

The Consumer Finance Podcast – Year in Review and Look Ahead: Fair Lending and UDAAP in the Trump 2.0 Era — Federal Pullback, State Pushback, and What Comes Next

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Guest: Lori Sommerfield

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Chris Willis (00:05):

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice, and today's episode is the next one in our continuing series of *Year in Review and Look Ahead* episodes. And in this one, we're going to be talking about UDAAP and fair lending. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [ConsumerFinancialServicesLawMonitor.com](#) and [TroutmanFinancialServices.com](#). And of course, don't forget about all of our other great podcasts, the [FCRA Focus](#), [Payments Pros](#), [The Crypto Exchange](#), and [Moving the Metal](#). Those are all available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and let us know how we're doing. Now, as I said, today we're going to be doing a *Year in Review and Look Ahead* with respect to two issues that are near and dear to my heart and probably to many of you listening as well, and that's unfair and deceptive and potentially abusive acts and practices, or UDAAP and fair lending. And joining me to talk about this is my partner and co-author of this section of our *Year in Review* publication and also a very frequent guest on the podcast, Lori Sommerfield, so Lori, welcome to the podcast.

Lori Sommerfield (01:16):

Thanks, Chris. Wonderful to be with you again.

Chris Willis (01:19):

It's great to have you. And I think it would be fair to say that 2025 was a pretty active year in this area in ways that turned out to be surprising to a lot of us. So we saw the current presidential administration take a lot of steps to roll back enforcement of the federal fair lending laws. We saw the CFPB take a much less aggressive approach to enforcing UDAAP as compared to where it had been for the previous four years. And instead, we saw the administration shift to new priorities through the issuance of executive orders, such as the debanking initiative, which of course we're going to be talking about. And the federal agencies have taken actions to align with the President's priorities by significantly scaling back fair lending examinations, supervision, investigations, and enforcement actions. We've also seen a lot of fair lending-related rulemaking activity and the withdrawal of existing fair lending and UDAAP regulatory guidance, and maybe even the promise that we're going to get yet another definition of the word "abusive" from the CFPB, although that has not yet eventuated. But that's sort of a little overview of what we all lived through in 2025, but let's dive in a little bit. With that background, Lori, do you mind

providing the audience with an overview of a few of the key fair lending developments over the past year, and then we'll talk about UDAAP a little bit later in the show?

Lori Sommerfield (02:37):

Sure. Chris, I'm happy to do that. I'm going to focus on three key fair lending developments that I think were pretty impactful during 2025. The first is an effort by the Trump administration to eliminate use of the disparate impact liability theory, and that was accomplished through an executive order. Second, the new debanking initiative, which was also accomplished through an executive order. And third, the status of the Combatting Redlining Initiative, which as the audience knows, was a very big deal during the Biden administration.

Let's start with the disparate impact theory. In April of 2025, President Trump issued Executive Order 14281, which was called Restoring Equality of Opportunity in Meritocracy, and that was designed to eliminate use of the disparate impact liability in all contexts. So not only did it address use of that theory at the federal level, but also surprisingly at the state level. The order did several things. First of all, it instructed federal agencies to deprioritize enforcement of all laws and regs that would contain disparate impact liability. The order also required federal agencies to undertake a review of all of their pending investigations, civil suits, ongoing matters, and even existing consent orders and injunctions that relied on disparate impact liability under either ECOA the Fair Housing Act, or UDAAP, and then take appropriate action.

Similarly, federal agencies were required to conduct a review of their existing regulations, guidance, and other orders that involve disparate impact liability, and then determine how to either amend those laws or guidance or withdraw them. So, in response, we saw the federal banking agencies remove all references to disparate impact from their examination procedures. We also saw the CFPB announce that it's no longer going to use disparate impact theory in any of its supervision or enforcement activities. And then HUD rescinded its guidance that relates to disparate impact. So going forward, the federal banking agencies are only going to prioritize cases with clear evidence of intentional discrimination and identified victims. This represents a significant sea change in the way that the federal fair lending laws are being enforced.

Chris Willis (04:55):

And I think, Lori, with respect to issue number one, we'd probably be wise to point out that even though the administration, and therefore the administrative agencies, have expressed their desire to do away with disparate impact, I don't think we can call that job done until we get something much more authoritative from probably the Supreme Court in the absence of legislation, of course. And we'll talk about that in connection with some of the rulemaking that the Bureau is doing, but this is a wish of the administration rather than a completed undertaking, I would say.

Lori Sommerfield (05:28):

I agree with you, Chris. This is definitely not a *fait accompli*, as the French say. There is much more to come here, and we do need a Supreme Court decision for this to actually be finalized.

Chris Willis (05:38):

Well, let's talk about debanking then.

Lori Sommerfield (05:40):

Back in August, President Trump issued Executive Order 14331, which was called Guaranteeing Fair Banking for All Americans, and it was aimed at preventing and addressing the practice of "unlawful and politicized debanking actions," 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. So in response, we saw the Small Business Administration issue a letter to over 5,000 small business lenders seeking to implement that executive order. And then we saw the OCC issue a preliminary report in December that basically outlined its preliminary findings from its supervisory review of debanking activities at the nine largest national banks in the United States. According to the OCC, between 2020 to 2023, those banks made "inappropriate distinctions," among customers on the basis of their lawful business activities by maintaining policies and procedures that restricted access to banking products and services. And the OCC went on to identify several business sectors as being subject to restricted access or heightened review procedures at each of those institutions. So some of the things that the OCC mentioned were categories like fossil fuels, firearms, payday and payroll lending, consumer debt collection and repossession, and high-interest lending.

(07:14):

The OCC also mentions, surprisingly, adult entertainment and digital asset activities. So far, the two most active federal agencies have been the SBA and the OCC in this arena, but going forward, we expect that we're going to see much more public activity and likely enforcement actions during 2026 as they look for institutions that have engaged in this type of unlawful or politicized debanking activity.

Chris Willis (07:40):

Your mention of the catchphrase "unlawful or politicized debanking" makes me believe I think we could have a very profitable conversation about whether debanking is, in fact, illegal in that whether it violates any law or not. I think it's obvious that discriminating against a loan applicant on the basis of religion would be illegal because the Equal Credit Opportunity Act explicitly forbids that. But as for the rest of it, I don't remember any of those being involved in one of those industries as being a protected class under any statute, public accommodation, lending, or whatever. And so it's something to be discussed if anybody ever gets into trouble with respect to this, whether it's really against the law or not.

Lori Sommerfield (08:18):

I agree, Chris. It seems like it's a sticky wicket here for any federal agency to try to claim that any of these business sectors would fall into the categories of protected class groups.

So the third category is the redlining initiative called the “Combatting Redlining Initiative” that was initiated under the Biden administration. And we've seen the Trump administration clearly indicate that it doesn't intend to pursue redlining enforcement actions at the federal level during the next three to four years. So in response to that new policy, we saw the DOJ terminate several existing redlining consent orders during 2025. We also saw the CFPB issue a memo to staff concerning its 2025 supervision and enforcement priorities that stated, in part, that the Bureau would no longer use redlining in its enforcement matters going forward. And then in September, we saw HUD issue a memo to staff stating that it would prioritize its resources for cases with strong evidence of intentional discrimination. So they're no longer going to rely on any sort of redlining theories going forward to bring investigations or cases. So while we're seeing the federal agencies curtail use of redlining theory in bringing investigations and enforcement actions, it's pretty clear that state redlining enforcement activities will continue.

Chris Willis (09:38):

Well, and just to hearken back to a recent episode we did with Stephen Hayes as a guest on this podcast, whatever break we're getting from redlining now I think needs to be regarded as temporary because if we have another Democrat in the White House someday, which presumably we will, there's no reason for them not to pick up that Combatting Redlining Initiative right where they left it at the end of the last administration. And so I think industry has to realize that this is a temporary respite, not a permanent change.

Lori Sommerfield (10:09):

I agree with that assessment, Chris.

Chris Willis (10:11):

Apart from those three big events and really related to them, the CFPB also issued two very significant rulemakings, proposed rules actually, in November of 2025, under Regulation B. So do you mind giving the audience a brief overview of both of those? Because we need to watch those very carefully, I think.

Lori Sommerfield (10:32):

Absolutely, Chris. So as you mentioned, in November, the CFPB issued two proposed rules concurrently — one that would amend Subpart A of Regulation B, and another one that would amend Subpart B, which deals with small business data collection and reporting that's required under Section 1071 of the Dodd-Frank Act. So the first proposed rule would amend Subpart A by hearkening back to our first topic on today's podcast, eliminating the disparate impact liability availability under ECOA. It would also clarify the scope of discouragement to focus on explicit statements that are directed at applicants or prospective applicants that might discourage them from submitting an application. And this brings to mind the *Townstone* case that we've also discussed on this podcast during 2025. And the third thing that this proposed rule would do would be to prohibit or tightly restrict use of certain protected class criteria in special purpose credit programs that are offered by for-profit organizations. And special purpose credit programs are explicitly authorized by ECOA, and they've been part of Reg B for decades. So, this would be a big sea change. Rather than encouraging use of special purpose credit, the second

proposed rule would amend Subpart B, as I mentioned, that implements Section 1071. And that basically was designed to rein in the initial Section 1071 final rule that was issued by focusing more on mainstream businesses as well as products like loans, lines of credit, and credit cards, as well as higher volume lenders. It would also raise the coverage threshold from 100 to 1,000 originations in each of the two preceding calendar years. And it would use only small business originations and set a single compliance date for institutions above that threshold in both 2026 and 2027. So, the new compliance date would be January 1st of 2028. The proposal would also tighten the small business definition by considering small businesses to be defined as those that have gross annual revenue of \$5 million or less to \$1 million or less. And it would also restrict initial data collection to statutorily required fields and just a small set of discretionary fields. So it seems that the Bureau took a somewhat balanced approach in this. Frankly, I expected the Bureau to take more of a chainsaw to that regulation rather than sort of a clipper. So I think that it's more workable for industry in its new proposed formulation. But we'll see how this comes out as a final rule going forward.

Chris Willis (13:29):

And I think also the fact that they were somewhat judicious in how they sought to amend the 1071 rule means it's more likely to be defensible in the litigation that will surely ensue after it is finalized.

Lori Sommerfield (13:42):

Absolutely. And to your point, Chris, I do think that both of these rules will be finalized during the first half of 2026, and we would expect that consumer advocacy groups in particular will be the ones bringing litigation protesting these rules.

Chris Willis (13:56):

And maybe some of the state AGs too. You never know. Let's talk about the states since I let that particular cat out of the bag. Lori, during 2025 we saw some significant indications of state interest in fair lending and related issues with the sort of stated purpose of filling the void that was left by inaction on the federal government's part with respect to these issues. Can you give the audience some examples of the fair lending related actions at some of the states?

Lori Sommerfield (14:26):

Sure. Happy to do so, Chris. I would view 2025 as basically kind of a ramp-up period for state activity, primarily by state AGs, but we've definitely seen them get their oar in the water on things like enforcement actions and rulemakings that clearly tell us that they have a keen interest in stepping into the federal void that's been left here in 2025. So let me give an example of a state enforcement action and then also a rulemaking initiative that might be instructive. First of all, last July, we saw the Massachusetts Attorney General issue an assurance of discontinuance against a lender for failing to perform disparate impact testing of its artificial intelligence models using discretionary human decision-making in connection with training data and using certain variables that included cohort default rate, as well as issuing inadequate adverse action notices. So we see use of the disparate impact liability theory alive and well in this enforcement action. And then late last year, we saw New Jersey adopt comprehensive

disparate impact regulations, which became effective on December 15th. The new rules, which were issued by the Division on Civil Rights of the New Jersey AG, were issued under New Jersey's Law Against Discrimination.

(15:23):

And those rules were designed to codify disparate impact guidance across several sectors, including housing, lending, employment, places of public accommodation, and contracting. And the rules adopted a structured type of burden-shifting approach that we've seen at the federal level. So it uses a burden-shifting test that basically says that disparate impact discrimination occurs when you have a facially neutral policy or practice that results in a disproportionately negative effect on a protected class, even absent any discriminatory intent, unless it can be shown that the policy or the practice is necessary to achieve a substantial, legitimate, and non-discriminatory interest and if there's no less discriminatory alternative available. Those rules don't create any new liability under the LAD, but instead they clarify how DCR believes that the law should be enforced using a disparate impact claim.

(16:53):

I think the last thing I'll mention, Chris, is Colorado's Artificial Intelligence Act, which was enacted in 2024. This was a really landmark law at the time, and it was the first comprehensive state law that sought to regulate AI systems — again, used in various sectors like employment, housing, credit, education, and healthcare decisions. But we saw that law face increasing challenges in 2025. There was a special legislative session that was held back in August, and there were very intense lobbying efforts by certain constituencies during that legislative session that resulted in a compromised legal framework that was proposed to amend the AI Act, but that was rejected, and instead the legislature just ended up deferring implementation of the law. So the new effective date was delayed from February 1, 2026, to June 30 of this year. And I might note that there's still the need for a rulemaking to actually implement and enforce the law. And it's possible that the Colorado General Assembly could introduce substantive amendments to the law early this year. So this is definitely something to keep our eye on.

Chris Willis (18:07):

Yeah, we'll be watching that very carefully, not only for the impact that it'll have in Colorado, but also if any other states enact comprehensive AI laws that include coverage of lending, as Colorado's does, it might be an important bellwether for what we may expect in other states I think.

Lori Sommerfield (18:22):

I agree, Chris.

Chris Willis (18:25):

We've talked about fair lending for a while, and rather than continue to talk about that, which I would still enjoy doing, let's talk about UDAAP developments. What did we see in terms of the

CFPB's approach to enforcing its UDAAP authority under the Trump 2.0 administration's first year, that is 2025?

Lori Sommerfield (18:43):

Well, I would say that the CFPB has clearly taken a much less aggressive approach to enforcing UDAAP, and it appears to be adopting a narrower view of its authority to determine what constitutes an abusive act or practice under the Dodd-Frank Act. So as a key indicator of those two trends, I think it's instructive that the CFPB withdrew its 2023 Policy Statement on Abusiveness and indicated in its spring rulemaking agenda that it plans to issue a formal rulemaking instead, which is going to be used to define the boundaries of UDAAP. So stay tuned for that — I think we'll see that sometime during 2026. So as a result of this change in the Bureau's UDAAP policy, it's pretty clear that the focus of enforcement is now shifting to the states.

Chris Willis (19:31):

Well, and even though fair lending is kind of a tall order for a lot of states to get involved in, because those cases tend to be very resource-intensive and long-lived cases, UDAP is an area where states traditionally have been very active and they don't face nearly the sort of the barriers to participation that I feel like they do with respect to fair lending. And so that's not only because every state has a UDAP law that's enforced by the state's attorney general usually, but it's something that the states have a massive amount of experience on and that doesn't require some kind of statistical analysis to detect whether it's happening or not. You can infer the existence of consumer confusion through complaints and other information that state regulators have far greater access to than the statistical workings of someone's underwriting model, for example. So I think understanding that makes us realize that the CFPB's sort of self-imposed brake on aggressive UDAAP enforcement is something that only partially clears the field for industry because the states are still there and ready, willing, and able to do all kinds of enforcement activity under their state UDAP statutes.

Lori Sommerfield (20:40):

I agree, Chris. And I think it's also important to point out to the audience that state Attorneys Generals and also state banking agencies have the authority to not only enforce their own UDAP laws, but also Dodd-Frank Act's UDAAP prohibitions.

Chris Willis (20:55):

Right. Under Section 1042 of Dodd-Frank.

Lori Sommerfield (20:58):

Exactly.

Chris Willis (20:59):

So let's talk about a look ahead. We've talked about what occurred during 2025, which was an interesting year to read the news for all of us. But what do you think, Lori, financial institutions and financial services companies ought to expect concerning fair lending and UDAAP in the year ahead of us, that is 2026?

Lori Sommerfield (21:19):

I think during the next year we're going to continue to see continued scaling back of enforcement of the federal fair lending laws, as well as less aggressive enforcement of UDAAP laws, together with very limited activity by federal agencies in either conducting fair lending or UDAAP examinations, supervisory issues, or investigations or enforcement actions. However, I think we are going to see rulemakings both at the federal level and the state level as it relates to fair lending in UDAAP/UDAP. And certainly, as we've discussed, we're going to see those Regulation B proposed rules finalized, likely in the first half of 2026. So I think there's a lot more ahead here with a focus more on rulemaking and even potentially legislative activity at the state level increasing over the next three years to fill this federal government enforcement void. And then I might also add, Chris, that while we see this federal pullback in terms of enforcement of the fair lending and UDAAP laws, it's important to remember that regulatory compliance is based primarily on a retrospective review of lending activity. The statute of limitations under ECOA is five years, as the audience probably knows, and the statute of limitations for the CFPB is three years from the date of discovery of an alleged violation.

(22:38):

So that means that any lending activity that occurs over the next, say, three to four years is going to be subject to regulatory scrutiny during the next administration. So the potential for enforcement by the next administration, if it's held by a Democrat, and the likelihood of increased state activity under any of the laws that we've discussed today (fair lending, UDAAP, or even AI laws), as well as the possibility of private litigation, all seem to suggest that our financial institution clients and financial services companies should continue their fair lending and UDAAP compliance risk management programs and efforts without interruption. In other words, let's just keep doing what we've been doing because of this look-back possibility.

Chris Willis (23:23):

Yeah. I think that's actually the most important message for the audience to hear and one that I think the industry in general believes because of exactly the reasons that you just stated, Lori. So thanks for putting that so eloquently and thanks for being, of course, on the podcast today. And thanks for our audience for listening as well. Don't forget to visit and subscribe to our blogs, [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com). And while you're at it, why not visit us on the web at [troutman.com](https://www.troutman.com)? We've got a snazzy website, but more importantly than that, you can add yourself to our Consumer Financial Services email list and get copies of the alerts and advisories that we send out from time to time, as well as invitations to our occasional industry-only webinars. And of course, stay tuned for a great new episode of this podcast every Thursday afternoon, including the remainder of episodes in our *Year in Review and Look Ahead* series, of which this is a part. Thank you all for listening.

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