risks in high-volume filing years.

BUSINESS BANKRUPTCIES

Although most bankruptcies filed in 2025 were by consumers, businesses are also suffering, as evidenced by a 6% increase in small-business bankruptcy filings. In total, at least 717 U.S. companies filed for bankruptcy in 2025. For businesses, the increase in filings is due to a combination of factors, including persistent interest rates remaining relatively high, higher debt-servicing costs, weak consumer demand, and the ever-changing landscape of tariffs, which continues to create instability in the supply chain. This last factor has resulted in industrial companies being hit harder than in the post-2008 downturn, with construction firms and transportation companies leading the way in new filings.

U.S. SUPREME COURT DEVELOPMENT: UNITED STATES V. MILLER

The U.S. Supreme Court also issued a decision during its 2024–2025 term in *United States v. Miller*, 604 U.S. 518 (2025), resolving a circuit split about a bankruptcy trustee’s power to avoid a debtor’s tax payment to the United States under § 544(b) when no actual creditor could have obtained relief under the applicable state fraudulent transfer law outside of bankruptcy because sovereign immunity barred any such action against the government. The U.S. Supreme Court agreed with the government, holding that a bankruptcy trustee could not avoid the payment because § 544(b) requires that an “actual creditor” that could have voided the transaction outside of bankruptcy proceedings be identified, and this would require a waiver of sovereign immunity beyond the one outlined in § 106(a). Because sovereign immunity would have prevented any actual creditor from recovering outside of bankruptcy, the trustee couldn’t recover either. This creates a scenario in which a consumer may satisfy personal obligations to the government at the expense of other creditors before filing bankruptcy, without the trustee being able to claw back those funds for distribution under § 544(b), although alternative avoidance theories may still be available in some cases.



Consumer Class Actions

From the U.S. Supreme Court's decision to sidestep the growing divide over the inclusion of uninjured class members to significant decisions concerning arbitration, class action litigation in consumer financial services continued to evolve throughout 2025. Looking ahead to 2026, we expect courts to further clarify the boundaries of class certification and the enforceability of arbitration and class action waivers in the consumer financial services space.

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U.S. SUPREME COURT LEAVES UNINJURED CLASS MEMBER QUESTION UNANSWERED

This year, the U.S. Supreme Court dismissed a *writ of certiorari* as improvidently granted, leaving unresolved a significant question regarding class-action certification under Federal Rule of Civil Procedure 23. The question presented (and left unanswered by the majority) in *Davis*, discussed [here](#), was whether a federal court may certify a damages class that includes both injured and uninjured class members. The dismissal has sparked considerable debate, particularly in light of Justice Kavanaugh's dissent.

The case arose from the petitioner's introduction of self-service kiosks for patient check-ins, which allegedly violated the Americans with Disabilities Act (ADA) and California's Unruh Civil Rights Act due to accessibility issues for blind and visually impaired patients.

The district court initially certified the class, prompting the petitioner to seek an interlocutory appeal, arguing that the class definition was overly broad and would sweep in many uninjured members. While the petition for interlocutory appeal was pending, the district court clarified the class definition, which the plaintiffs argued rendered the appeal moot.

The U.S. Court of Appeals for the Ninth Circuit granted the interlocutory appeal and ultimately approved the class certification, reasoning that Rule 23 permits certification of a class even when the class "potentially includes more than a de minimis number of uninjured class members." The petitioner sought certiorari.

Instead of resolving the merits question, the U.S. Supreme Court dismissed this case as improvidently granted. Among other criticisms, Justice Kavanaugh's dissent highlighted that Rule 23 requires common questions to predominate in damages class actions, which is not possible when a class includes both injured and uninjured members. He emphasized that the Ninth Circuit's approval of such a class contradicts Rule 23 and Supreme Court precedents, potentially leading to significant real-world consequences. "Classes that are overinflated with uninjured members raise the stakes for businesses that are the targets of class actions."

For now, how courts treat classes containing both injured and uninjured members remains unsettled across jurisdictions.

CAN ROUTINE COLLECTIONS ACTIVITY LEAD TO A COURT FINDING AN ARBITRATION CLAUSE AND/OR CLASS ACTION WAIVER UNENFORCEABLE?

Picture this: A consumer runs up \$10,000 on a credit card and then defaults. The credit card issuer brings a routine small-claims collections action in the local state court. The consumer responds by filing counterclaims against the credit card issuer, including putative class claims (maybe even on a nationwide basis). Did that initial collections action waive the credit card issuer's ability to invoke the arbitration clause in the governing contract, when it comes to adjudicating those counterclaims? What about the class action waiver incorporated into the arbitration provision? Do the answers to these questions change if the contract contains an anti-waiver provision?

In a trend with significant implications for the industry, several state appellate courts in 2025 answered these questions in favor of consumers. These courts have taken the position that by initiating collections activity as a plaintiff, a financial services company risks waiving the right to arbitrate individual counterclaims brought by the consumer — even when the counterclaims have, at best, a highly attenuated relationship to the underlying debt (for example, an allegation of inadequate disclosures at the time the account was opened). Those courts have doubled down on this view, refusing to enforce the class action waivers commonly included in arbitration clauses, even when faced with putative class counterclaims. Those courts have also disregarded anti-waiver clauses, finding that a consumer's agreement allowing the financial service company to file a collection action in court without waiving its right to arbitrate does not alter the waiver analysis.

In order to minimize the risk of inadvertent waiver, it is critical for financial services companies to be aware of this trend, and to instruct their collections counsel to promptly invoke arbitration clauses and class action waiver provisions as soon as counterclaims are filed.

CLASS ACTION UNDER THE SERVICEMEMBER CIVIL RELIEF ACT COULD NOT SURVIVE MANDATORY ARBITRATION/CLASS ACTION WAIVER CLAUSE IN CONSUMER AGREEMENTS.

The U.S. Court of Appeals for the Fourth Circuit dealt a major blow to Servicemember Civil Relief Act (SCRA) plaintiffs seeking to avoid individual arbitration.

In *Espin*, discussed [here](#), servicemembers who opened credit card accounts prior to active duty brought a class action alleging that the issuing bank's reinstatement of credit card contract terms, including interest rate terms, after servicemembers left active duty violated the SCRA, Military Lending Act (MLA), Truth in Lending Act (TILA), and Credit Card Act, as well as state and common law. The bank moved to compel arbitration, but the district court denied the motion, holding that the SCRA's provision expressly authorizing class actions precluded arbitration. The bank appealed, and the Biden administration filed an amicus brief supporting the plaintiffs' position. A three-judge panel of the Fourth Circuit reversed.

The court noted that the Federal Arbitration Act favors arbitration and requires courts to honor arbitration agreements unless "overridden by a contrary congressional command." The court found no such command in the SCRA, despite its provision allowing for claims to be brought via class actions. The case was remanded with instructions to compel arbitration of the plaintiffs' SCRA and other claims, except those under the MLA. The arbitration provision in the credit card agreements also contained a class action waiver, meaning the plaintiffs would be required to arbitrate individually.

As for the plaintiffs' MLA claims, the court recognized that the MLA does contain an express prohibition on arbitration but noted the district court had not decided whether the MLA actually applied in the case. In this case, the plaintiffs' credit cards were all opened before the MLA was amended to apply to credit card accounts. And while the plaintiffs argued that use of credit cards brought their claims under the MLA, that was an issue the district court had not addressed.

This sets up an emerging dilemma already playing out in some lower courts, which have held that if claims arise out of a consumer agreement subject to the MLA, such as TILA claims, then the MLA's bar on arbitration may extend to those related claims as well.

Consumer Credit Reporting

In 2025, the consumer credit reporting ecosystem experienced a marked uptick in Fair Credit Reporting Act (FCRA) activity — reflected in a 37.4% increase in FCRA filings — alongside appellate decisions sharpening the legal-versus-factual accuracy distinction, intensifying scrutiny of consumer reporting agency (CRA) and furnisher investigations, and escalating federal and state tensions over medical debt reporting.

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EVOLVING BATTLEGROUND FOR LEGAL VS. FACTUAL DISTINCTIONS IN CREDIT REPORTING

Federal courts of appeal continued to evaluate FCRA “accuracy” via legal-versus-factual credit reporting distinctions and clarify the scope of the “objectively and readily verifiable” standard. This continues to be a hot-button FCRA issue, particularly as more credit reporting litigation centers around underlying contract disputes, prior litigation, and bankruptcy.

In *Reyes*, 140 F.4th 279 (5th Cir. 2025), a plaintiff alleged that a CRA violated FCRA Section 1681i (15 U.S.C. § 1681i) by continuing to report a delinquent credit card account after she disputed the underlying charges as fraudulent. The furnisher charged off the account and reported the unpaid balance after it determined the charges were not fraudulent. The plaintiff initiated several disputes, and each time the CRA sent Automated Credit Dispute Verifications (ACDVs) to the furnisher, who verified the reporting as accurate. The U.S. Court of Appeals for the Fifth Circuit affirmed summary judgment in favor of the CRA, reiterating that a plaintiff must establish an inaccuracy as a threshold requirement of a § 1681i claim. Accordingly, the court held that a plaintiff cannot use § 1681i’s reinvestigation procedures to collaterally attack the validity of a debt, citing cases from other circuits requiring disputed information to be objectively and readily verifiable. The court added that CRAs lack the authority to adjudicate legal disputes and recognized that the “FCRA expects consumers to dispute the validity of a debt with the furnisher of the information or append a note to their credit report to show the claim is

disputed.”

In *Rozov*, No. 24-13034, 2025 WL 1620921 (11th Cir. June 9, 2025), the plaintiffs alleged they were victims of an employment scam and inadvertently deposited a fraudulent check into their joint account. The plaintiffs’ bank closed their account due to apparent check fraud, which the bank reported to the CRA and became part of the plaintiffs’ credit file. The plaintiffs alleged the CRA violated Sections 1681i and 1681e(b) of the FCRA by failing to correct the misinformation even though the plaintiffs provided the CRA with facts about the employment scam. The U.S. Court of Appeals for the Eleventh Circuit reviewed whether the report was misleading and whether the plaintiffs showed that the consumer report contained false or misleading information that was objectively and readily verifiable by the CRA. The Eleventh Circuit determined that a CRA could not objectively and readily verify whether the plaintiffs intended to defraud a bank, going so far as to say that it did “not see how” a “consumer reporting agency could objectively and readily verify” whether the alleged fraudster “intended to defraud [the bank] when he deposited a fraudulent check.” Further, the bank verified the accuracy of its reporting to the CRA. The court found that the CRA did not have an obligation to accept the plaintiffs’ version of events as true and affirmed dismissal.

Notably, in *Lennon*, Civil Action No. 25-cv-1431, 2025 WL 1933708 (E.D. Pa. July 11, 2025), the district court observed that “[t]he [U.S. Court of Appeals for the] Third Circuit has declined to take a position on whether an entity can be held liable” under the FCRA “for reporting information whose validity turns on resolving a legal dispute,” while citing *Reyes* and other circuit authority outside the Third Circuit applying the standard of “whether the supposed error is ‘objectively and readily verifiable.’”

The holdings in *Reyes* and *Rozov* confirm that alleged inaccuracies must be objectively and readily verifiable

to support potential FCRA liability, especially where the furnisher is uniquely suited to clarify the issue, or issues of consumer/furnisher intent are in play.

REASONABLE, NOT PERFECT, REINVESTIGATION

Several 2025 appellate opinions illustrate how courts are reshaping core FCRA duties and defenses. As discussed [here](#), in *Suluki*, the U.S. Court of Appeals for the Second Circuit emphasized that furnishers owe consumers a reasonable, not perfect, investigation under the FCRA and affirmed summary judgment where the bank had a well-documented, multistep investigative process. 138 F.4th 709 (2d Cir. 2025). The decision strengthens furnishers’ defenses to claims under 15 U.S.C. Sections 1681s-2(b) and may also bolster CRAs’ defenses to claims under 15 U.S.C. Section 1681i. Going forward, we expect defendants to rely more heavily on detailed investigation records to defeat FCRA dispute investigation claims, particularly in identity theft disputes.

MEDICAL DEBT

In May 2025, the Consumer Financial Protection Bureau (CFPB) — the primary federal agency with jurisdiction over the FCRA — withdrew an interpretive rule on medical debt that had construed FCRA preemption as narrow. This view allowed states to enact stricter medical debt reporting restrictions, which — under the CFPB’s prior view — were not preempted by the FCRA so long as they did not directly address a requirement or obligation covered by the statute. In October 2025, the CFPB issued a new interpretive rule (discussed [here](#)) clarifying that the FCRA broadly preempts state regulation of medical debt reporting, reversing the CFPB’s position.

In 2025, California, Delaware, and Illinois enacted laws restricting or prohibiting the reporting of medical debts on consumer reports, joining Colorado and Connecticut. Trade associations for CRAs, furnishers, and debt collectors have filed lawsuits challenging these state

The court found that the CRA did not have an obligation to accept the plaintiffs’ version of events as true and affirmed dismissal.

statutes as preempted by the FCRA and as violating the First Amendment’s protection of commercial speech. Additional litigation challenging state medical debt reporting laws is expected in 2026.

STANDING

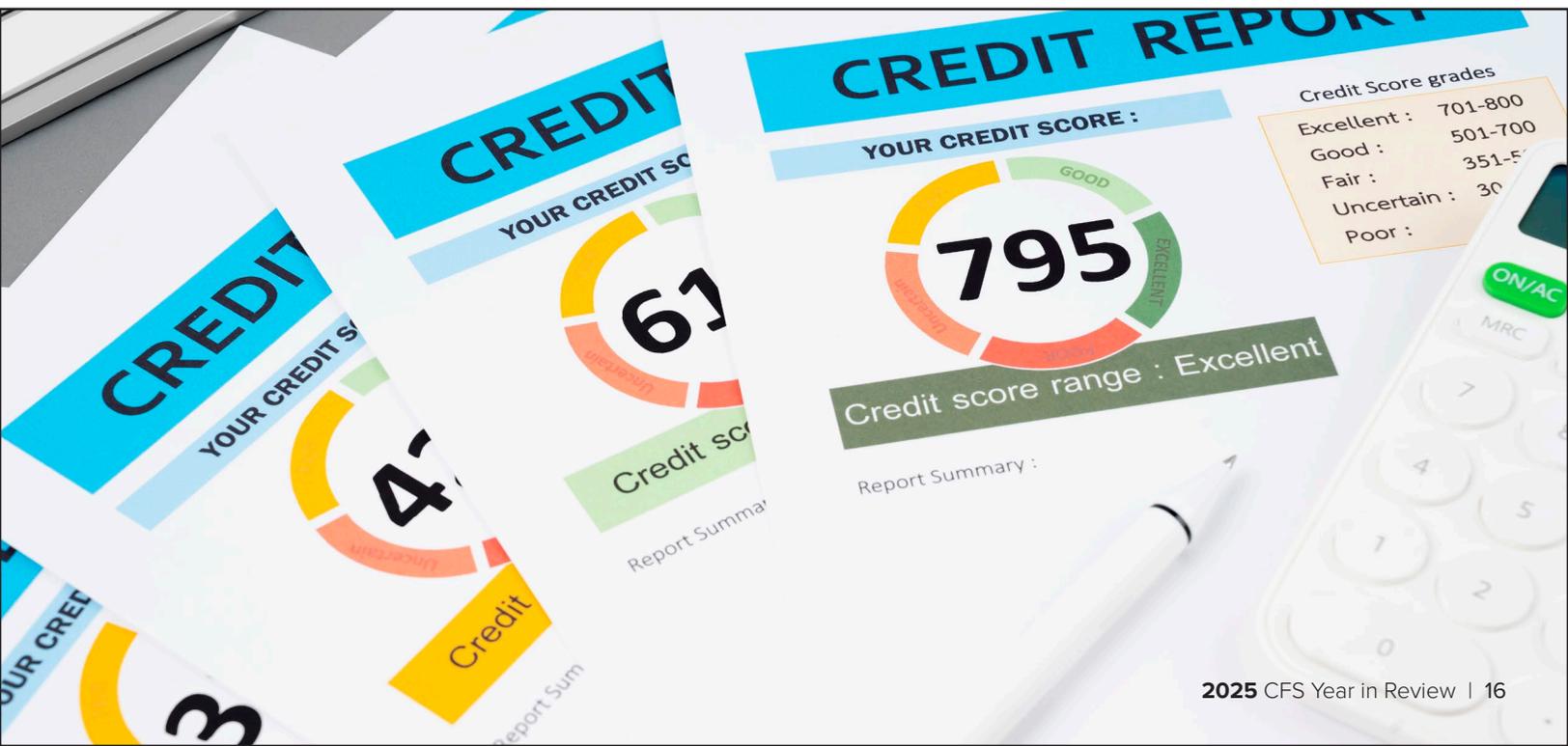
Courts continued to grapple with what constitutes a “concrete injury” sufficient to satisfy Article III standing, particularly in cases involving FCRA claims.

The Eleventh Circuit clarified in two FCRA decisions that a consumer’s “self-imposed” harm — such as the self-imposed expenditure of time and money to correct a credit report — does not, by itself, constitute a concrete injury sufficient to establish Article III standing when the alleged inaccuracies have not otherwise caused, and are not likely to cause, concrete harm. *Nelson*, No. 24-10147, 2025 WL 2016752 (11th Cir. July 18, 2025); *Peeples*, No. 24-10956, 2025 WL 2682441 (11th Cir. September 19, 2025). The decisions also held that speculative allegations of future harm — such as an increased risk of identity theft — are insufficient to confer standing. Instead, a plaintiff must show that the threatened harm is “certainly impending” or at “substantial risk” of occurring.

Looking ahead to 2026, we anticipate that courts will continue to scrutinize standing in FCRA cases, as they have for the past several years following *Spokeo, Inc.*, 578 U.S. 330 (2016) and *Ramirez*, 594 U.S. 413 (2021).

LOOKING AHEAD

We anticipate an increased focus on state-level regulatory frameworks in 2026, accompanied by various challenges to those regimes. At the federal level, the CFPB remains active but is notably more industry-friendly than under the prior administration. As the legal challenges and regulatory initiatives discussed herein unfold, we expect an even greater rise in litigation, especially at the state level and via *pro se* litigation.



Debt Collection

Rising consumer debt levels and increased litigation activity continued to shape the debt collection landscape in 2025. Continuing the trend from 2024, consumer debt balances grew again, with Americans owing \$1.23 trillion in credit card debt as of the third quarter of 2025 — a \$60 billion increase over the third quarter of 2024.

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Federal lawsuits under the Fair Debt Collection Practices Act (FDCPA) also continued to climb, with filings through the third quarter of 2025 up by approximately 4.1% compared with the same period in 2024. See WebRecon November 2025 Stats, available [here](#). Consumer complaints about debt collection companies increased, with 253,000 complaints filed through November 2025, compared to 141,000 over the same period in 2024. Against this backdrop, 2025 brought significant structural shifts in federal oversight of debt collection, an emerging post-*Loper Bright* litigation environment, and expanding state-level regulation. We expect these trends to accelerate in 2026 as the CFPB cedes ground to states and courts apply their own interpretations of the FDCPA.

CFPB IN FLUX

The past year was marked by significant tumult and uncertainty for the Consumer Financial Protection Bureau (CFPB or Bureau). In February, acting Director Russell Vought temporarily closed CFPB headquarters and instructed all employees to halt most supervision, examination, and enforcement activity. The Bureau also withdrew most proposed rules, rescinded or delayed the effective date for various final rules, terminated many consent orders, and closed or quickly resolved most pending enforcement actions. Vought then sought to terminate roughly 90% of the CFPB’s employees and signaled that the Bureau would not accept further funding from the Federal Reserve, prompting litigation by the National Treasury Employees Union. While those challenges remain pending before the U.S. Court of Appeals for the D.C. Circuit, the U.S. District Court for the District of Columbia recently issued an order clarifying its prior injunction to reject the CFPB’s argument that it could not request funds from the Federal Reserve because the funding mechanism is unavailable if the Federal Reserve is operating at a loss. On January 9, 2026, the Bureau requested \$145 million in funding from the Fed to carry out its authorities for the second quarter of fiscal year 2026 (see discussion [here](#)).

THE IMPACT OF *LOPER BRIGHT* ON REGULATION F:

In 2025, courts began applying the principles of the U.S. Supreme Court's 2024 decision in *Loper Bright* to Regulation F. *Loper Bright* overturned the *Chevron* doctrine and its mandatory deference to agency interpretations of federal law. Freed from *Chevron* deference, federal judges increasingly relied on the statute's plain language rather than the CFPB's interpretation of Regulation F.

For example, in *Kinney*, No. 2:24-cv-1440, 2025 U.S. Dist.

while cell phone numbers and email addresses are not. That is, the plaintiff used the CFPB's interpretation to expand the prohibition in Section 1692c(a)(1) to include all mediums of communication. The court reasoned that the CFPB's interpretation did not supersede its independent judgment and held that Section 1692c(a) speaks to inconvenient places — not inconvenient correspondence mediums.

Regulation F suggests that not using a borrower's preferred communication medium may constitute harassment.

LEXIS 85074 (N.D. Ala. May 5, 2025), the plaintiff alleged that the defendant's calls after she requested communications only by email and regular mail violated Section 1692d, which prohibits harassing conduct. Regulation F suggests that not using a borrower's preferred communication medium may constitute harassment. 12 C.F.R. Sections 1006.14(a), (h)(1). The court noted that it owed no deference to the CFPB's interpretation of the FDCPA, restricted its analysis to Section 1692d itself, and held the defendant's conduct was not harassing under the statute.

Similarly, in *Maze*, No. 2:24-cv-1161, 2025 U.S. Dist. LEXIS 95887 (N.D. Ala. May 20, 2025), the plaintiff alleged the defendant violated the FDCPA by mailing a letter to her home after she directed it not to. Her complaint relied on the CFPB's interpretation of the word "place" in FDCPA Section 1692c(a)(1). The court reasoned that it did not owe deference to the CFPB's interpretation of the FDCPA and looked at the statutory language of Section 1692c(a)(1) to determine whether the plaintiff stated a claim.

Finally, in *Pritchett*, No. 2:23-cv-01365, 2025 U.S. Dist. LEXIS 60830 (N.D. Ala. Mar. 31, 2025), the plaintiff alleged that the defendant violated Section 1692c(a)(1) because she sent the defendant a letter instructing it not to send her correspondence through the mail. In support of her claim, the plaintiff relied on the CFPB's Official Interpretation in Regulation F, which states that mailing addresses and landline telephone numbers are associated with "places,"

Each of these cases represents an instance where the plaintiff's claim relied on the CFPB's expanded interpretation of the FDCPA, but the court instead looked to the FDCPA itself for guidance.

DEVELOPMENTS IN STATE DEBT COLLECTION LAWS

States continued to enhance consumer debt collection protections in 2025. Key changes coming in 2026 include new medical debt collection laws and restrictions on collection of "coerced" debt. These state-level measures build on existing federal regulations and focus on stricter oversight, clearer licensing, and targeting abusive practices aimed at vulnerable consumers. Debt settlement companies also continue to draw legislative scrutiny, with several states passing legislation regulating licensing and consumer protection requirements for such entities.

State-specific changes to look out for include:

Medical Debt

Virginia's Medical Debt Protection Act, Va. Code Sections 59.1-611 through 59.1-613 (effective July 1, 2026) restricts interest and fees on medical debt, requires notices before collection actions, and mandates refunds for excess payments. Violations of the Act constitute violations of Virginia's Consumer Protection Act. Virginia joins a growing number of states that have recently restricted the timing and methods of medical debt collection.

Coerced Debt

New York SB 1353, effective February 16, 2026, will prohibit creditors from enforcing a consumer debt incurred due to fraud, duress, intimidation, threats, force, identity theft, exploitation of the debtor's personal information, or similar economic abuse. The legislation provides a private right of action for consumers.

Illinois Pub. Act 104-0297, effective January 1, 2026, provides various protections for consumers whose domestic partner coerces them to take on debt — whether by force, fraud, or similar abuse — by limiting enforceability of such obligations and affording remedies for affected borrowers.

Debt Settlement Companies

Tennessee's new Debt Resolution Services Act, Tenn. Code §§ 47-18-5801 through 47-18-5820, effective January 1, 2026, requires traditional debt settlement companies to be licensed by the Tennessee Department of Commerce & Insurance and creates consumer protections and regulations, including clearer termination rights and rules for handling consumer funds and fees, replacing the state's previous, less structured oversight framework.

LOOKING FORWARD

With the CFPB attempting to cede enforcement and regulatory authority to the respective states, the industry is expected to face increased state-level regulation of debt collection activities and comparatively less federal regulatory activity. At the same time, parties involved in litigation must navigate a more uncertain and variable judicial landscape as courts apply their own interpretations of the FDCPA in the wake of *Loper Bright*.



Digital Assets

2025 marked a significant pivot in the U.S. regulatory posture toward digital assets. The cautious approach of the Biden administration has been replaced — through new legislation and the rescission of restrictive guidance — with a more supportive environment for banks and other financial services businesses to engage with this emerging asset class. In 2026, we expect the emphasis to shift from policy announcements to implementation and supervision, testing how far this pro-innovation turn can go while regulators tighten guardrails around fraud, decentralized finance (DeFi), and financial crime risk.

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1. WHITE HOUSE: PRO-INNOVATION PIVOT, ANTI-CBDC, AND A BITCOIN “VIRTUAL FORT KNOX”

The Biden-era “regulation by enforcement” model, driven by Department of Justice (DOJ) and Securities and Exchange Commission (SEC) actions, has been replaced by the more innovation-oriented strategy of the second Trump Administration. A January 2025 executive order titled “American Leadership in Digital Financial Technology” created a President’s Working Group on Digital Asset Markets to develop a federal framework for digital assets, with an emphasis on open blockchain access and dollar-denominated stablecoins. The order also directed exploration of a strategic national crypto reserve and prohibited development of a U.S. central bank digital currency (CBDC) absent new legislation.

The DOJ disbanded the National Cryptocurrency Enforcement Team and directed prosecutors to focus on fraud, terrorism, narcotics, and organized crime, rather than registration-only cases against exchanges, mixers, and wallets.

Senior appointments — including a “crypto czar” coordinating legislative strategy; Michael Selig leading the U.S. Commodity Futures Trading Commission (CFTC); and Paul Atkins as SEC Chair — signaled alignment on a more permissive, rules-based framework. The administration also announced a Strategic Bitcoin Reserve at Treasury, framed as a “virtual Fort Knox” intended to support U.S. economic resilience and signal long-term support for bitcoin in national reserves.

2. CONGRESS: GENIUS ACT, CLARITY ACT, AND ANTI-CBDC LEGISLATION

I. Stablecoins – GENIUS Act

Congress enacted the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS Act), the first federal statutory framework for stablecoin issuers under the supervision of federal and state banking agencies. The Act limits issuance to “permitted payment stablecoin issuers”; requires high-quality reserves (cash or safe assets like U.S. Treasuries); imposes supervisory, prudential, and consumer-protection standards; prohibits issuers from paying interest or yield directly on stablecoin holdings; mandates monthly reserve disclosures and independent audits; and clarifies that compliant stablecoins are not treated as securities or commodities.

Following enactment, Treasury issued a Request for Information on innovative tools to detect illicit finance in digital assets (Application Programming Interfaces (APIs), artificial intelligence (AI), digital identity, blockchain analytics) and an Advance Notice of Proposed Rulemaking on the regulatory framework for payment stablecoins (covering scope, reserves, anti-money laundering (AML)/sanctions, consumer protection, systemic risk), while the Federal Deposit Insurance Corporation (FDIC) proposed the first GENIUS-based rule for insured banks issuing stablecoins through subsidiaries, with detailed capital, liquidity, and supervisory conditions.

II. Market Structure – CLARITY Act

Additionally, Congress is considering the Digital Asset Market Clarity (CLARITY) Act, which would split oversight between the SEC for initial investment offerings qualifying as digital asset securities and the CFTC for digital commodities and related intermediaries like trading platforms. The bill would also create a pathway for tokenized assets to transition from securities to commodities once decentralization criteria are met. Although the U.S. House of Representatives passed the CLARITY Act in July, its final form is still uncertain as Senate markup slipped into early 2026 amid debates over how to regulate DeFi, protocol governance, and bankruptcy protections for custodial assets. Both the U.S. Senate Banking Committee and the Committee on Agriculture, Nutrition and Forestry — which have jurisdiction over the SEC and CFTC, respectively — have issued discussion drafts building on the CLARITY Act.

III. Anti-CBDC & Innovation Support

The House passed the “Anti-CBDC Surveillance State Act,” limiting the Federal Reserve’s (the Fed) ability to issue a CBDC without congressional authorization. Separately, another bill directs the Department of Commerce to support blockchain deployment, public-private collaboration, and U.S. competitiveness in digital asset technology.



3. FEDERAL REGULATORS: FROM AD HOC ENFORCEMENT TO RULEMAKING AND PILOTS

I. CFTC

The CFTC underwent a leadership reset and rolled out a more constructive crypto agenda. It launched a digital assets pilot program to test the use of digital assets as collateral for derivatives and to develop token collateral risk management standards, withdrew outdated crypto guidance post-GENIUS Act to align with the new stablecoin regime, and opened a “Crypto Sprint” rulemaking on 24/7 trading and updated derivatives rules, while shifting enforcement priorities away from pure registration cases and toward complex fraud. The expectation for 2026 is that the CFTC will solidify its supervision over non-security spot markets and codify pilot learnings into formal guidance.

II. SEC

The SEC similarly shifted away from aggressive enforcement toward structured rulemaking. In July, the agency launched Project Crypto, a commission-wide initiative to provide clear guidance on token classification and market structure. SEC Chair Paul Atkins emphasized that the program aims to create a transparent regulatory framework that supports innovation while protecting investors. In line with this approach, the SEC dismissed high-profile enforcement actions signaling a broader deregulatory trend. The SEC also rescinded SAB 121 (which effectively penalized bank crypto custody on balance sheets) and adopted SAB 122, created a Crypto Task Force to solicit input on a practical regime for crypto assets, refocused on fraud rather than treating most tokens as securities, and integrated crypto into its broader regulatory agenda and exam priorities rather than treating it as a stand-alone “crisis area.”

III. Banking Regulators and FINRA

Banking regulators and FINRA likewise moved toward more defined frameworks for digital asset activity. The FDIC rescinded anti crypto supervisory guidance and an earlier interagency “anti crypto” statement and proposed a GENIUS based rule on bank stablecoin issuance; the OCC took a pro-innovation approach by discouraging “debanking” of lawful crypto businesses, confirming permissibility of crypto custody, stablecoin activities, and node participation, and chartering several crypto focused

national trust banks; and FINRA developed a Digital Asset Hub to focus examinations on crypto marketing, influencer content, and AI driven tools, emphasizing its communications and supervision rules for firms offering digital asset products.

IV. Treasury, FinCEN, and OFAC

While some rules were rolled back or delayed, Treasury and the Financial Crimes Enforcement Network (FinCEN) remained aggressive on financial crime risk. The GENIUS Act made payment stablecoin actors clearly subject to Bank Secrecy Act (BSA)/AML but left DeFi treatment open; Treasury and FinCEN explored advanced monitoring technologies (APIs, AI, and analytics) even as other initiatives, such as the investment adviser BSA rule and parts of the Corporate Transparency Act framework, were delayed or softened; and FinCEN considered a “gatekeeper” role with veto authority over other agencies in BSA/AML matters. The Office of Foreign Assets Control (OFAC) also intensified sanctions enforcement in the crypto sector, including designations of exchanges, mixers, and financial institutions tied to ransomware, fentanyl trafficking, and “pig butchering” scams.

4. STATES: LICENSING, CONSUMER PROTECTION, UCC ARTICLE 12, AND AG ENFORCEMENT

States significantly deepened their role as primary retail protectors and licensing authorities in 2025. Numerous states updated money-transmitter laws to cover virtual currency; require licensing or registration for ATM/kiosk operators; impose transaction caps, monitoring and analytics, mandatory fraud warnings, and refund rights; and tighten oversight of digital asset distribution channels. Some states (such as Montana) passed “financial freedom” laws narrowing the circumstances in which staking or certain network tokens are treated as securities. California’s Department of Financial Protection and Innovation (DFPI) implemented the Digital Financial Assets Law (DFAL), establishing licensing, capital, segregation, and disclosure rules, and bringing early enforcement actions against kiosk operators and lenders, while New York’s Department of Financial Services (DFS) continued to lead on BitLicense-style oversight, stablecoin guidance, and enforcement, including AML failures and sanctions-risk management.

State attorneys general increasingly filled perceived federal gaps by pursuing crypto fraud, misleading marketing, kiosk abuses, and fee gouging, and by opposing federal efforts to preempt state consumer-protection authority. Meanwhile, adoption of UCC Article 12 by a majority of states continued to establish a uniform framework for “controllable electronic records” (including crypto and non-fungible tokens (NFTs)), defining “control” and clarifying secured-lending and perfection rules for digital assets.

OUTLOOK FOR 2026

These developments marked a coordinated federal effort to foster growth in the digital asset sector while trying to maintain appropriate guardrails, in particular with respect to fraud and illicit finance. Overall, the U.S. moved away from ambiguity: Digital asset policy is increasingly becoming statute-driven (GENIUS, CLARITY, tax bills) instead of being built case-by-case through enforcement.

Looking ahead, we expect 2026 to focus on implementing the GENIUS stablecoin framework, potential passage of CLARITY-style market-structure legislation, continued SEC and CFTC movement toward codified rules and pilot programs with less emphasis on “regulation by enforcement,” and expansion of state-level consumer protection, licensing, and enforcement — particularly for kiosks and retail DeFi.

The U.S. digital asset regime is becoming more structured and explicitly pro-innovation but remains fragmented across federal and state levels, with DeFi, tax, and financial crime issues still very much in flux. For businesses operating in the digital assets ecosystem, this environment offers new opportunities but also demands proactive compliance with evolving federal standards.



Fair Lending & UDAAP

During 2025, the Trump administration took unprecedented steps to roll back enforcement of the federal fair lending laws, the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA), and has taken a less aggressive approach to enforcing the federal unfair, deceptive, or abusive acts or practices law (UDAAP).

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The administration has instead shifted to new priorities through the issuance of Executive Orders, such as the “debanking” initiative, and federal agencies have taken actions to align with the administration’s priorities by scaling back fair lending examinations, supervision, and enforcement, as well as amending fair lending regulations and rescinding fair lending and UDAAP regulatory guidance. Meanwhile, state fair lending activities and enforcement have increased to fill the federal void. In 2026, we expect federal fair lending and UDAAP enforcement to remain very limited while state attorneys general and banking regulators increasingly fill the void. However, because today’s lending practices will be reviewed retroactively by future administrations and private litigants, lenders should continue to maintain robust fair lending and UDAAP compliance programs.

FAIR LENDING

Disparate Impact Theory

On April 23, President Trump issued Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy*, aimed at eliminating the use of disparate impact liability “in all contexts.” See discussion [here](#). The order revokes presidential approvals of U.S. Department of Justice (DOJ) regulations supporting disparate impact and instructs federal agencies to deprioritize enforcement of all laws and regulations containing disparate impact liability. The order also requires federal agencies to undertake a review of all pending investigations, civil suits, and ongoing matters and existing consent orders and injunctions that rely on disparate impact liability under ECOA, FHA, and UDAAP and take appropriate action. Similarly, federal agencies must conduct a review of existing regulations, guidance, and orders that involve disparate impact liability and outline steps to amend or withdraw them. The Attorney General, in consultation with federal agency heads, must also review laws or decisions, including at the state level, that impose disparate impact liability and take appropriate measures to address them. In response, the federal banking agencies removed all references to disparate impact from their examination procedures, the Consumer Financial Protection Bureau (CFPB or Bureau) announced that it will no longer use disparate impact theory in its supervision or enforcement activities, and the U.S. Department of Housing and Urban Development (HUD) rescinded guidance related to disparate impact. See discussion [here](#) and [here](#). Federal agencies will now prioritize cases with clear evidence of intentional discrimination and identified victims.

Regulation B Proposed Rules

On November 13, the CFPB issued two proposed rules that would amend Regulation B, which implements ECOA:

- The first proposed rule would amend Subpart A by eliminating disparate impact liability under ECOA, clarifying the scope of “discouragement” to focus on explicit statements directed at applicants or prospective applicants, and prohibiting or tightly restricting use of certain protected class criteria in special purpose credit programs offered by for-profit organizations.

We expect the CFPB to finalize both rules during the first half of 2026 and consumer advocates to immediately contest them in litigation.

Debanking Initiative

On August 7, President Trump issued Executive Order 14331 aimed at preventing and addressing the practice of unlawful and politicized debanking, which is the practice of restricting individuals’ and businesses’ access to financial products or services on the basis of political or religious beliefs or lawful business activities.

We expect the CFPB to finalize both rules during the first half of 2026 and consumer advocates to immediately contest them in litigation.

- The second proposed rule would amend Subpart B, which implements Section 1071 of the Dodd-Frank Act regarding small business lending data collection and reporting. The Bureau proposes to focus the initial Section 1071 implementation on mainstream business loans, lines of credit, and credit cards, and on higher-volume lenders. It would also raise the coverage threshold from 100 to 1,000 originations in each of the two preceding calendar years, using only small business originations (not small farm), and set a single compliance date (January 1, 2028) for institutions above the threshold in both 2026 and 2027. The proposal would tighten the “small business” definition from gross annual revenue of \$5 million or less to \$1 million or less, and confine initial data collection to statutorily required fields and a small set of discretionary data.

In response, the Small Business Administration issued a letter to over 5,000 small business lenders containing instructions for compliance with Executive Order 14331 (discussed [here](#)), and the Office of the Comptroller of the Currency (OCC) issued voluminous information requests to large banks. On December 10, the OCC issued its preliminary findings from its supervisory review of debanking activities at the nine largest national banks (discussed [here](#)). According to the OCC, between 2020 and 2023, the banks made “inappropriate distinctions” among customers on the basis of their lawful business activities by maintaining policies that restricted access to banking services for certain industry sectors or required escalated reviews and approvals before providing services. The OCC identified the following sectors as subject to restricted access or heightened review: (1) oil and gas; (2) coal mining or coal-powered plants; (3) firearms; (4) private prisons (including immigrant detention); (5) payday and payroll lending, consumer debt collection, repossession agencies, and related high-interest lending; (6) tobacco and e-cigarettes; (7) adult entertainment; (8) political action committees and political parties; and (9) digital asset activities.

Redlining

The Trump administration indicated it does not intend to pursue redlining enforcement at the federal level, and the DOJ has terminated several existing redlining consent orders. On April 16, the CFPB issued a memorandum to staff concerning 2025 supervision and enforcement priorities stating, in part, that it would curtail use of redlining in enforcement matters. On September 16, HUD issued a memorandum stating it must “prioritize resources for cases with strong evidence of intentional discrimination” and will no longer rely on various guidance documents, including those concerning redlining. While redlining cases will not be pursued by federal agencies, state redlining enforcement is expected to continue.

Special Purpose Credit Programs (SPCPs)

While SPCPs were actively encouraged during the Biden administration, SPCP risk is rising. Although SPCPs are expressly permitted under ECOA and current Regulation B, they are not authorized by the FHA. In March, the Federal Housing Finance Agency (FHFA) Director issued an order terminating SPCPs supported by Fannie Mae and Freddie Mac. See discussion [here](#). In September, HUD withdrew its legal opinion (issued in December 2021) stating that SPCPs are lawful under the FHA so long as they comply with ECOA. These activities, plus the issuance of executive orders disfavoring diversity, equity, and inclusion (DEI) programs and the CFPB’s proposal to amend Subpart A of Regulation B, suggest that federal agencies may begin scrutinizing lenders’ use of SPCPs and, in particular, race-based SPCPs in mortgage lending. Private litigation also remains a risk.

Immigration Status

In late 2025, it was rumored the CFPB and DOJ planned to withdraw a 2023 joint statement warning lenders against overbroad use of immigration status in credit decisions. See discussion [here](#). Those rumors proved accurate when in early January 2026, the agencies formally withdrew the guidance. See discussion [here](#). The rationale for withdrawal cited confusion among lenders and the CFPB’s new policy of issuing guidance only when necessary or to reduce compliance burden, and concluded that further guidance on this topic was unnecessary. The notice of withdrawal reflects two priorities of the current administration: a harder line on immigration and a continued effort to decrease fair lending enforcement. Although ECOA remains unchanged, the move signals a sharp shift in how the CFPB and DOJ are likely to interpret and enforce protections for noncitizen borrowers.

State Fair Lending Enforcement Activity

While fair lending enforcement has been rolled back at the federal level, enforcement continues at the state level. Examples include the following:

- In March, the New Jersey Attorney General and New Jersey Division on Civil Rights (DCR) announced the issuance of a finding of probable cause against a cash-advance company, alleging that the company had violated the New Jersey Law Against Discrimination (LAD) by maintaining a policy of refusing to lend to certain individuals based on race, national origin, and nationality.

- In July, the Massachusetts Attorney General issued an Assurance of Discontinuance against a lender for failing to perform disparate impact testing of its artificial intelligence (AI) models, using discretionary human decision-making in connection with training data, using certain variables including cohort default rate, and issuing inadequate adverse action notices.

State Fair Lending Laws/Regulations Developments

Some key developments in state laws and regulations include the following:

- New Jersey adopted comprehensive disparate impact regulations, effective on December 15. See discussion [here](#). The new rules, issued by the DCR under New Jersey’s LAD, codify disparate impact guidance across housing, lending, employment, places of public accommodation, and contracting, and adopt a structured burden-shifting approach. Under the rules, disparate impact discrimination occurs when a facially neutral practice or policy results in a “disproportionately negative effect” on a protected class, even absent any discriminatory intent, unless it is shown that such practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest and there is no less discriminatory alternative that would achieve the same interest. Protected characteristics include, among others, race, national origin, religion, gender, gender identity and expression, disability, sexual orientation, age, and source of lawful income. The rules do not create additional liability under the LAD but instead clarify how DCR believes disparate impact claims should be analyzed under that law.
- Enacted in May 2024, Colorado’s landmark Artificial Intelligence Act (AI Act), which was the first comprehensive state law seeking to regulate AI systems used in employment, housing, credit, education, and health care decisions, faced increasing challenges in 2025. Following intense lobbying efforts by multiple stakeholders during an August 2025 special legislative session, a compromise legal framework that was proposed to amend the AI Act was rejected and implementation of the law was delayed from February 1, 2026 to June 30, 2026. Rules still must be issued to enforce the law, and the Colorado General Assembly may introduce substantive amendments to the law in early 2026.

UDAAP

The CFPB is taking a less aggressive approach to enforcing UDAAP and a narrower view of its authority to determine what constitutes “abusive” acts or practices under the Dodd-Frank Act. In May, the CFPB withdrew its 2023 Policy Statement on Abusiveness and indicated in its spring rulemaking agenda that it plans to issue a formal rulemaking to define the boundaries of UDAAP.

Given the change in the Bureau’s UDAAP policy, the focus of enforcement has shifted to the states. State attorneys general and state banking agencies can enforce state unfair or deceptive acts or practices (UDAP) laws, as well as the Dodd-Frank Act’s UDAAP prohibitions. Priority areas appear to include “junk fees,” deceptive advertising, collection practices, and holder rule liability for home-improvement, medical, or other merchant-related credit products. States are also expanding their own UDAP statutes. For example, in December, New York enacted the FAIR Business Practices Act, which represents a massive expansion of the state’s UDAP law (General Business Law § 349) by prohibiting “unfair” and “abusive” practices in addition to “deceptive” practices to mirror the federal UDAAP statute.

WHAT TO EXPECT IN 2026

During 2025, we witnessed a dramatic scaling back of enforcement of the federal fair lending laws and a less aggressive enforcement of UDAAP, together with very limited activity by federal agencies in fair lending or UDAAP examinations, supervision, or investigations (other than rulemakings and rescission of regulatory guidance). We expect this trend to continue in 2026. In response, state attorneys general and state banking agencies have stepped up to enforce their fair lending and UDAP laws and regulations. State fair lending and UDAP/UDAAP enforcement, rulemaking, and legislative activity are likely to continue increasing over the next three years to fill the federal government enforcement void.

While the pullback at the federal level represents a significant shift in fair lending and UDAAP supervision and enforcement, it is important to remember that regulatory compliance is based primarily on a retrospective review of lending activity. The statute of limitations for ECOA is five years, while the statute of limitations for the CFPB is three years from the date of discovery of the alleged violation. Therefore, any lending activity that occurs over the next three to four years will be subject to regulatory scrutiny during the next administration. The potential for enforcement by the next administration, the likelihood of increased state activity (either under fair lending, UDAP, or AI laws), and the possibility of private litigation all suggest that lenders should continue their fair lending and UDAAP compliance risk-management programs without interruption.

Fintech

Fintech and bank partnership models were at the center of several consequential developments in 2025. The U.S. Court of Appeals for the Tenth Circuit’s application of Colorado’s Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) opt-out challenged long-standing assumptions about rate exportation for bank partner programs, while the Consumer Financial Protection Bureau’s (CFPB) shifting positions on earned wage access (EWA) and buy now, pay later (BNPL) products signaled a move away from aggressive federal oversight toward more targeted guidance and market monitoring. Looking ahead to 2026, we expect continued pressure on bank partnership and rate export models in the courts, expanding state-level regimes for EWA and BNPL, and a more fragmented, jurisdiction-by-jurisdiction compliance landscape for fintech providers and their bank partners.

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COLORADO’S DIDMCA OPT-OUT

In June 2023, Colorado passed H.B. 1229, which limits certain charges on consumer loans and opts Colorado out of Sections 521–523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). Sections 521–523 allow state banks to charge interest rates permitted by their home state, regardless of the borrower’s location. However, Section 525 of DIDMCA allows states to opt out of these provisions for loans “made in” the opt-out state. In March 2024, three trade organizations filed a complaint challenging H.B. 1229, arguing that a loan is “made” where the lender is located or where it performs its loan-making functions, not where the borrower is located.

In June 2024, a Colorado federal court granted a preliminary injunction, halting the enforcement of that law with respect to loans made by out-of-state, state-chartered banks. The court agreed with the plaintiffs that the determination of where a loan is “made” depends on the *lender’s* location and actions, not the *borrower’s* location.

In November 2025, the Tenth Circuit reversed the district court’s preliminary injunction, holding that Colorado may enforce its Uniform Consumer Credit Code interest rate caps for loans to Colorado borrowers even when originated by out-of-state, state-chartered banks. Interpreting the phrase “loans made in such State,” the court concluded it encompasses loans in which either the lender or the borrower is located in the opt-out state (discussed [here](#)). Because Colorado has opted out, if this ruling becomes final, 12 U.S.C. Section 1831d will no longer preempt Colorado rate caps for loans from out-of-state, state-chartered banks to Colorado residents.

Following the panel’s decision, the trade organizations moved for rehearing en banc. The Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and 20 state attorneys general have filed briefs in support of that motion. The FDIC had previously filed briefs in both the district court and the Tenth Circuit in support of *Colorado’s* position. However, those briefs were filed before the change in presidential administrations, and the FDIC withdrew the prior Tenth Circuit amicus before the panel decision. The current brief in support of rehearing reverses its argument, returning the FDIC to a position consistent with its historical view of DIDMCA’s opt-out.

Regardless of whichever party ultimately prevails in the Tenth Circuit, we expect an attempt to appeal to the U.S. Supreme Court.

REGULATION OF EWA

CFPB Advisory Opinion

At the end of 2025 the CFPB issued an advisory opinion concluding that certain EWA products are not subject to Truth in Lending Act (TILA) and Regulation Z (Reg Z) requirements. This advisory opinion, building upon and expanding the November 2020 advisory opinion issued during the first Trump Administration under CFPB Director Kraninger, provides that certain “Covered EWA” products do not provide workers with the right to defer payment of debt or incur debt and defer its payment and, as such, do not constitute credit under TILA and Reg Z. The advisory opinion defines Covered EWA products as those where transaction amounts do not exceed the cash value of accrued wages, the provider uses a payroll-process deduction for collection of accessed amounts, no legal recourse is available to the provider if payment falls short, and the provider does not evaluate credit risk of workers. The advisory opinion also clarifies that, to the extent an EWA product does fall within the Reg Z definition of credit, certain fees, including expedited delivery fees and tips, do not constitute finance charges under Reg Z because they are not imposed directly or indirectly by the provider. Importantly, the advisory opinion clarified that it takes no position as to whether EWA products that are not Covered EWA are credit under Reg Z, nor does it seek to interpret any law outside of Reg Z.

This advisory opinion marked the latest shift in position from the CFPB following its earlier rescission of the November 2020 advisory opinion during the final days of the Biden administration’s CFPB in January 2025 (discussed [here](#)).

EWA Under the Military Lending Act

In October 2025 the U.S. District Court for the Northern District of California issued a ruling denying an EWA provider’s motion to compel arbitration, determining that its product constituted “credit” under the Military Lending Act (MLA), despite the provider’s assertion that users had no unconditional obligation to repay (discussed [here](#)). Key elements of the court’s analysis included the high repayment rates on advances, authorization to debit the full advance amount plus other charges at origination, and the nature of the product’s instant transfer fee, which the court deemed a finance charge incident to the extension of credit.

State Regulations

Continuing a trend seen in 2024, multiple states passed legislation regulating EWA products in 2025. In March, Arkansas enacted the Earned Wage Access Services Act aimed at regulating EWA providers, which is defined to exclude employers that advance a portion of earned wages directly to employees or independent contractors. Under the law, providers are not deemed to be engaged in lending, money transmission, or debt collection if they comply with certain requirements, including fully disclosing all fees associated with EWA services, providing a no-cost option, reimbursing consumers for any overdraft or nonsufficient-fund fees, and more. The law also prohibits certain activities, including sharing fees with employers, using consumer credit reports to determine eligibility for services, accepting credit card payments, charging late fees and other penalties, compelling payment through legal action or third-party collection, or misleading consumers about the voluntary nature of tips or gratuities.

Similar statutes were enacted in Utah, Louisiana, and Maryland. Utah’s own Earned Wage Access Services Act requires EWA providers to annually register with the Utah Division of Consumer Protection and mandates various consumer protections, including requiring certain disclosures, requiring consumer consent to changes in terms, mandating a no-fee option for services, and more. The law also prohibits use of legal action or third-party collections to compel repayment, reporting nonpayment to consumer reporting agencies (CRAs), use of consumer credit scores, and more. Finally, the law clarifies that EWA services are not considered credit and voluntary fees, tips, and gratuities are not finance charges. Louisiana’s EWA law similarly requires providers to make certain disclosures and provide a no-cost option while prohibiting legal action and third-party collection to compel repayment. Finally, Maryland’s EWA law imposes similar requirements and restrictions, including a licensing requirement for providers and restrictions on tipping practices, in addition to capping certain fees associated with obtaining EWA services.

While the New York Legislature introduced its own EWA law in early 2025, this bill has yet to become law.

Finally, the California Department of Financial Protection and Innovation (DFPI) EWA regulations took effect in February 2025. These regulations classify non-recourse EWA products as loans under the California Financing Law (CFL) and allow providers to register rather than obtain a CFL license.

We expect EWA products to be an area of continued interest for state regulators in 2026.

BNPL

Shift in CFPB Priorities

In a significant position shift, the CFPB announced in May 2025 that it would not prioritize actions focused on BNPL loans under TILA and Reg Z (discussed [here](#)). This announcement aligned with the CFPB's broader strategic adjustment to focus resources on what it classified as more pressing threats, such as those affecting servicemembers, veterans, and small businesses. Following this announcement, the CFPB formally rescinded its prior interpretive rule concerning Reg Z's application to BNPL products issued in 2024. The 2024 interpretive rule classified digital user accounts issued by some BNPL providers as "other credit device[s]" within the TILA/Reg Z definition of "credit card." This interpretation would have demanded significant and burdensome compliance adjustments for the industry, forcing providers to investigate consumer disputes, pause payments required during investigations, credit funds for returned products or canceled services, and provide periodic billing statements as required by Reg Z. The 2024 interpretive rule was met with condemnation from market participants, with one industry group filing suit to enjoin enforcement of the rule. After rescinding the interpretive rule, the CFPB clarified in a status report submitted in that lawsuit that it does not intend to issue a revised interpretive rule on BNPL. The decision to rescind the 2024 interpretive rule provides significant relief to BNPL providers who otherwise faced a complex and burdensome regulatory environment.

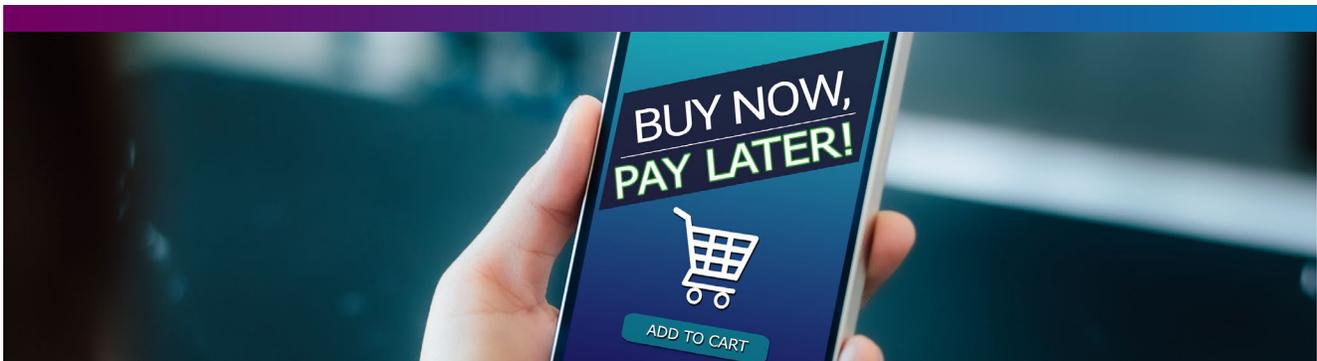
Despite this shift away from supervisory and enforcement focus on BNPL products, the CFPB ended the year by releasing a market report on BNPL market trends in 2023, relying on data from six major providers of "pay-in-four" BNPL loans (discussed [here](#)). The report showed increasing use of BNPL products, as well as improved credit performance and declining charge-off rates. Specifically, the report showed originations continued to grow through 2023, albeit at a slower pace than in prior

years, with meaningful indications of improved credit performance, including decreasing late fees and charge-off rates. Importantly, this report did not cover point-of-sale installment loans or credit card installment plans.

State Regulation

In May 2025, New York enacted the Buy-Now-Pay-Later Act as part of its broader budget legislation for the 2025–2026 fiscal year (discussed [here](#)). The Act defines BNPL loans to include any closed-end credit provided to a consumer in connection with the purchase of goods or services, with limited exceptions for motor vehicles and certain credit sales, thereby expanding its coverage to numerous credit transactions not typically associated with BNPL offerings. The law imposes licensing requirements on BNPL lenders and requires already-licensed lenders offering BNPL products to seek approval from the New York Department of Financial Services (DFS). While national banks and other federally chartered financial institutions are excluded from the law's purview, state-chartered banks are not excluded and must comply with the law's requirements. The law imposes substantive restrictions on certain BNPL loans, capping interest rates in line with New York's existing limits and requiring the Superintendent of DFS to establish maximum fee limits and caps on origination and late fees. The law also imposes certain disclosure and record-retention requirements on BNPL providers. Most provisions of the Act will not take effect until 180 days after implementing regulations are issued by DFS, and industry participants should closely monitor DFS rulemaking and guidance over the coming year to understand the final contours of the regime and adjust their compliance frameworks accordingly.

This legislation represents the first of potentially many attempts by states to step into the perceived void left by the CFPB, forcing BNPL providers to navigate a disjointed patchwork of state-level regulations and creating complex compliance challenges going into 2026.



Mass Arbitration

Mass arbitration — the coordinated filing of numerous individual arbitration demands against the same company — has become an increasingly common tactic used by the plaintiffs' bar that companies must factor into their litigation and risk management strategies. Advances in technology, including generative artificial intelligence, now enable plaintiffs' firms to recruit hundreds or thousands of claimants through social media and other digital tools and to generate large volumes of arbitration filings quickly, often without meaningful vetting of individual claimants or their alleged injuries.

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Arbitration, when used as intended, offers businesses and consumers an efficient alternative to litigation. Consumer arbitration agreements that require disputes to be resolved on an individual basis help companies mitigate class action exposure, while consumers typically pay little or no fees to pursue their claims in a streamlined forum. Under the fee schedules of JAMS and the American Arbitration Association (AAA) — the leading arbitral organizations in the United States — businesses bear the bulk of the administrative and arbitrator fees in consumer arbitrations. In ordinary volumes, these costs are manageable. But plaintiffs' firms can exploit this framework by filing large numbers of individual demands that trigger substantial, front-loaded fees that companies must pay before the merits of any claim can be addressed. Even companies with strong defenses can face millions of dollars in arbitration fees before a single case is decided.

The coercive power of this mass arbitration strategy is reflected in the data. Statistics released by the AAA show that only a small fraction of mass arbitration cases resulted in a final determination on the merits in 2024 and that the plaintiffs' bar continued to deploy mass arbitration as a tactic in 2025. JAMS and the AAA have issued rule changes and updated fee schedules to address mass arbitration filings, but those measures alone are insufficient to guard against the use of mass arbitration to coerce settlements. The courts have continued to scrutinize how mass arbitration procedures function in practice, including whether they resemble prohibited class or representative proceedings. These developments highlight the importance of well-crafted, regularly updated arbitration agreements. The decisions businesses make — not only about whether to arbitrate but also how to address mass filings — can significantly affect both exposure and predictability when facing mass claims.

RECENT DEVELOPMENTS

Courts Continue to Scrutinize Mass Arbitration Procedures

In 2024, the U.S. Court of Appeals for the Ninth Circuit and several district courts closely examined bellwether arbitration procedures that required a small group of cases to be heard before others could progress and that bound non-bellwether claimants. Courts found various iterations of these bellwether procedures unconscionable because they created undue delays, chilled the pursuit of claims, bound absent parties, or risked inconsistent outcomes. *See, e.g., Heckman*, 120 F.4th 670 (9th Cir.

2024).

Businesses responded to these decisions by incorporating alternative mechanisms for handling mass arbitrations in their agreements, which courts tested in 2025. While courts continued to find bellwether provisions unconscionable, courts enforced other batching procedures that did not involve bellwether or representative proceedings that bound absent parties. See, e.g., *Cordero*, No. 3:25-cv-04024-CRB (N.D. Cal. August 5, 2025). Consumers argued these batching procedures were proscribed by the class action waivers typically present in consumer arbitration agreements. The Ninth Circuit rejected that argument in *Jones*, 129 F.4th 1176 (9th Cir. 2025), upholding a clause allowing the consolidation of thousands of individual demands before a single JAMS arbitrator. The court emphasized that “consolidation” is not the same as “class or representative arbitration” and held that the defining feature of class action arbitration is its representative nature, not the number of parties.

These decisions suggest that mass arbitration procedures are more likely to be upheld when they preserve bilateral arbitration and provide claimants with a path to timely, individualized hearings. By contrast, mechanisms that create open-ended delays or bind non-participating claimants without adequate safeguards face a heightened risk of being found unconscionable.

Arbitral Provider Rule Changes

The AAA and JAMS issued rule changes and updated fee schedules in 2024 that specifically addressed mass arbitration and attempted to ameliorate some of the cost and administrative burdens that mass arbitration filings impose on businesses. Both the AAA and JAMS rules provide for a process arbitrator to hear preliminary and administrative matters, include an affirmation requirement, and incorporate fee schedules that mitigate some of the significant costs businesses face from mass arbitrations.

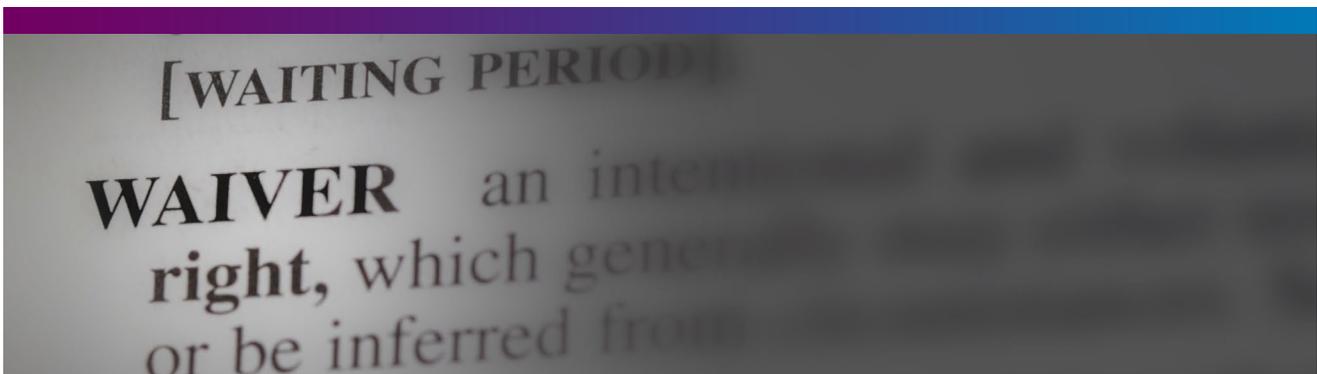
However, there are several notable differences that businesses should consider when identifying specific alternative dispute resolution providers in their arbitration agreements. For example:

- JAMS defines “mass arbitration” as 75 or more similar demands, while the AAA sets the threshold at 25 or more.
- The AAA’s rules apply automatically if the threshold is met, whereas JAMS requires both parties to opt in through a written agreement.
- JAMS does not mandate mediation, whereas the AAA requires mediation within 120 days.

In 2025, courts that evaluated the AAA and JAMS rules affecting the coordination of mass arbitration filings rejected arguments that these rules were unconscionable. See, e.g., *Carolus*, No. 25-cv-03089-CRB (N.D. Cal. October 7, 2025); *Jones*, 129 F.4th 1176.

Although neither JAMS nor the AAA issued additional mass arbitration specific rule changes in 2025, the AAA implemented substantive changes to its Consumer Arbitration Rules effective May 1, 2025, with implications for both mass and non-mass arbitration. Some of these rule changes provide the AAA with additional flexibility to handle mass arbitrations more efficiently. For instance, a new consolidation provision allows the AAA, in its discretion, to treat multiple claims by the same party under the same contract as a single administered case. The revisions also make hearings virtual by default, reducing logistical barriers when hundreds of matters must be heard.

While these arbitral rule changes are a step in the right direction, plaintiffs’ firms can still leverage the current rules and fee schedules to exert settlement pressure irrespective of the merits. For companies facing the threat of mass arbitration, the most effective response is to ensure that their arbitration provisions incorporate robust safeguards before arbitration commences.



WHAT CAN CLIENTS DO?

Companies should periodically review their arbitration agreements and implementation strategies to ensure they adequately address the risks posed by mass arbitration and align with broader risk-management objectives. Involving experienced arbitration counsel at the drafting and revision stage — rather than only when disputes arise — can improve enforceability and outcomes.

Key considerations include:

- Drafting arbitration clauses that efficiently manage and coordinate mass arbitration filings;
- Ensuring that arbitration coordination mechanisms preserve bilateral dispute resolution with each individual consumer and do not create indefinite delays or de facto representative proceedings;
- Determining whether and how to incorporate arbitral provider rules and harmonizing those rules with bespoke contract terms addressing mass filings;
- Building in flexibility for future changes to provider rules and evolving case law regarding permissible mass arbitration procedures; and
- Developing strategies for implementing mass arbitration mechanisms, including clause rollouts, updates, and response plans for mass arbitration demands.

LOOKING AHEAD

Mass arbitration continues to evolve through provider rulemaking, a growing body of case law, and the refinement of contractual clauses to address both risk and enforceability in court. Businesses cannot rely on boilerplate arbitration clauses to minimize the risks of mass arbitration. Given the substantial, up-front exposure associated with mass filings, arbitration provisions should be treated as central components of a broader dispute resolution strategy that are regularly revisited to account for new case law and provider rule changes. Companies that proactively monitor these developments and periodically recalibrate their arbitration strategy with experienced counsel will be better positioned to enforce their arbitration agreements and manage the impact and cost of mass arbitration filings.



Mortgage Lending & Servicing

In 2025, mortgage lenders and servicers faced significant developments across multiple fronts, including a key appellate ruling on federal preemption of state escrow-interest laws, the implementation of new quality-control standards for automated valuation models (AVMs), changes to federal support for special purpose credit programs, and limits on trigger-lead marketing under the Fair Credit Reporting Act (FCRA). At the same time, federal housing agencies sharpened their focus on government-sponsored enterprise (GSE) performance in serving underserved markets, while foreclosure activity increased nationwide, signaling rising operational, compliance, and credit-risk pressures for market participants. This section highlights the most impactful developments and key takeaways for mortgage lenders and servicers in 2026.

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NATIONAL BANK ACT PREEMPTION LITIGATION

On September 22, 2025, the U.S. Court of Appeals for the First Circuit issued its decision in *Conti*, the first appellate ruling applying the U.S. Supreme Court's 2024 *Cantero* decision, which clarified that federal law preempts state laws that “significantly interfere” with national banks' powers. The court held that Rhode Island's statute requiring banks to pay interest on mortgage-escrow accounts is **not** preempted, finding the defendant bank had not shown that complying with the law would significantly interfere with its federal banking powers. Similarly, in *Kivett*, the U.S. Court of Appeals for the Ninth Circuit followed *Cantero* to hold that California's interest-on-escrow (IOE) law is not preempted, explaining that courts must perform a “nuanced comparative analysis” to determine if state laws significantly interfere with national bank powers, using text, structure, and common sense.

For federally chartered institutions that originate and service mortgages across states, these decisions underscore the need to track and comply with a patchwork of state escrow-interest and servicing rules, reassess preemption-based defenses in litigation, and evaluate whether loan pricing, disclosures, and servicing practices should be tailored to state-specific obligations. They also diminish one of the traditional advantages of a national charter — regulatory uniformity — by reinforcing that courts will require a concrete showing of significant practical interference before displacing state consumer protection laws.

FEDERAL REGULATORY DEVELOPMENTS

AVMs Final Rule Became Effective

The final rule (the Rule) implementing quality-control standards for the use of AVMs in credit decisions for a consumer's principal dwelling, which was mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, became effective on October 1, 2025.¹ An AVM is defined as any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage. The Rule applies to mortgage originators and secondary market issuers (but generally excludes servicers unless they act as originators, such as for refinances).

¹ 89 Fed. Reg. 64538 (August 7, 2024).

The Rule requires covered entities that use AVMs in credit decisions or covered securitization determinations to adopt and maintain certain policies, practices, procedures, and control systems designed to meet five key objectives: (1) ensure a high level of confidence in the estimates produced; (2) protect against the manipulation of data; (3) seek to avoid conflicts of interest; (4) require random sample testing and reviews; and (5) comply with applicable nondiscrimination laws. The agencies have not issued AVM-specific guidance beyond the Rule itself, instead pointing institutions to existing safety-and-soundness guidance, and the Rule does not create new enforcement mechanisms — noncompliance is subject to the same fines, penalties, and enforcement tools available under existing law.

FHFA Terminated Mortgage-Related Special Purpose Credit Programs for GSEs

Special Purpose Credit Programs (SPCPs) are programs through which financial institutions may consider prohibited-basis information when determining whether to extend credit to economically or socially disadvantaged groups. Through a combination of specific statutory authorizations, legal opinions, and interagency policy statements, the use of SPCPs by financial institutions has been strongly encouraged at the federal level.

However, on March 25, 2025, the new Federal Housing Finance Agency (FHFA) Director Bill Pulte issued an order terminating SPCPs supported by government-sponsored enterprises Fannie Mae and Freddie Mac (together, the GSEs), stating that the FHFA has determined that the current level of support for SPCPs is “inappropriate for regulated entities in conservatorship.” This directive signals closer scrutiny of mortgage-related SPCPs and suggests that, rather than being uniformly encouraged, their use may now raise heightened regulatory and litigation risk, particularly given the absence of an express SPCP authorization in the Fair Housing Act.

Homebuyers Privacy Protection Act Amends FCRA to Limit Trigger Leads

The Homebuyers Privacy Protection Act (HPPA) was enacted on September 5, 2025, with bipartisan support and goes into effect on March 6, 2026. The HPPA will limit the sale of leads or data from mortgage applicants to mortgage brokers, lenders, and other third parties. Under the FCRA, the three consumer reporting agencies (CRAs) have been permitted to sell data of mortgage applicants to prospective lenders as “trigger leads” *without* the consumer’s consent if a firm offer of credit was available.

The HPPA narrows this framework by limiting the sale of trigger leads to third parties unless one of three exceptions is met: (1) the consumer has consented to receive the offer; (2) the third-party buyer of the trigger lead is the consumer’s existing servicer or mortgage lender; or (3) the third-party buyer is a lender with a relevant and existing relationship with the consumer. These changes are expected to reduce the number of solicitations to potential homebuyers. Mortgage lenders should review their standards and practices to ensure the trigger leads they purchase comply with the HPPA’s new restrictions.

The CFPB Issued a Final Rule to Apply Residential Mortgage Requirements to Property Assessed Clean Energy (PACE)

On December 17, 2024, the Consumer Financial Protection Bureau (CFPB) issued a final rule applying residential mortgage requirements to PACE financing, a program designed to provide alternatives to traditional financing for energy-efficient home improvements. The rule generally treats PACE assessments as “credit” subject to Truth in Lending Act and Regulation Z requirements, including Loan Estimate and Closing Disclosures, Home Ownership and Equity Protection Act (HOEPA) coverage, and a three-day right of rescission, while clarifying that truly involuntary tax liens and assessments remain outside the scope of “credit.”

Mortgage lenders should review their standards and practices to ensure the trigger leads they purchase comply with the HPPA’s new restrictions.

The CFPB Announced Its Semiannual Rulemaking Agenda

On August 15, 2025, the CFPB released its semiannual Unified Rulemaking Agenda, which includes 24 action items — double the Fall 2024 update. Key mortgage-related initiatives include:

- Rescinding existing regulations concerning loan originator compensation;
- Streamlining mortgage servicing requirements for borrowers; and
- Rescinding certain COVID-19-related protections under the Real Estate Settlement Procedures Act.

The U.S. Department of Housing and Urban Development (HUD) Seeks Input on HECM and HMBS Programs

On October 2, 2025, HUD published a Request for Information in the *Federal Register*, titled “Future of the HECM and HMBS Programs and Opportunities for Innovation in Accessing Home Equity.” HUD, through the Federal Housing Administration (FHA) and the Government National Mortgage Association (Ginnie Mae), seeks input regarding the market for senior homeowners to access equity in their homes and possible improvements to the Home Equity Conversion Mortgage (HECM) and HECM mortgage-backed securities (HMBS) programs.

Rather than proposing immediate changes, HUD is soliciting feedback on product design, risk management, consumer protections, and secondary-market execution for reverse mortgage products. On December 10, HUD reopened and extended the comment period until January 5, 2026, and indicated that late-filed comments would be considered to the extent practicable.

FHFA Annual Housing Report Evaluates Freddie Mac and Fannie Mae 2024 Performance

On October 30, 2025, the FHFA released its Annual Housing Report (the Report) detailing the performance of Fannie Mae and Freddie Mac (together, the GSEs) under FHFA conservatorship. The Report determined that Freddie Mac met all single-family and multifamily housing goals set by FHFA for mortgages purchased in 2024. Fannie Mae was also determined to have met all 2024 single-family and multifamily housing goals but narrowly missed the single-family very low-income home purchase goal benchmark.

The Report also found that both GSEs satisfied FHFA’s Duty to Serve regulation in 2024 through efforts to serve historically underserved markets of manufactured housing, affordable housing preservation, and rural housing.

If Fannie Mae does not improve its performance on very low-income single-family home mortgage purchases, FHFA may require Fannie Mae to submit a formal Housing Plan describing how it will increase activity in this segment, underscoring FHFA’s continued focus on underserved markets and GSE secondary-market conduct.

Mortgage Foreclosures Trending Upward

Mortgage foreclosure activity increased significantly year over year. According to property data from ATTOM Data Solutions, annual foreclosure activity nationwide increased for nine straight months as of December 2025. ATTOM’s November 2025 U.S. Foreclosure Market Report showed a total of 35,651 U.S. properties with foreclosure filings (consisting of default notices, foreclosure actions, or bank repossessions), up 21% year over year. Foreclosure starts nationwide increased by 17% and completed foreclosures increased by 26% versus the prior year. The states with the highest foreclosure rates overall were Delaware, South Carolina, Nevada, New Jersey, and Florida, and the states with the highest number of foreclosure starts were Florida, Texas, California, New York, and Illinois.

OUTLOOK IN 2026

In 2026, mortgage lenders and servicers should expect heightened operational and compliance complexity driven by both evolving federal standards and the erosion of traditional preemption assumptions. The *Conti* decision signals that national banks will face greater exposure to state-specific servicing and escrow-interest requirements, making multistate compliance management and preemption-based litigation strategies more challenging. At the same time, the AVM quality-control rule will require lenders and secondary market participants to revisit their fair lending controls and business plans, while the FHFA’s termination of GSE-sponsored SPCPs suggests increased regulatory and litigation risk for targeted credit programs that continue to use protected-class-related criteria.

The HPPA’s trigger-lead restrictions will force lenders to reassess lead-generation programs, vendor contracts, and marketing pipelines. HUD’s HECM/HMBS review and FHFA’s continued focus on underserved markets mean product design, secondary-market execution, and affordable housing strategies may need adjustment. Rising foreclosure activity simultaneously points to increased default servicing, loss-mitigation, and real estate-owned management demands, with corresponding litigation and reputational risks. Finally, the CFPB’s robust rulemaking agenda signals a commitment to address concerns for consumers while also curtailing actions taken under the prior administration.

Payment Processing & Cards

Payment processing and cards remained a focal point of regulatory and litigation activity in 2025, as federal agencies, courts, and state legislatures all moved to reshape the economics of card programs and interchange. The Consumer Financial Protection Bureau's (CFPB) credit card late fee rule was vacated in high-profile litigation, Illinois pressed forward (albeit on a delayed timetable) with novel restrictions on interchange tied to tax and gratuity amounts, and a North Dakota federal court called into question the Federal Reserve's long-standing Regulation II framework under the Durbin Amendment. Together, these developments signal an environment in which long-settled assumptions about fee caps, cost recovery, and network rules are increasingly subject to challenge from both issuers and merchants.

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In 2026, we expect continued uncertainty as appellate courts weigh in, state laws like Illinois' Interchange Fee Prohibition Act (IFPA) move toward effectiveness, and the Federal Reserve and CFPB decide whether and how to adjust their card and payment regulations in response.

CFPB'S CREDIT CARD LATE FEE RULE VACATED

On April 15, 2025, the CFPB's credit card late fee rule was vacated by the U.S. District Court for the Northern District of Texas pursuant to a joint motion for entry of consent judgment filed in *Chamber of Commerce of the United States of America v. CFPB* (discussed [here](#)). The agreement followed the court's earlier conclusion at the preliminary injunction stage that the plaintiffs were likely to succeed on their claim that the rule violated the Credit Card Accountability Responsibility and Disclosure Act (CARD Act) by failing to allow issuers to impose penalty fees that are "reasonable and proportional" to the violation, and the court's ultimate determination in the consent judgment that the rule was "contrary to law" under the Administrative Procedure Act (APA) because it prevented card issuers from imposing penalty fees that reflect both costs and deterrence, as contemplated by the CARD Act.

Issued on March 5, 2024, during the Biden Administration, the rule had amended 12 C.F.R. § 1026.52(b) to lower the safe harbor for credit card late fees from \$30 and \$41 to a flat \$8 amount, and to eliminate the annual inflation adjustment for this safe harbor. In challenging the rule, several trade groups and financial institutions had argued that by focusing on estimated collection costs and limiting consideration of deterrence and consumer conduct, the CFPB exceeded its statutory authority under the CARD Act.

Following the plaintiffs' challenge, the court entered a preliminary injunction preventing the rule from taking effect and found that the plaintiffs were likely to succeed on the merits. On February 10, 2025, the court ordered the CFPB to describe how it intended to proceed. The CFPB reported that the parties were working toward a resolution, which culminated in a joint motion asking the court to vacate the rule, dismiss the remaining claims with prejudice, and confirm that the CFPB will not assert issue or claim preclusion based on the judgment in future litigation over other rules.

In granting the motion, the court reiterated that the late fee rule was “contrary to law” under the APA because it prevented card issuers from imposing penalty fees that reflect both costs and deterrence, as contemplated by the CARD Act. The court vacated the rule and dismissed all remaining claims with prejudice, removing the rule’s \$8 late fee safe harbor.

ILLINOIS DELAYS IMPLEMENTATION OF INTERCHANGE FEE RESTRICTIONS FOLLOWING DISTRICT COURT RULINGS

Originally set to take effect July 1, 2025, the IFPA was delayed by 2025 legislation signed by Gov. J.B. Pritzker and is now scheduled to take effect on July 1, 2026. That delay came against the backdrop of litigation brought by trade associations and preliminary injunction rulings that narrowed who can be subject to the statute: The U.S. District Court for the Northern District of Illinois had barred enforcement of the IFPA against national banks and federal savings associations in late 2024, and in February 2025 extended this ruling to out-of-state, state-chartered banks operating in Illinois, while leaving Illinois chartered banks, state and federal credit unions, and payment networks/processors still within its reach once the law becomes effective.

Enacted in 2024, the IFPA prohibits the collection of credit and debit card interchange fees on the portions of card transactions attributable to sales taxes, excise taxes, and gratuities, provided merchants report those amounts to the acquiring bank. The law also restricts the use of transaction data and imposes \$1,000 per transaction civil penalties and refund obligations for violations.

NORTH DAKOTA FEDERAL COURT VACATES REGULATION II; STAY LEAVES RULE IN EFFECT PENDING APPEAL AND DOES NOT AFFECT FED’S 2023 PROPOSAL

On August 6, 2025, Judge Daniel M. Traynor of the U.S. District Court for the District of North Dakota vacated in its

entirety Regulation II, the Federal Reserve’s rule governing debit card interchange fees under the Durbin Amendment (*Board of Governors of the Federal Reserve System, Case No. 1:21-cv-00095 (D. N.D. August 6, 2025)*). The court found Regulation II to be “contrary to law” and held that the Federal Reserve had exceeded its statutory authority by including cost categories in the interchange fee cap calculation that were not permitted by the Durbin Amendment.

Specifically, Judge Traynor held that the inclusion by the Federal Reserve of fixed authorization, clearance, or settlement (ACS) costs, network processing fees, transaction-monitoring costs, and fraud losses was unlawful, and that only incremental ACS costs may be considered. However, to prevent widespread market disruption, the court stayed the vacatur of Regulation II pending appeal to the Eighth Circuit. As a result, as of January 2026, Regulation II remains operative until the Eighth Circuit rules on the appeal.

The stay also does not affect the Federal Reserve’s pending amendments to Regulation II (proposed in 2023), which aim to lower the existing debit interchange cap established in 2011 — i.e., no more than the sum of a base component of 21 cents, an ad valorem component of five basis points multiplied by the value of the transaction, and a fraud-prevention adjustment of one cent if the issuer meets certain fraud-prevention standards — based on updated cost data collected by the Federal Reserve every other year on a mandatory basis from large debit card issuers. Citing Judge Traynor’s decision in a joint letter sent to the Federal Reserve on December 8, 2025, the American Bankers Association, America’s Credit Unions, the Association of Military Banks of America, the Bank Policy Institute, the Clearing House, the Defense Credit Union Council, the Electronic Payments Coalition, the Independent Community Bankers of America, and the National Bankers Association urged the Board to withdraw its proposed 2023 amendments.



Privacy & Cybersecurity

In 2025, financial institutions confronted another year of rapid change at the intersection of privacy, cybersecurity, and technology. The following highlights key developments across seven areas — state privacy laws, children’s privacy, cybersecurity, tracking technology litigation, artificial intelligence (AI), CFPB Section 1033, and biometrics — and offers a brief look at what to expect in 2026 as regulatory expectations and litigation risk continue to evolve.

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STATE PRIVACY LAWS

On January 1, state privacy laws in Indiana, Kentucky, and Rhode Island went into effect. These bring the total number of state comprehensive privacy laws to 19 states. Financial institutions must navigate these laws carefully, particularly with respect to the scope of exemptions under the Gramm-Leach-Bliley Act (GLBA). While many state laws continue to recognize GLBA entity-level exemptions, Connecticut and Montana amended their statutes in 2025 to narrow prior entity-level exemptions to the more limited GLBA data-level exemptions seen in California, Minnesota, and Oregon.

In 2025, the California Privacy Protection Agency (CalPrivacy) approved revisions to the California Consumer Privacy Act (CCPA) regulations, effective January 1, with staggered compliance deadlines. Key amendments include requirements for annual independent cybersecurity audits, risk assessments, automated decision-making technology (ADMT), treatment of opt-out preference signals, and clarified rules around “dark patterns.” The regulations also refine existing provisions governing right to know, privacy policy disclosures, notice of the right to limit, and the definition of sensitive personal information to include certain neural data.

Looking Ahead

Although no new comprehensive privacy statutes were enacted in 2025, financial institutions should continue to monitor legislative activity in states like Pennsylvania, New York, and North Carolina, as well as amendments to existing regimes, such as in Colorado. Financial institutions should also monitor the regulatory expectations articulated in enforcement actions under these state privacy laws, which we anticipate will expand beyond California in 2026.

CHILDREN’S PRIVACY

Increased scrutiny of children’s and teens’ data on both the federal and state levels is reshaping how banks, credit unions, and youth-focused fintechs design and monetize digital products. Financial institutions should carefully assess to what extent they can use data from minors for personalization, analytics, and marketing, with a focus on data minimization, limited repurposing of minors’ data, and strong default privacy controls.

On the federal level, the Federal Trade Commission (FTC) updated the Children's Online Privacy Protection Act (COPPA) rules to strengthen limits on sharing children's data with adtech partners, expand the definition of covered "personal information" (including certain identifiers and biometrics), limit reliance on the "actual knowledge" test, and impose stricter data security and retention obligations. These changes directly affect youth banking apps, financial literacy programs, family digital wallets, and other financial products for minors. In parallel, the FTC brought a number of COPPA enforcement actions, including in areas such as online messaging services, video viewing data, and gaming, and also launched an inquiry into AI chatbots as companions to children and teens, which demonstrate the FTC's ongoing commitment to protecting children's privacy.

On the state level, multiple states (e.g., California, Louisiana, Maryland, Tennessee, Texas, Utah, and Vermont) enacted age verification and children's privacy laws focused on social media, mobile apps, and AI, which can impact financial institutions with youth-oriented or social features. Many of these laws face constitutional challenges (e.g., California and Arkansas) and regulators in states such as Florida, Michigan, Mississippi, and Missouri raised children's privacy issues in investigations and enforcement. States are also increasingly looking to protect children's privacy under state comprehensive privacy laws, such as proposed regulations in Colorado.

Looking Ahead

Expect continued COPPA rulemaking and enforcement, more federal "kids' privacy" proposals, and state-level minors' laws that push financial institutions toward formal data minimization frameworks, age-aware product design, and tighter oversight of adtech and analytics vendors.

CYBERSECURITY

As cybersecurity threats continued unabated in 2025, there were a number of developments of interest to financial institutions. In October 2025, the New York Department of Financial Services (NYDFS) released an industry letter on managing third-party service provider risk under the NYDFS Cybersecurity Regulations, 23 NYCRR Part 500, clarifying expectations and recommending best practices without creating new formal obligations.

State data breach notification laws also continued to evolve, expanding covered "personal information" (e.g., Oklahoma), adding notification obligations to new state regulators (e.g., New York), and imposing more prescriptive timelines on when notification about a data breach must be provided (e.g., California). Private litigation arising from data breaches and regulatory enforcement (including by the California Department of Financial Protection and Innovation) has further increased the costs associated with resolving a data breach.



Looking Ahead

We expect cyberattacks, many powered by AI tools, to increase in 2026. Financial institutions should align their practices against federal and state guidance and monitor for evolving threats to mitigate cyber risks.

TRACKING TECHNOLOGY LITIGATION

In 2025, litigation against financial services companies concerning website tracking technologies continued to rise. Claims asserting violations of the California Invasion of Privacy Act (CIPA), the Pennsylvania Wiretapping and Electronic Surveillance Control Act, and the Electronic Communications Privacy Act (ECPA) have increased.

CIPA has become a leading vehicle for cookie and pixel lawsuits. It grants statutory damages of up to \$5,000 per violation, and plaintiffs argue that website session recording or third-party tracking tools constitute unlawful “wiretaps” absent consent from both the consumer and the website. Cookie banners and consent flows are increasingly being redesigned to address these theories.

The Pennsylvania Wiretapping and Electronic Surveillance Control Act is similar to CIPA in that it provides a civil remedy and requires all-party consent, but Pennsylvania courts have been more reluctant than California courts to extend the statute to website tracking where consumers lack a reasonable expectation of privacy.

Plaintiffs have also asserted claims under the federal wiretapping act, the ECPA, including under the “crime-fraud” exception, alleging that sharing browsing data with third parties violates other statutes or privacy policies. For example, in the Northern District of California, several cases have survived a motion to dismiss based on allegations that there was an interception of information in violation of the defendant’s own privacy policy. Under the ECPA, statutory damages are \$10,000 per violation.

Looking Ahead

We expect tracking technology litigation to continue to rise in 2026. Because state wiretapping laws generally lack GLBA exemptions, financial institutions should consider inventorying and auditing website technologies regularly, reviewing and updating website privacy policies and other privacy disclosures, and enhancing website consent controls by requiring an affirmative action by the user after the user receives notice of the website’s terms or policies, such as via a cookie banner.

ARTIFICIAL INTELLIGENCE

In 2025, several states enacted comprehensive AI laws (e.g., California, Texas, and Utah), though none replicated the breadth of the 2024 Colorado AI Act. Other state AI laws addressed narrowly focused topics rather than taking a comprehensive approach (e.g., Arkansas on model training, Illinois on employment, Maine on AI-generated images, New York on frontier AI and synthetic advertising, and Pennsylvania on deepfakes). All 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia introduced AI-related legislation during 2025, underscoring a rapidly developing patchwork.

On Dec. 11, 2025, President Donald Trump issued an Executive Order titled “Ensuring a National Policy Framework for Artificial Intelligence” (EO), which seeks to establish a “uniform Federal policy framework for AI.” While the EO does not expressly preempt state AI laws, it directs the Department of Justice (DOJ) to create an AI Litigation Task Force to challenge state laws deemed inconsistent with the national framework and instructs federal agencies to address “conflicting” state laws.

Looking Ahead

We anticipate continued state AI activity in 2026, despite the EO, and potential legal challenges to the EO itself. Financial institutions subject to the Colorado AI Act should continue preparing for compliance even as we expect additional legislative efforts to amend the law and await the final regulations from the Colorado Attorney General.

CFPB SECTION 1033 — PERSONAL FINANCIAL DATA RIGHTS

In 2025, implementation of the CFPB’s October 2024 Personal Financial Data Rights Rule under Section 1033 of the Dodd-Frank Act (Section 1033 Rule) stalled amid litigation and a formal reconsideration process. While the Section 1033 Rule was designed to advance “open banking” and consumer control over data, banks and trade groups argued it would threaten privacy and data security while also creating operational risks.

In litigation brought by industry plaintiffs, the Eastern District of Kentucky stayed the mandatory compliance deadlines under the Section 1033 Rule until after the CFPB completes its reconsideration. The stay applies nationwide. The CFPB is currently reviewing public comments received in response to its Advance Notice of Proposed Rulemaking in areas such as consumer representatives, fee structures, data security, privacy, and appropriate compliance timelines.

Looking Ahead

In 2026, we expect to see additional CFPB activity, which may include new draft regulations. However, we anticipate that industry will not await these efforts and will likely move forward with self-regulatory efforts to deploy open banking among consumers, data providers, and third parties.

BIOMETRICS

In 2025, biometric privacy remained largely litigation-driven, with the Illinois Biometric Information Privacy Act (BIPA) dominating the landscape. Companies using facial recognition, voiceprints, or ID “selfie” matching for onboarding, authentication, and fraud prevention were frequent targets of class actions. Courts addressed the scope of statutory exemptions, what constitutes a “biometric identifier,” and how damages apply to ongoing versus legacy conduct, while plaintiffs increasingly alleged misuse of biometrics in AI model training and remote identity verification.

Questions around GLBA-related exemptions persisted, particularly where biometric data is handled by vendors and service providers. Courts scrutinized whether those exemptions extend to third-party providers, and several vendors faced suits testing the boundaries of these carve-outs.

At the same time, more states treated biometrics as “sensitive data” under broader privacy laws. Texas now regulates AI systems that use biometrics, while carving out certain security and fraud prevention uses; Maryland prohibits the sale of biometric data; Colorado restricts conditioning employment on biometric consent except in limited circumstances; and Montana added “neural data” to its protected categories.

Looking Ahead

Into 2026, expect sustained BIPA filings, biometrics legislation among the states, and a growing focus on biometric governance and vendor management for financial institutions seeking to preserve identity verification and authentication mechanisms without inviting class action exposure.



Small Dollar Lending & Small Business Finance

Small dollar lending and small business finance saw a significant reset in 2025, as the long-delayed compliance date for the Consumer Financial Protection Bureau’s (CFPB) Payday Rule arrived just as the Bureau announced it would deprioritize enforcement and signaled an intent to reconsider the remaining payment provisions. At the same time, overall CFPB enforcement activity contracted, with the agency voluntarily dismissing some legacy cases while still pursuing targeted actions in priority areas such as the Military Lending Act.

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States moved decisively into the vacuum, revisiting bank partnership guidance (Ohio), modernizing installment lending frameworks (Nebraska and Nevada), tightening small dollar products and anti-evasion rules (Rhode Island), and extending “consumer-style” disclosure regimes into commercial financing (Texas and Louisiana). Looking ahead to 2026, we expect continued federal retrenchment coupled with increasingly granular state regulation, producing a more fragmented landscape for small dollar lenders and small business finance providers that operate across multiple jurisdictions.

CFPB PAYDAY RULE

The compliance deadline for the Payday, Vehicle Title and Certain High-Cost Installment Loans Rule (Payday Rule), promulgated by the CFPB in 2017, passed on March 30, 2025, following years of litigation.

Immediately before the effective date, the CFPB issued a statement that it would “not prioritize enforcement or supervision actions” for the Rule’s payment withdrawal and payment disclosure provisions. (The payment provisions are the only remaining substantive provisions of the Payday Rule, as the ability-to-repay provisions were previously rescinded by the CFPB.) The CFPB also has indicated that it plans to “reconsider” the remaining provisions of the Payday Rule, but no public details have been made available to date.

While ostensibly aimed at higher-APR lending (e.g., loans with an APR above 36%), it also applies to most creditors, including banks, offering loans: (1) that are substantially repayable within 45 days or less; or (2) that have a bullet or balloon payment feature. It applies by its plain terms to a number of mainstream financial products and products marketed to high-net-worth individuals, none of which the CFPB seems to have considered when promulgating the rule.

The Payday Rule’s remaining payment-related provisions include requirements that: (1) prohibit covered lenders from initiating additional payment transfers from consumers’ accounts after two consecutive payment attempts have failed for nonsufficient funds from the same account unless the consumer authorizes additional payment transfers; and (2) require various notices before a covered lender initiates certain payment transfer attempts. Although relatively straightforward on their face, the payment-related provisions pose myriad practical issues for covered lenders, and the CFPB recently hosted a consumer advisory board meeting to address industry concerns regarding these issues.

CFPB ENFORCEMENT

In addition to deprioritizing enforcement of the Payday Lending Rule, the CFPB decreased enforcement activity.

For example, in 2024 the CFPB had filed a complaint against a small-dollar lender, asserting it engaged in deceptive practices related to its solicitation of tips or donations and provided consumer reports governed by the Fair Credit Reporting Act. In 2025, the CFPB agreed to voluntarily dismiss that case. Commenting on why the case was dismissed, the acting CFPB Director commented that it was “wrong” to have brought the case and that “the weaponization of ‘consumer protection’ must end.” The CFPB also terminated multiple investigations without taking action.

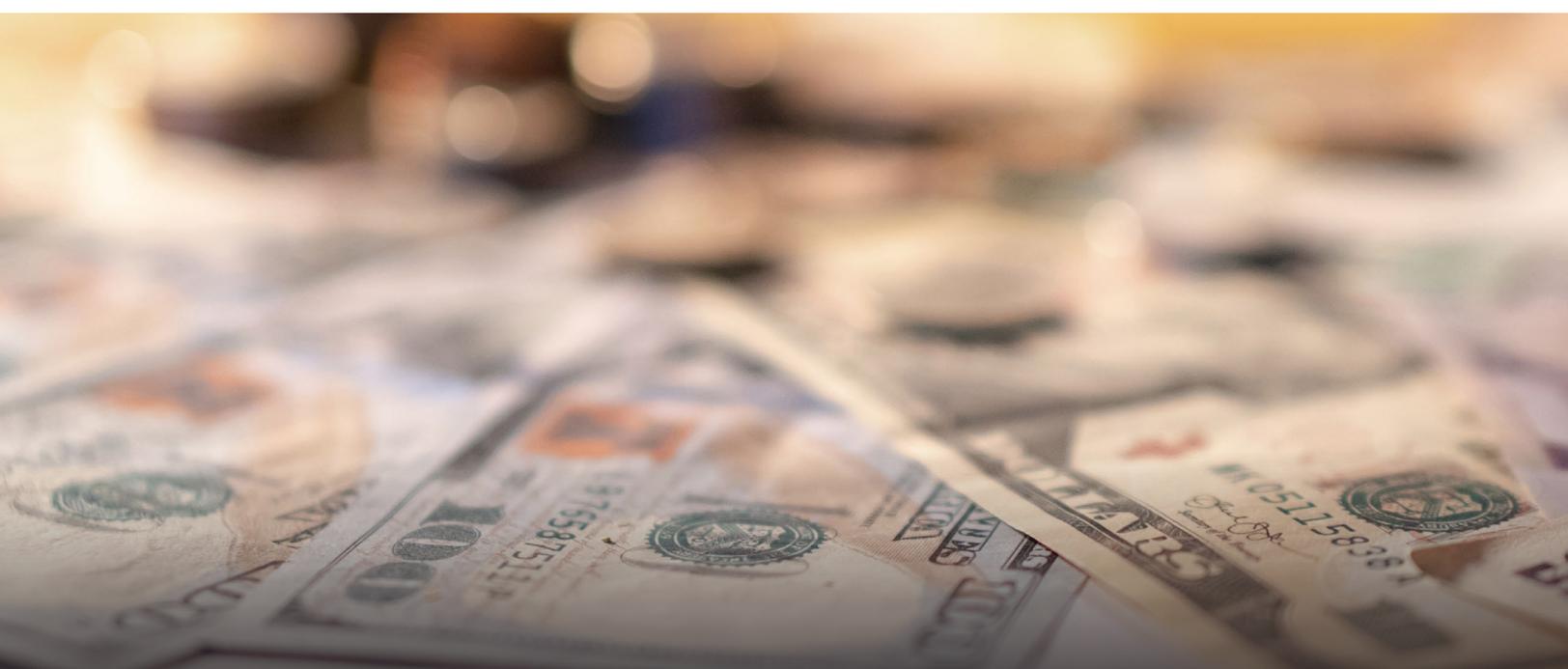
However, the CFPB did not dismiss all actions without seeking redress. For example, in July, the CFPB agreed to a settlement related to alleged violations of the Military Lending Act (MLA). The CFPB alleged that the lender’s transactions exceeded the MLA’s 36% maximum APR for covered borrowers, required arbitration in the event of a dispute, and failed to provide certain disclosures. The settlement required the lender to set aside \$5 million for consumer redress and pay a \$4 million penalty. In 2025, the CFPB also indicated that it would focus its enforcement and supervision resources on “taxpayers, servicemen, veterans, and small businesses,” and those priorities appear consistent with the decision to settle rather than dismiss this action.

In 2026, we expect the CFPB to continue to limit its enforcement primarily to actions that fit within its more narrowly stated focus.

STATE DEVELOPMENTS

In 2025 state regulators and legislators took several actions that impact either small dollar consumer lenders or small business finance companies.

In December 2024, Ohio’s Division of Financial Institutions (DFI) issued bank-partnership guidance related to the application of Ohio’s Small Loan Act (SLA) to nonbank entities that received compensation for arranging certain loans originated by banks. The DFI also issued updated guidance and FAQs in 2025 in an effort to clarify the



application of the SLA. In October, the DFI reversed course and further updated the bank-partnership guidance. This newest guidance indicates that the DFI does not require any nonbank entity to obtain a license under the SLA or otherwise to arrange bank loans, even if the nonbank receives compensation. The updated guidance also indicated that the DFI does not require a license under the SLA to make or arrange loans if no interest is charged.

In May, Nebraska enacted the Nebraska Installment Loan and Sales Act, which merged Nebraska's prior installment-lending and installment-sales statutes. The amended law clarified that licensees have authority to service loans made by a bank without the loan being subject to the law's rate limitations. This update provided bank partners with additional regulatory clarity in the state.

In May, Nevada also amended its Installment Loans Chapter to update select sections related to loans made over the internet, including defining an "internet consumer lender" to include a person who facilitates consumer loans over the internet. The amendment required contracts to be governed by Nevada law but only to the extent not preempted by federal law. This reference to federal preemption implicitly acknowledges the authority of licensees to facilitate loans made by banks under federal law.

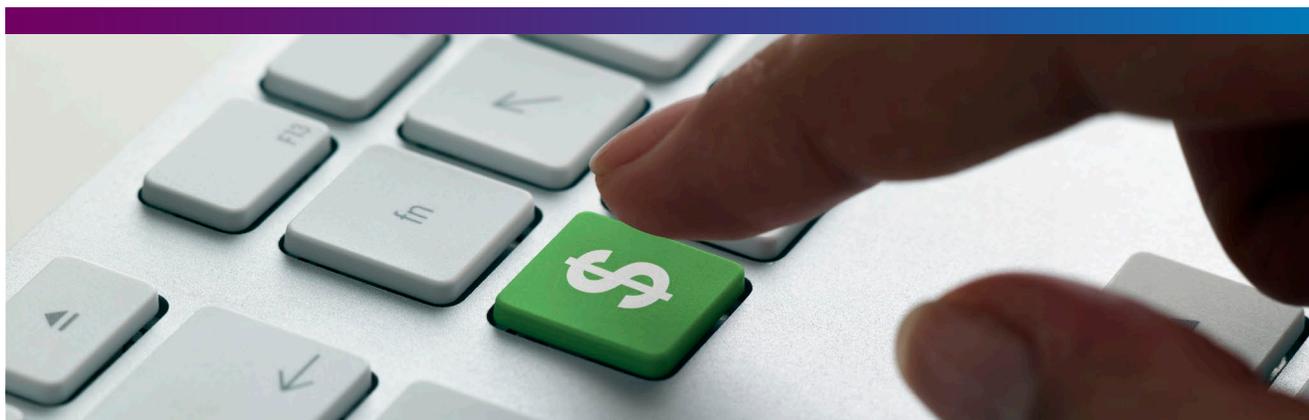
In July, Rhode Island enacted amendments to its consumer lending laws that eliminated authority to enter into deferred deposit transactions. The amendments also added an anti-evasion provision seeking to prevent lenders from engaging in subterfuges that evade the requirements of the state's Small Loan Act. Unlike anti-evasion provisions recently enacted by some other states, this law does not include language specifically targeting bank-partnership programs.

For small business transactions, both Louisiana and Texas imposed new commercial financing disclosure laws (discussed [here](#)).

Texas's law introduces several new regulatory requirements for providers and brokers of commercial "sales-based financing" operating within the state. Most significantly, the new law prohibits the establishment of automatic debit mechanisms from a merchant's deposit account unless the finance company holds a validly perfected security interest in the account. This requirement poses a substantial operational challenge because obtaining a security interest in a deposit account requires a control agreement with the merchant and the merchant's bank. This development has resulted in finance companies exploring alternative structures to offer financing in compliance with that law.

The Texas law also requires registration of providers and brokers and imposes consumer-like disclosures of certain terms, such as the total financing amount, finance charge, total repayment amount, estimated term, payment schedule, collateral requirements, additional fees, certain prepayment terms, and whether the provider pays compensation to a broker.

Louisiana's law applies to revenue-based financing transactions, requiring consumer-like disclosures of certain terms, including the total amount of funds provided, the total dollar cost, the payment schedule, and certain prepayment terms.



Student Lending & Education Finance

For years, we have tracked developments in student lending, which became increasingly active and contentious during the Biden Administration and then experienced near-whiplash in the Trump Administration. Last year, we detailed the Biden Administration's efforts to forgive debt, along with the legal challenges that came with those efforts. We also previewed the potential changes that may have come once the Trump Administration took the reins. Below, we highlight some of the shifts in student loans that have already transpired and what we expect in 2026.

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FEDERAL LOAN PROGRAM UPDATES

Impact of Legislation on Federal Student Loan Programs

On July 4, 2025, President Trump signed the One Big Beautiful Bill Act (OBBBA), which resulted in significant changes to federal student loan programs. A majority of these changes take effect on July 1, 2026.

Chiefly, OBBBA changes the amount of student loans that new students are able to receive. For graduate students, OBBBA eliminates Grad PLUS loans and sets individual loan limits for those in professional programs like medicine or law at \$50,000 a year, with a maximum lifetime borrowing cap of \$200,000. For other graduate programs, students can receive \$20,500 a year, with a maximum lifetime cap of \$100,000. While there are no direct limits on undergraduate borrowers, any loans received will count toward the student's lifetime loan limits. Parent PLUS loans are also newly capped per student per year and contain lifetime limits.

For borrowers who have already completed their education and are moving into repayment, OBBBA made sweeping changes to the student loan repayment framework. OBBBA reduces and streamlines repayment options for borrowers down to just two different repayment plans. Under Plan One, the "Standard Plan," new borrowers are assigned a repayment window of between 10 and 25 years, depending on the size of their debt, with equal monthly payments similar to a home mortgage. Borrowers with loans totaling \$100,000 or more have 25 years for repayment, while borrowers with loans totaling \$25,000 or less have 10 years for repayment.

Plan Two, the "Repayment Assistance Plan" (RAP), is based on the borrower's adjusted gross income (AGI). Borrowers earning more than \$10,000 but not more than \$20,000 will have payments based on 1% of AGI, with the percentage increasing as income rises. Repayment tops out at 10% of AGI for borrowers earning \$100,000 a year or more.

The biggest change to the plan framework is the elimination of the Biden Administration's SAVE Plan. OBBBA requires borrowers in the SAVE Plan to move into the new plans by July 1, 2028, when SAVE will be officially shut down. Importantly, OBBBA will not impact Income-Based Repayment, which was previously set by Congress, so this plan remains open to student borrowers.

Department of Education Student Loan Garnishment

The Trump Administration is also taking a more hands-on approach in its enforcement of federal student loans. In December, the Department of Education announced it will resume the garnishment of wages for borrowers in serious default, an enforcement measure that had not been taken since 2020, when collection activity was halted during the COVID-19 pandemic.

As of April 2025, the Department stated that more than 42 million Americans hold student loans, and the outstanding debt totals over \$1.6 trillion. Of those Americans holding student loans, more than 5 million borrowers were in default, meaning they had not made a payment in the last 270 days. A further 4 million were in delinquent status, meaning they had not made a payment in the last 90 days.

Once a borrower is in default, the federal government is permitted to attempt to collect on the debt by ordering employers to withhold up to 15% of a borrower's after-tax income. The only restriction is that, by law, borrowers must be left, on a weekly basis, with at least 30 times the federal minimum hourly wage of \$7.25 per hour. In other words, as long as borrowers are left with \$217.50 per week in net income, the government may garnish their pay — up to 15% of their net income. The federal government may also attempt to collect by seizing tax refunds and Social Security benefits.

Borrowers should receive a 30-day notice from the Department of Education before wage garnishment begins. The Department stated that notices of administrative wage garnishment were set to begin on January 7, 2026, but on January 16 the Department announced it would delay the implementation. The delay will reportedly enable the Department to implement major student loan repayment reforms under the Working Families Tax Cuts Act and give borrowers more options to repay their loans.

At a minimum, the revamping of repayment options for borrowers is already having an immediate impact on servicers. Likewise, as certain new borrowers will have total loan amounts capped going forward and may face collection efforts down the road, this may lead to increased activity in the private student loan market and may drive the growth of other education financing products, such as educational income share agreements (EISAs).

STATE LEGISLATIVE UPDATES

There have also been significant changes in the state student lending space due to new laws passed by state legislatures. We highlight a couple of the most notable updates.

Illinois Amends Student Loan Servicing Law to Address Income Share Agreements

On August 15, 2025, Illinois Governor J.B. Pritzker signed Public Act 104-0383, amending Illinois's Student Loan Servicing Rights Act to regulate EISAs (as discussed [here](#)). EISAs are agreements in which a provider advances funds for a consumer's postsecondary education in exchange for periodic payments based on the consumer's income, for a defined duration.

The Act establishes an array of consumer protections applicable to EISAs. Notably, EISA payments are capped at 8% of a consumer's income, and the effective APR cannot exceed the greater of 8.5% or the 10-year U.S. Treasury note high yield plus 4.5%. Further, co-signers and security interests in collateral are prohibited, and EISAs must terminate upon the consumer's death or total and permanent disability. The Act limits EISAs to a maximum of 180 monthly payments and a 240-month term (excluding relief pauses), and requires at least three months of voluntary payment relief for every 30 income-based payments. It also sets criteria for referral to repayment specialists for consumers in hardship or delinquency.

The Act also mandates clear pre-contract disclosures, including payment calculations and refinancing impacts, and grants enforcement authority to the Illinois Attorney General and rulemaking authority to the Secretary of Financial and Professional Regulation.

New York Tightens Oversight of Exempt Student Loan Servicers

New York Assembly Bill A8067A, signed into law by Governor Kathy Hochul on December 5, 2025, modified New York's student loan servicing framework, amending how certain entities servicing student loans — such as banks and postsecondary educational institutions already exempt from licensure — are regulated by the Department of Financial Services (DFS).

Before A8067A, these exempt entities were largely outside the formal student loan servicer licensing regime, with limited clarity about their ongoing obligations. A8067A preserves the licensing exemption but adds new notice and compliance requirements. Covered exempt servicers must now notify DFS that they are servicing student loans affecting New York borrowers and must comply with specified reporting, examination, and supervisory provisions under state law.

Troutman Pepper Locke will continue to monitor these updates, as a result of both the Trump administration and state legislatures, and provide insight and information to help you navigate the student lending space.

Telephone Consumer Protection Act

This year, the U.S. Supreme Court once again transformed the landscape of Telephone Consumer Protection Act (TCPA) litigation with its *McLaughlin Chiropractic Assocs., Inc.* decision, ruling that district courts are not obligated to follow the Federal Communications Commission’s (FCC) interpretation of the TCPA. This shift, along with the rising number of TCPA case filings and new FCC consent revocation requirements, has major implications for ongoing compliance and risk mitigation. In 2026, companies should expect more text-focused statutory litigation, divergent rulings on core TCPA questions (including texts as “calls”), and continued growth in class actions.

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DEVELOPMENTS IN LITIGATION

McLaughlin: End of Deference to the FCC on TCPA Interpretation

On June 20, in a 6–3 vote, the U.S. Supreme Court in *McLaughlin* held that “district courts must independently determine the law’s meaning under ordinary principles of statutory interpretation while affording appropriate respect to the agency’s interpretation.” Because the FCC has interpreted, and in many cases expanded, the text of the TCPA in regulations dozens of times in the 33 years since its enactment, this decision has significant implications for businesses engaged in any outbound telephone communications where the TCPA applies. District courts are now free to apply traditional statutory interpretation principles to re-examine prior FCC orders that have driven litigation against consumer-facing companies.

Key issues likely to see renewed litigation include:

- **Whether Do-Not-Call (DNC) rules cover cell phones.** In a 2003 order, the FCC found that “residential subscribers” include cell phone subscribers. *McLaughlin* allows litigants to challenge this interpretation, and several district courts have already done so.
 - In *Wilson*, 2025 WL 1784815 (D. Or. June 27, 2025) and *Loudermilk*, 2025 WL 3625779 (N.D. Ga. Dec. 11, 2025), the courts agreed that “residential subscribers” can include cell phone users, focusing on how the phone is used rather than the specific transmission technology.
- **Prior express (written) consent.** The TCPA’s text does not require “prior express written consent” before making a marketing call using an automatic telephone dialing system (ATDS) or artificial or prerecorded voice, but the FCC has repeatedly expanded “prior express consent” to require written consent and to narrow how consumers can grant permission. Even before *McLaughlin*, some courts challenged the FCC’s expanded definition. See, e.g., *Ins. Mktg. Coal. Ltd.*, 127 F.4th 303, 313 (11th Cir. 2025) (express permission is “permission that is clearly and unmistakably granted by actions or words, oral or written”). After *McLaughlin*, courts have acknowledged that they are “under no obligation to defer to the FCC’s ruling, so

long as the agency’s positions are given due respect.” *Aguirre*, 2025 WL 3190830 (C.D. Cal. October 24, 2025); see also *Alvarez*, 2026 WL 202930, at *3 (S.D. Tex. January 26, 2026) (“Although this Court must afford appropriate respect to the agency’s interpretation, that does not mean that the court must *defer* to that interpretation based on mere reasonableness.”). At the same time, courts may still adopt FCC interpretations they find persuasive. In *Moore*, 2025 WL 2755076, at *9, the court rejected the argument that *McLaughlin* “throw[s] out” the FCC’s interpretation of “prior express written consent,” explaining that district courts must still “afford[] appropriate respect to the agency’s interpretation” and may adopt it if correct.

- **Who “makes” or “initiates” a call.** The FCC has issued several orders addressing who is liable for making or initiating a telephone call, particularly where third-party vendors are involved. After *McLaughlin*, defendants are more likely to litigate these questions. In *Moore*, 2025 WL 2755076 (N.D. Ill. September 26, 2025), the district court conducted its own analysis of vicarious liability for calls placed by a third-party telemarketer but ultimately followed the FCC’s 2013 *Dish Network* ruling and held that a seller could be vicariously liable for a call actually placed by a third party.

District Courts Re-Examine Whether Texts Are “Calls” Under Section 227(c)

Since *McLaughlin*, one major issue has been whether text messages can be treated as “calls” under the statute. Several district courts have re-examined this question, and, predictably, there has been a split.

Some district courts have held that text messages are not “calls” for purposes of Section 227(c)(5), leading to dismissals of TCPA claims. The Northern District of Florida ruled that “a text message is not a ‘telephone call’” based on ordinary meaning principles. See *Davis*, 797 F. Supp. 3d 1270, 1272 (N.D. Fla. 2025). Other courts, including the Central District of Illinois, have similarly concluded that provisions referring expressly to a “telephone call” do not extend to text messages. See *Jones*, 792 F. Supp. 3d 894, 899 (C.D. Ill. 2025).

Other courts have gone the opposite direction. In *Wilson*, 2025 WL 2029274, at *4 (D. Or. July 21, 2025), the District of Oregon stated that “it cannot be argued in good faith that text messages are so categorically different from

phone calls that the former cannot be considered an invasion of consumer privacy when directed at numbers on the DNC Registry,” and noted that “as technology has developed over the years, so too has our understanding of the TCPA’s protections.” Courts in the Southern District of New York and in the Northern District of California have reached similar conclusions, holding that the “TCPA-era definition of ‘telephone call’” — “a communication made by telephone” — “easily encompasses text messages.” See *Wilson*, 2025 WL 3493815, at *6 (S.D.N.Y. Dec. 5, 2025).

The contradictory rulings highlight the unpredictability and inconsistency of TCPA interpretation after *McLaughlin*. Clients should be prepared to challenge FCC interpretations of the TCPA and DNC regulations where appropriate, particularly where the agency’s action expands liability beyond that envisioned by the statutory text. At the same time, sellers and telemarketers should be cautious about making significant changes to their compliance programs until the appellate courts have a chance to weigh in. The wait might not be too long — on December 3, 2025, the Central District of California granted a defendant’s request for an interlocutory appeal to the Ninth Circuit to determine whether text messages constitute “telephone calls” under 47 U.S.C. Section 227(c)(5). *Dilanyan*, 2025 WL 3549868 (C.D. Cal. Dec. 3, 2025).

TCPA Filings Continue to Surge, Especially Class Actions

TCPA filings continue to rise. After several years of decline, WebRecon reports that court filings under the TCPA increased by 58% year over year through September 30, 2025, following a 67% rise in 2024. Of the 2,587 TCPA complaints filed nationwide through November 2025, 1,982 (77%) were filed as putative class actions, reflecting plaintiffs’ firms’ preference for class actions to drive early settlements. As illustrated by plaintiff Chet Michael Wilson, who brought three of the lawsuits discussed above and has filed more than 70 putative class action cases in federal court, plaintiffs have much to gain by pursuing TCPA suits.

TCPA cases, regardless of their merit, are ripe for large, individual settlements due to inordinately large potential damages that corporations may face. Because damages can be awarded up to \$1,500 *per* violation, multimillion-dollar liability is the norm. These potential damages are in addition to the significant legal fees incurred to defend putative class action lawsuits and the potential increase in compliance costs to avoid such lawsuits in the first place.

DEVELOPMENTS IN REGULATORY OVERSIGHT

FCC Removes One-to-One Prior Consent Requirement

The FCC issued a rule in 2023 requiring one-to-one consent for lead generators, i.e., if a consumer signed up to be contacted by phone or text, the consent had to be for one specific seller and the contact had to be “logically and topically” related to the interaction leading to the consent. However, in January 2025, the U.S. Court of Appeals for the Eleventh Circuit found that the FCC exceeded the scope of its authority and vacated the rule. See *Ins. Mktg. Coal. Ltd.*, 127 F.4th 303, 317 (11th Cir. 2025). In April 2025, the FCC stated it would not challenge the Eleventh Circuit’s ruling, effectively eliminating the requirement.

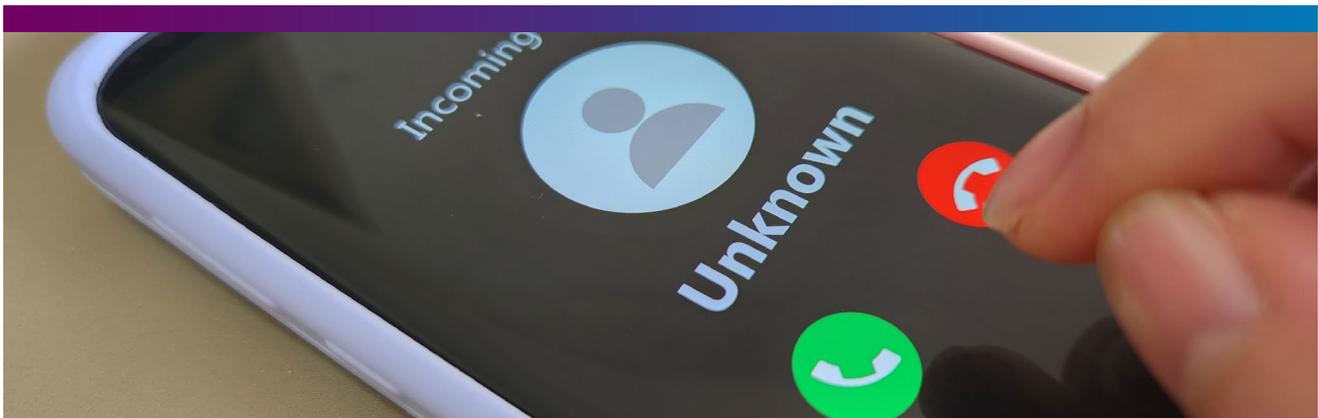
Key Changes to TCPA Opt-Out Rules for Informational Calls and Telemarketing

On April 11, 2025, new FCC amendments regarding consent revocation became effective. Now, consumers can revoke consent for automated calls or texts “in any reasonable manner” — including by using common opt-out terminology such as “stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe.” With the new rules in effect, callers are required to process revocations “as soon as practicable” and no later than 10 business days after receipt. See 47 C.F.R. Section 64.1200(d)(3).

The FCC granted an extension for enforcement of a blanket opt-out rule. Once this rule goes into effect, if a called party revokes consent to receive calls or text messages, that revocation must apply to all future communications from the caller on unrelated matters. The FCC granted an extension to April 11, 2026 to provide affected parties, particularly financial institutions and healthcare organizations, additional time to modify their communication systems to process these revocation requests efficiently and cost-effectively.

Looking Forward

- FCC orders and guidance remain influential but not controlling. Courts will treat agency interpretations as persuasive authority, not as binding rules of decision.
- Statutory text and structure will take center stage. Companies should expect more litigation focused on the TCPA’s language rather than FCC rules or orders.
- Greater variability among courts is likely. Without a unifying deference regime, interpretations will diverge across jurisdictions, creating both opportunities and uncertainty for defendants.
- We continue to see more DNC and prerecorded message class actions than ATDS cases. Plaintiffs’ lawyers have realized that ATDS cases are expensive and hard to prove, especially post-*Facebook*.



Tribal Lending

Lawsuits challenging tribal lending practices continued in 2025. Courts rejected prospective waiver challenges to the enforceability of delegation clauses and arbitration agreements based on waived access to state statutory schemes. The U.S. Courts of Appeals for the Ninth and Fourth Circuits affirmed large judgments secured by the Consumer Financial Protection Bureau (CFPB) and in class proceedings, respectively. The Pennsylvania Attorney General settled potential claims against a collector partnering with Tribal lenders. The Third Circuit adopted the *Breakthrough* factors in assessing arm-of-the-tribe immunity while finding the lender did not qualify for such immunity. And the U.S. District Courts for the Northern Districts of Illinois and Alabama issued opinions assessing the limits of courts' jurisdiction and the immunity of lenders and Tribal officials from suit. Against this backdrop, 2026 is poised to feature continued challenges to arbitration and delegation provisions, efforts to extend state lending laws to non-tribal partners, and heightened regulatory scrutiny of tribal lending programs.

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NINTH CIRCUIT AFFIRMS \$134 MILLION LEGAL RESTITUTION AWARD

The Ninth Circuit rejected a tribal lender's challenges to the CFPB's \$134 million legal restitution award and its claimed entitlement to a jury trial. 135 F.4th 683 (9th Cir. 2025). With respect to the jury trial issue, the court noted that precedent suggests no form of restitution triggers a right to jury trial but declined to resolve that issue, as it found the lender waived that right by never requesting a jury and voluntarily participating in a bench trial. The court further rejected arguments that: (1) the CFPB was equitably estopped from seeking legal restitution because it had requested "equitable restitution" instead — finding the CFPB consistently requested relief in the form of money to borrowers; and (2) the lender was entitled to offsets, because legal restitution allows recovery of net revenues received, not just profits.

THE FOURTH CIRCUIT UPHELD \$43.4 MILLION CIVIL RICO JUDGMENT

In *Williams*, 143 F.4th 555 (4th Cir. 2025), the Fourth Circuit upheld a \$43.4 million civil RICO judgment, rejecting the defendant's arguments that:

- Rules 12(b)(7) and 19 required dismissal based on the inability to join sovereign tribal defendants as parties, finding the tribal parties were not "indispensable" because they had already settled and no judgment would run against them;
- Tribal, and not Virginia, law applied to the loans (making those loans legal debt), because the loans at issue did not constitute on-reservation conduct; and
- A mistake-of-law defense should have been considered, because such a defense would not negate any element of a RICO claim, as a culpable mens rea is not required for liability.

NORTHERN DISTRICT OF ILLINOIS DISMISSES ALLEGED FINANCIER OF RICO ENTERPRISE ON PERSONAL JURISDICTION GROUNDS, DENIES REMAINING MOTIONS TO DISMISS

In *Dixon*, 790 F. Supp. 3d 679 (N.D. Ill. 2025), the plaintiff alleged non-tribal actors ran the lending business, using the Tribe's name and sovereign immunity to evade state usury laws. The plaintiff alleged violations of RICO, the Illinois Predatory Loan Prevention Act (PLPA), and common law claims. The defendants moved to dismiss on jurisdictional grounds, on the merits, and because the Tribe was an indispensable party that could not be joined.

The court did permit *Ex parte Young*-style suits against them for prospective injunctive relief, rejecting immunity defenses and Rule 19 and 12(b)(7) arguments that the Tribe was an indispensable party that could not be joined, requiring dismissal.

For non-tribal co-defendants, the court found personal jurisdiction and concluded the plaintiffs adequately alleged they helped operate the lending program, shared profits, and influenced pricing. One defendant appealed the tribal sovereignty rulings to the U.S. Court of Appeals for the Eleventh Circuit under the collateral order doctrine, and both the appellate and underlying cases are currently stayed.

On June 24, 2025, the Pennsylvania Attorney General settled with a collection company for alleged illegal use of tribal lenders to violate state consumer protection laws.

The court found it lacked personal jurisdiction over an alleged financier of the RICO enterprise, as the plaintiff failed to allege a prima facie case of personal jurisdiction and the "ends of justice" test under RICO did not require haling the defendant into Illinois when all defendants were subject to personal jurisdiction in Montana. The court found personal jurisdiction over the remaining defendants because their actions allegedly targeted Illinois borrowers and determined the Tribe's absence did not require dismissal. On the merits, the court found the plaintiff plausibly alleged a RICO enterprise and let the PLPA claim remain on the theory that non-tribal controllers can be "lenders."

NORTHERN DISTRICT OF ALABAMA LARGELY ALLOWS RICO AND STATE STATUTORY CLAIMS TO PROCEED

In *Weidley*, 787 F. Supp. 3d 1255 (N.D. Ala. 2025), the plaintiffs challenged loans issued to Alabama residents allegedly violating Alabama's Small Loans Act (ASLA). The court held that the lender was an arm of the Tribe and thus dismissed it as immune from litigation.

The court also dismissed individual capacity claims against most tribal defendants, finding those claims to be "factually impossible," as the tribal officer defendants were not affiliated with the lender at the time of the loans at issue.

PENNSYLVANIA ATTORNEY GENERAL SETTLES WITH DEBT COLLECTOR ALLEGEDLY PARTNERING WITH TRIBAL LENDERS

On June 24, 2025, the Pennsylvania Attorney General settled with a collection company for alleged illegal use of tribal lenders to violate state consumer protection laws. As part of the settlement, the company: (1) agreed to cease using tribal lending entities; (2) paid restitution to affected consumers; and (3) agreed to implement procedures to ensure legality of practices when partnering with certain creditors.

COURTS REJECT INVALIDATION OF DELEGATION CLAUSES IN ARBITRATION AGREEMENTS BASED ON LACK OF ACCESS TO STATE LAW

In *Bridges*, No. 1:24-CV-00087-MR-WCM, 2025 WL 3565343 (W.D.N.C. Dec. 10, 2025) and *Wood*, No. 4:24-cv-00128, ECF 21 at 6–9 (W.D. Ky. September 30, 2025), the U.S. District Courts for the Western Districts of North Carolina and Kentucky enforced delegation clauses in Tribal loan arbitration agreements, despite arguments from the plaintiffs that the prospective waiver invalidated those clauses due to waiver of state law. The *Bridges* court rejected the plaintiff's attempted expansion of the

prospective waiver doctrine to include state law, explaining: “[t]here is no inconsistency, however, in invoking federal law regarding arbitration and other federal rights, while also choosing certain other substantive law...

[t]he waiver of other rights... presents no conflict... [and] does not render the arbitration provisions of these agreements unenforceable.” And in *Wood*, the court found the delegation clause enforceable because the “agreements allow for the application of federal law, including the FAA, at the arbitrability stage,” which allows a consumer “to raise choice-of-law objections with the arbitrator.”

THIRD CIRCUIT ADOPTS *BREAKTHROUGH* FACTORS, BUT FINDS LENDER NOT ENTITLED TO IMMUNITY

In *Ransom*, 148 F.4th 141 (3d Cir. 2025), the Third Circuit adopted the *Breakthrough* factors to assess whether an economic arm is entitled to tribal immunity, determining the lender at issue was not entitled to immunity. While the court found that all but one *Breakthrough* factor weighed in favor of immunity, it found the financial relationship factor weighed heavily against immunity, stating the evidence suggested the Tribe never profited and a judgment against

the lender “likely will not reduce the tribe’s immediate revenue by even a penny.” The court found this “resounding” factor “tip[s] the balance all on its own.”

LOOKING AHEAD IN 2026

In 2026, we expect plaintiffs’ attorneys to continue testing the validity of delegation clauses and arbitration provisions, arguing any waiver of any statutory law renders the provisions unenforceable. We also expect plaintiffs’ attorneys to continue attempting to apply state statutory lending regimes to non-lenders. Further, lenders and any non-tribal partners can expect continued regulatory scrutiny of business practices.



Uniform Commercial Code Litigation & Banking

The year 2025 largely played out as expected in banking and Uniform Commercial Code (UCC) litigation. Courts continued to refine the contours and limitations of the UCC in response to novel arguments by both businesses and individuals, generally reinforcing traditional UCC principles and rejecting attempts to manufacture contractual or payment obligations through creative, unsupported theories.

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Retail banking and deposit cases against financial institutions involving contractual and payment rights issues trended upward in 2025, including suits premised on increasingly unconventional theories. In response, courts largely adhered to the UCC's text and structure by clarifying when issuers must honor negotiable instruments, tightening the "actual knowledge" standard for beneficiary banks in misdescription cases, rejecting efforts to transform unilateral UCC filings into binding contracts, enforcing UCC preemption to bar overlapping common law claims, and providing clear protections to financial institutions in elder financial exploitation cases. Courts continued to dismiss claims where plaintiffs attempted to stretch the UCC beyond its intended scope. Overall, it was a good year for banks, with several significant wins. We expect these trends to continue in 2026.

MARYLAND SUPREME COURT FINDS THAT HOLDER IN DUE COURSE POSSESSES ENFORCEABLE CONTRACT RIGHTS AGAINST ISSUER

The Supreme Court of Maryland grappled with important UCC issues in 2025. In *State of Maryland, Comptroller of Maryland*, 333 A.3d 919 (Md. 2025), the court considered whether a check issued by the State of Maryland and previously paid to another party required payment to a holder in due course seeking redemption. The defendant was a check-cashing business that cashed 15 State of Maryland checks that had already been paid by the State before the check-cashing business presented them to the State's bank. In some instances, the original payees had already deposited the checks via mobile app or received replacement checks after reporting them lost or stolen, then fraudulently or negligently cashed the original checks. The check-cashing business, unaware of the prior payments, sought to enforce the dishonored checks as a holder in due course and sued the State. The trial court found the check-cashing business to be a holder in due course, and the State sought certiorari to the Supreme Court of Maryland.

As a threshold matter, the court addressed whether the State of Maryland could invoke sovereign immunity. In rejecting that defense, the court held that the check was a contract and that Maryland law created a carve-out barring the State from asserting sovereign immunity in breach of contract cases. Under Maryland's version of the UCC, checks are negotiable instruments, and the court emphasized that the issuer's obligations include enforceable payment duties. 333 A.3d 178–79.

Having resolved sovereign immunity, the court held that the maker of a negotiable instrument (here, the State of Maryland) had an obligation under the Maryland UCC to pay a holder in due course irrespective of defenses the issuer might have against a prior holder. The court therefore concluded that the holder in due course could enforce and redeem the check from the State of Maryland notwithstanding prior payment of the check to another individual. The case underscores the risks of double presentment and strength of a holder in due course's rights.

FOURTH CIRCUIT CLARIFIES "ACTUAL KNOWLEDGE" REQUIREMENT FOR BENEFICIARY BANKS

The U.S. Court of Appeals for the Fourth Circuit provided guidance to financial institutions on what constitutes "actual knowledge" of a misdescription in a wire transfer. In *Studco Building Systems, U.S.*, the Fourth Circuit addressed whether the beneficiary bank was liable under UCC § 4A-207 for a misdescription in a wire transfer. The central question was whether the beneficiary bank had "actual knowledge" of the misdescription at the time it received funds from the originating bank and originator.

The Fourth Circuit noted that the beneficiary bank's automated system generated internal alerts regarding the misdescription. But the court held that the existence of such automated alerts was not sufficient to constitute actual knowledge for purposes of imposing liability on the beneficiary bank. The court further held that under the UCC, the bank had no duty to verify that the name and account number on an ACH transfer matched the name and number on the account receiving the funds.

Because the beneficiary bank deposited the funds into the account number designated in the payment order, the Fourth Circuit concluded that the beneficiary bank bore no liability. Although the depositor identified in the payment order did not actually hold the account in question, the court

found no evidence that the beneficiary bank had actual knowledge of the misdescription at the relevant time.

The Fourth Circuit also rejected the plaintiff's attempt to recover under a bailment theory. Specifically, the plaintiff argued that the deposits created a common law bailment. The court rejected this claim, concluding that under Virginia law a general deposit in a bank does not create a bailment. Under the UCC, ACH funds transfers merely alter account balances and thus do not establish a bailment relationship because they do not involve an essential element of bailment: the delivery and return of physical chattel.

SOVEREIGN CITIZEN'S FICTITIOUS UCC FINANCING STATEMENTS CANNOT SUPPORT A BREACH OF CONTRACT CLAIM

The U.S. Court of Appeals for the Third Circuit rejected attempts by a "sovereign citizen" to weaponize the UCC. In *Nah*, No. 25-2138, 2025 WL 2952788 (3d Cir. October 20, 2025), the Third Circuit held that a plaintiff cannot sustain a breach of contract claim based on the supposed validity of a unilateral UCC financing statement. The decision reinforces the essential requirement of mutual assent and confirms that UCC concepts cannot be used to manufacture banking or payment obligations absent a contract.

In *Nah*, a *pro se* plaintiff mailed a car dealership a self-styled "Vehicle Purchase Agreement & Security Agreement" and asserted that the mailing itself was a negotiable instrument sufficient to create a binding contract. The dealership did not sign, respond, process the paper as a payment item, or deliver the vehicle. Nonetheless, the plaintiff filed a UCC 1 financing statement and sued for breach of contract and breach of the implied covenant of good faith and fair dealing.

Applying New Jersey law, the Third Circuit held that the purported agreement did not form a contract and rejected the notion that one party can unilaterally dictate that silence equals assent. The court rejected the plaintiff's reliance on



UCC terminology, holding that the mere filing of a UCC 1 financing statement does not create a security interest or confirm the existence of a contract in the absence of an underlying agreement between the debtor and secured party.

Importantly, the Third Circuit continued its rejection of a growing number of similarly styled “sovereign citizen” claims that co-opt finance and banking concepts to fabricate banking obligations. The court’s decision reinforces a fundamental principle for checking and payment disputes: UCC forms and filings operate within, not in place of, ordinary contract law and cannot, by themselves, generate payment duties.

COURTS CONTINUE TO REJECT ATTEMPTS TO SKIRT UCC PREEMPTION IN ELDER FINANCIAL EXPLOITATION CASES

The U.S. Court of Appeals for the Fourth Circuit gave financial institutions additional clarity on the contours and protections of UCC preemption in an unpublished decision affirming the district court’s dismissal of claims involving allegations of elder financial exploitation. *In re Estate of Larry W. Cook*, No. 23-1945, 2025 WL 2237439 (4th Cir. August 6, 2025), arose from a classic elder financial exploitation scam. The complaint alleged that after a stroke “noticeably diminished his cognitive capacity,” Larry Cook “fell victim to a swindler” and over about seven months wired several million from his bank accounts to overseas accounts. *Id.* at *1. One of the financial institutions involved reported Cook to Adult Protective Services (APS), which agreed Cook needed protective services but closed its case when Cook refused to cooperate. After reporting the situation to APS, one of the financial institutions continued processing the wire transfers Cook requested. After Cook died, the administrator of his estate sued the banks on theories of negligence and assumption of voluntary duty (based largely on the APS referral and elder abuse concerns) and breach of the implied covenant of good faith and fair dealing. The district court dismissed under Rule 12(b)(6), and the Fourth Circuit subsequently affirmed.

As a threshold matter, the Fourth Circuit held that Article 4A of the UCC is the exclusive means of determining the rights, duties, and liabilities of the affected parties in any situation covered by particular provisions of the Article. Because Cook’s loss arose from his own authorized wire transfers, the banks had no extra contractual duty to stop or investigate the wire transfers. The negligence and voluntary assumption of duty claims therefore failed.

The Fourth Circuit further rejected all of the Estate’s theories for imposing bank liability for elder fraud. For example, the Estate argued that the Bank Secrecy Act and Virginia’s APS statutes imposed a duty on the financial institution to intervene in suspected elder financial exploitation, but the Fourth Circuit declined to “extend a duty to mandate the reporting of elder abuse or to mandate an action by a financial institution when elder abuse is suspected where the plain language of a statute clearly says otherwise.” *Id.* at *4. Even though Cook’s wire transfers were “indicative of possible elder financial exploitation,” those statutes did not create a duty running from the bank to Cook or his estate. *Id.* at *2. Similarly, the Estate argued that by reporting to APS and continuing to monitor Cook’s accounts, the bank assumed a voluntary duty to protect him from the scam. The Fourth Circuit rejected this elder fraud duty theory and held that when the bank reported its suspicions to APS, it “neither ‘took charge of’ nor ‘exercised control over’ Cook,” and “[t]herefore, no duty ever arose between Cook and [the bank].” *Id.* at *5, n. 4. The Estate also tried to recast its elder fraud theory as a contract claim because the banks did not investigate or stop the suspicious wires, but the Fourth Circuit concluded that a breach of the implied duty under the UCC gives rise only to a cause of action for breach of contract and cannot be used to “rewrit[e] an unambiguous contract in order to create duties that do not otherwise exist.” *Id.* at *6.

In sum, the Fourth Circuit’s decision effectively foreclosed several theories of bank liability for elder fraud. “Though the facts of Larry Cook’s financial exploitation in his final months are sad and disturbing, the law is clear.” *Id.* at *7.

LOOKING AHEAD TO 2026

Rapidly evolving artificial intelligence capabilities and increasingly sophisticated scams in the financial sector will continue to generate litigation. The growing popularity of the “sovereign citizen” movement will likely spur more attempts to co-opt the UCC to create illusory obligations for banks. While we expect elder financial exploitation cases to continue, important decisions like the Fourth Circuit’s ruling in *Cook* will make it more difficult for plaintiffs to succeed.

We expect courts to continue to apply long-standing UCC defenses, including preemption and various safe harbor provisions, while enforcing the statute’s plain language and the consumer protections it expressly provides.

Troutman Pepper Locke attorneys are well versed in all aspects of banking and UCC litigation, and we welcome questions about emerging issues or potential disputes.

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Kim Phan

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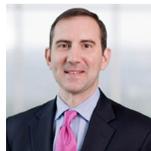
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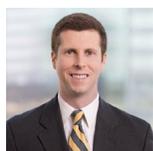
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