



# Consumer Financial Services Outlook 2021

Monday, January 25, 2:00-3:30 pm ET

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# Today's Discussion

- New President and Congress
- Changes @ the Agencies
- Regulatory Update
- Supervision, Examination, and Enforcement Outlook
- A Brief Look at the State Regulatory Outlook
- Questions and Closing Observations



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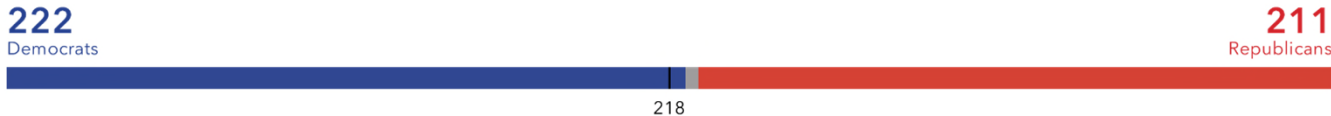
# New President and Congress

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# The 2020 Election – House of Representatives: Narrow Democratic Majority

- Democrats unexpectedly lost ground in the House, leaving Speaker Pelosi with a slim advantage and few remaining moderates. Managing a disparate caucus will be trickier than ever.
- Expect the GOP minority to proceed with an eye on 2022; midterm history and redistricting advantages put them in a strong position to win back the chamber in two years.

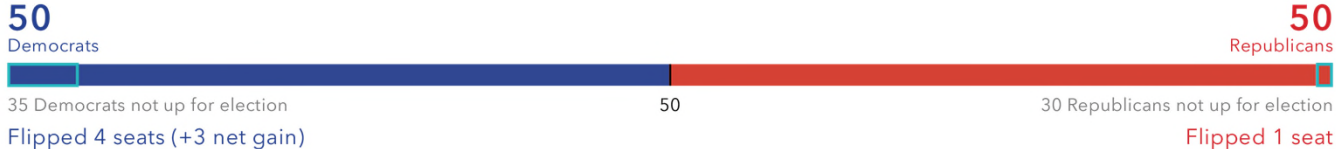
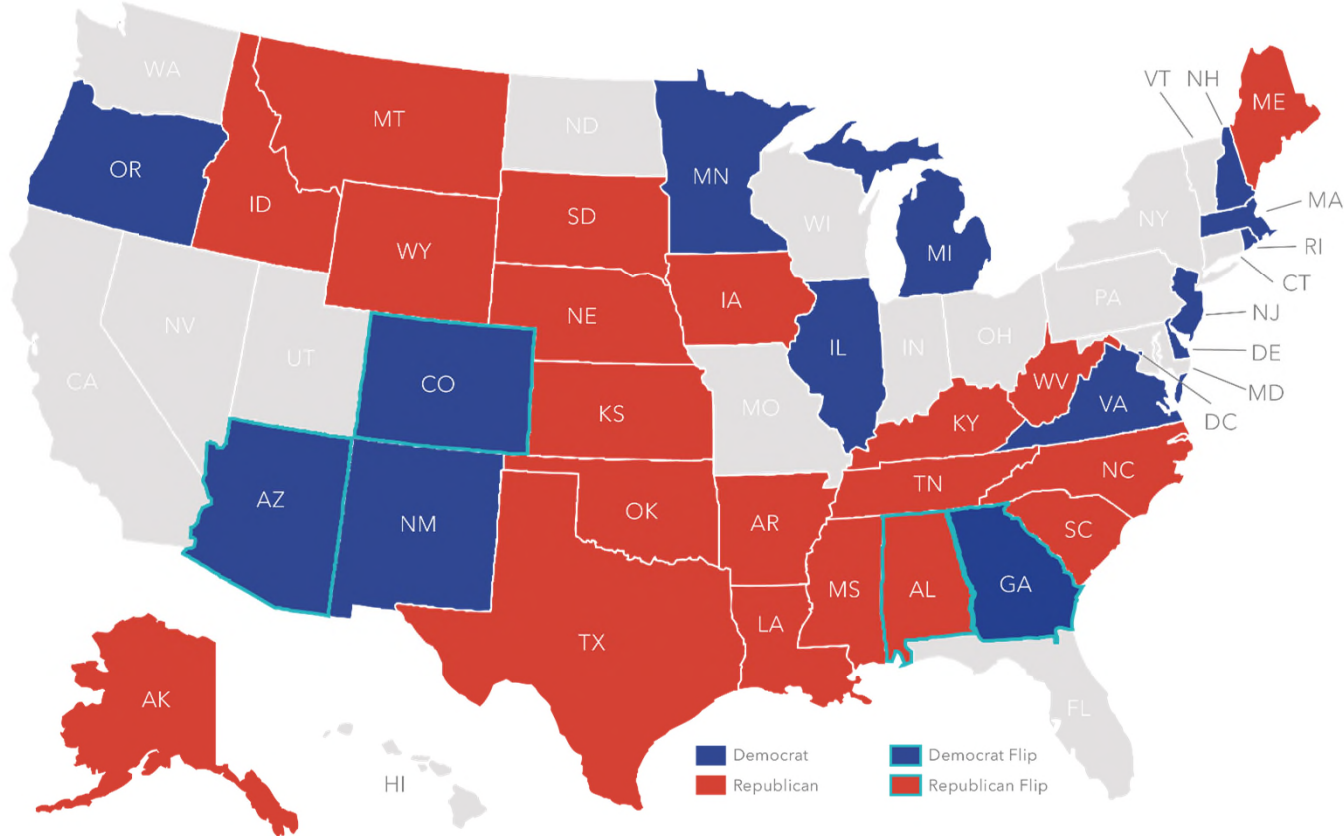


Party	Seats Won	Loss/Gain
Democratic	222	- 9
Republican	211	+ 10
Other		- 1

AP has called 433 of the 435 seats as of 4:00 p.m. on 12/14/20.

# The 2020 Election – The U.S. Senate: Evenly Divided

- The Senate is divided 50-50, with Democrats poised to take control
  - Vice President Harris is the tie-breaking vote
- Leaders Schumer and McConnell are negotiating a power-sharing agreement that will need 60 votes to pass
  - According to reports, the basis of the resolution will be the agreement from 2001
  - Expect committees to be evenly divided with Democratic chairmen
  - Tied votes will advance to the floor





# The 117th Congress -- Leadership and Key Committees of Jurisdiction

## House of Representatives



Rep. Nancy Pelosi (D-CA)

## U.S. Senate



Sen. Chuck Schumer (D-NY)

### House Committee Chairs



Rep. Maxine Waters (D-CA)  
House Financial Services

### House Ranking Members



Rep. Patrick McHenry (R-NC)  
House Financial Services

### Senate Committee Chairs



Sen. Sherrod Brown (D-OH)  
Senate Banking

### Senate Ranking Members



Sen. Patrick Toomey (R-PA)  
Senate Banking



Rep. Frank Pallone (D-NJ)  
House Energy and Commerce



Rep. Cathy McMorris Rodgers (R-WA)  
House Energy and Commerce



Sen. Maria Cantwell (D-WA)  
Senate Commerce, Science, and Transportation



Sen. Roger Wicker (R-MS)  
Senate Commerce, Science, and Transportation



# The 2020 Election – The U.S. Senate: Range of Motion

- Without the 60 votes necessary to overcome a GOP filibuster, the day-to-day operation of the Senate, as well as any legislative activity through regular order, will require Republican cooperation
- What Democrats can do by themselves:
  - Confirm all Biden nominees (both executive and judicial)
  - Rescind Trump administration “midnight regulations” using Congressional Review Act (CRA)
  - Tax and mandatory spending changes under the Budget Reconciliation process
    - Congress may pursue one reconciliation package for each annual budget resolution
    - Since Congress has not yet passed a resolution for FY2021, Democrats have two opportunities
    - Identical resolution must be passed by majority in both chambers with specific instructions to committees of jurisdiction on what fiscal targets they must to reconcile to
    - Committees pass (“report”) their respective pieces; Budget Committee bundles into one package for consideration by the full chamber
    - Senate restricted by the “Byrd Rule,” which limits which policies and provisions can qualify
      - E.g., must have significant budget impact; cannot lose revenue beyond 10-yr budget window
      - Majority could overrule parliamentarian, but challenge akin to nuclear option

# The Congress and Consumer Finance

- Consumer finance/banking legislation unlikely in 117th Congress because of narrow Democratic majorities, progressive/moderate divisions among Democrats, and the Senate's 60-vote threshold. (COVID-19 legislation could touch on consumer finances issues; forbearance, for example.)
- We do not see the elimination of the filibuster (or reform) in the near term in the 50-50 Senate because of stated opposition by some Democrats (Sens. Manchin, Sinema, Tester, and Feinstein) and potential 2022 election-cycle pressures.
- Reconciliation allows some bills to be passed with a simple majority; however, generally speaking, it must be related to revenue (taxes), spending, or the debt limit—and provisions simply setting policies with no budgetary impact would not be allowed.
- Nonetheless, we do not expect Democratic rhetoric to be tempered, and the **expectation is for an aggressive hearing agenda in the House and Senate.**

# Congressional Committees: Key Agenda Items

- Priorities of House Financial Services Committee Chairwoman Maxine Waters
  - Pandemic relief
  - Housing/rental assistance
  - Lending discrimination (overall theme of economic inequality/inclusion)
  - Letter to Biden: rescind Trump administration rules
- Priorities of Senate Banking Committee Chairman Sherrod Brown
  - Pandemic relief
  - “Housing, housing, housing”
  - Fair Access to Financial Services Act (highlights social justice aspects of policy)
- Again: difficult to pass legislation; control of hearing agenda; fintech issues are lower priority, as are changes to credit reporting

# The Biden Administration & Congress: Key Themes

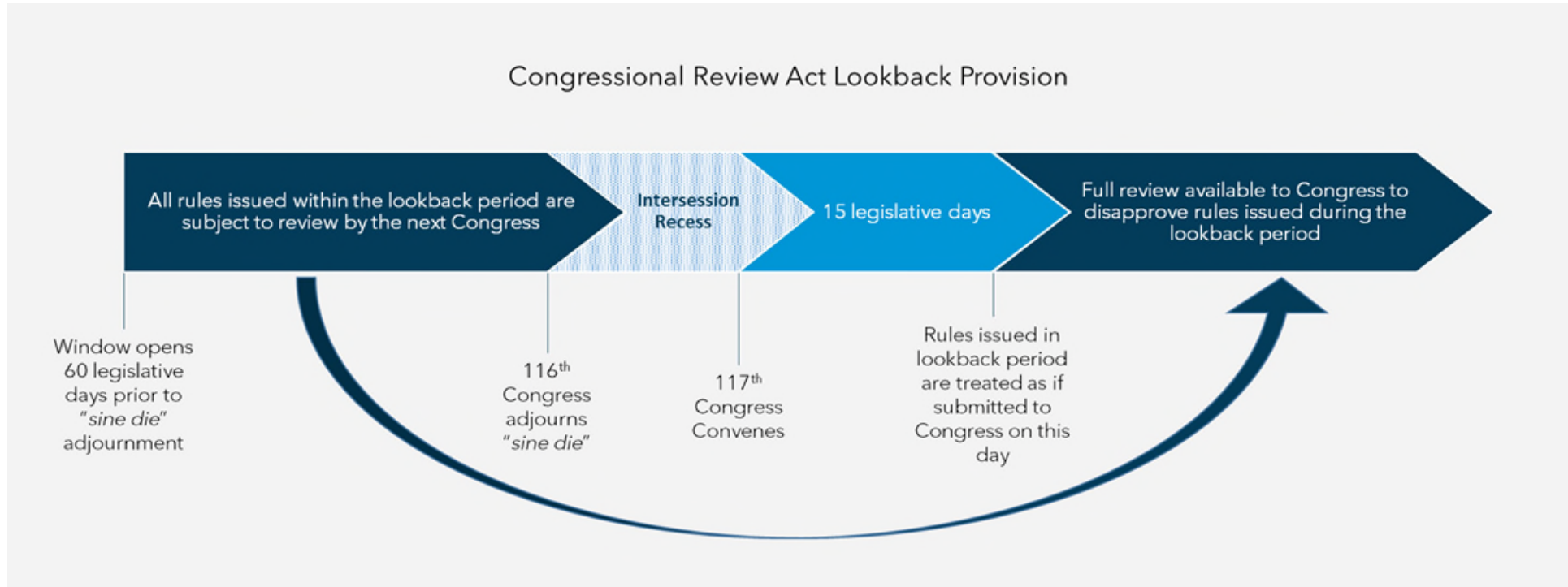
- President Biden will likely get his full slate of executive branch/independent agency nominees
  - Biden will not have to negotiate with Senate Republicans
  - Progressives will voice their disappointment (see Michael Barr/OCC) but will not block appointments
- The regulatory agencies will be more active than Congress on banking/consumer finance issues
- A unifying theme across the agencies will be actions tied to climate change (an ESG priority)
- Democrats will be relatively unified on an aggressive consumer finance agenda
- Legislation with consumer finance implications will be tied to COVID-19 relief legislation



# Executive Branch/Independent Agencies

- Intersectional themes: Climate change (risk)/ESG; equity/diversity
- End of regulatory rollback era—rollback of the rollback (CRA)
- Increased consumer finance regulation is a point of alignment between Biden administration and congressional Democrats
- Agency nominees/notes
  - Treasury—Janet Yellen
  - SEC—Gary Gensler
  - OCC—Michael Barr (expected but progressive opposition)
  - Federal Reserve—shift expected later in 2021; Lael Brainard
  - FDIC—Chairwoman Jelena McWilliams (Republican) to remain; expectation is through 2021 not remaining term
  - CFPB—Rohit Chopra (Acting Director Dave Uejio)

# Congressional Review Act



Source: Perez, Daniel, George Washington University Regulatory Studies Center, <https://regulatorystudies.columbian.gwu.edu/upcoming-cra-deadline-has-implications-regulatory-oversight-congress>

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# Changes @ the Agencies

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# @ Consumer Financial Protection Bureau: Expectations

- Democrats united around revitalized CFPB, and it is top priority of leadership and banking committee chairs
- Chopra well positioned to move quickly: restructure agency and re-orient priorities.
- Key areas of focus:
  - Reestablish Office of **Fair Lending**
  - Renewed focus on **enforcement**, including UDAAP, focus on disparate impact
  - Rule-writing: **small-dollar, debt collection, HMDA, and small business data collection**
  - **Enhanced scrutiny**: student lending, auto lending, Military Lending Act
  - **Unfinished Business** from the Cordray Era
- Second-tier focus
  - QM patch/qualified mortgages; overdraft; and fintech/data aggregation

POLITICO

TRANSITION 2020

## Biden taps Warren ally Chopra to lead Consumer Bureau

The selection of Chopra signals the Biden administration plans to return the CFPB to the more-muscular posture of its early days.





# @ the Federal Trade Commission / Federal Communications Commission

BI Business Insider

Biden picks Slaughter as acting FTC director, Rosenworcel for FCC - Business Insider

Biden picked Rebecca Kelly Slaughter and Jessica Rosenworcel as acting FTC and FCC directors. The two Democrats have been more ...



- FTC:
  - Aggressive on Big Tech, Privacy, Coordination with CFPB (?), Algorithms, Lead Generation, *but*
  - Possible litigation hazard on horizon: *AMG Capital Management, LLC v. Federal Trade Commission*, where the FTC's use of Section 13(b) of the FTC Act to obtain monetary relief is under review, *and*
  - Consumer Complaints: In FY2020 90% of the FTC's consumer protection law enforcement actions targeted the subject of **consumer complaints** to the FTC; 91.2% in FY2016. (Source: FTC Annual Performance Report 2020)
- FCC:
  - Telemarketing/TCPA
  - Fallout: "Supreme Court to decide what is an audodialer"

# @ the Banking Agencies

- Leadership

- Federal Reserve
- FDIC
- OCC

- Themes

- Fintech
- Financial Inclusion
- Climate Change
- Safety and Soundness

CNBC

The Fed under Biden: New mandates, a close White House tie and big challenges ahead

The Federal Reserve is likely to enjoy a more cordial relationship with President Joe Biden than it did with Donald Trump, who once called ...



- Notable Outstanding Rulemakings

- Fair Access
- CRA
- Brokered Deposits
- ILC Parent Company
- True Lender

- Future Rulemakings

AB American Banker

Biden team lays groundwork to reverse Trump-era banking

...

Observers say the speed and breadth of activity suggests President Biden's transition team prepared in advance to name agency appointees ...



AB American Banker

OCC's 'fair access' rule could be short-lived under Biden

WASHINGTON — A new rule that aims to bar large banks from declining services to unpopular industries is unlikely to survive during the Biden ...

1 week ago





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# Regulatory Update

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# Regulatory Agenda: CFPB Rulemaking

## Agency Rule List - Fall 2020

### Consumer Financial Protection Bureau

Agency	Agenda Stage of Rulemaking	Title	RIN
CFPB	Prerule Stage	Business Lending Data (Regulation B)	<a href="#">3170-AA09</a>
CFPB	Prerule Stage	Consumer Access to Financial Records	<a href="#">3170-AA78</a>
CFPB	Prerule Stage	Property Assessed Clean Energy Financing	<a href="#">3170-AA84</a>
CFPB	Proposed Rule Stage	Amendments to FIRREA Concerning Appraisals (Automated Valuation Models)	<a href="#">3170-AA57</a>
CFPB	Proposed Rule Stage	Public Release of Home Mortgage Disclosure Act Data	<a href="#">3170-AA85</a>
CFPB	Proposed Rule Stage	Home Mortgage Disclosure Act (Regulation C)	<a href="#">3170-AA97</a>
CFPB	Proposed Rule Stage	Role of Supervisory Guidance	<a href="#">3170-AB02</a>
CFPB	Proposed Rule Stage	Mortgage Servicing (Regulation X)	<a href="#">3170-AB04</a>
CFPB	Final Rule Stage	Debt Collection Rule	<a href="#">3170-AA41</a>
CFPB	Final Rule Stage	Disclosure of Records and Information	<a href="#">3170-AA63</a>
CFPB	Final Rule Stage	Higher-Priced Mortgage Loan Escrow Exemption	<a href="#">3170-AA83</a>
CFPB	Final Rule Stage	Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z)	<a href="#">3170-AA98</a>
CFPB	Final Rule Stage	Amendments to Regulation Z to Facilitate Transition From LIBOR	<a href="#">3170-AB01</a>



# Regulatory Agenda: What May Change?

## CFPB Regulatory Initiatives

- Small Dollar Lending (Payday and Title Loans)
  - Significant rollback of rule under prior administration
  - Overdraft Protection
  - Small Business Data Collection
  - Other Policy Changes/Guidance
    - COVID/Disaster-related
    - Fair Lending/HMDA
    - UDAAP
    - No-Action Policy
    - LIBOR Transition
    - Lookback Reviews

# Mortgage and Consumer Lending

## Mortgage

- Changes to ATR/QM Rules take effect
- Rulemaking(s) on servicing related to COVID-19 and other emergencies
- Continued moratoriums on foreclosures, possible new relief legislation
- Renewed focus on fair lending compliance
  - Expansion of HMDA data fields has not been harnessed by aggressive Fair Lending Office to date
  - Alternative underwriting, target marketing increasingly scrutinized

# Mortgage and Consumer Lending

## Consumer Lending

- Renewed focus on student loan servicing by CFPB
- Renewed focus on short-term installment loans by CFPB
- True Lender/Madden Rules and ongoing debate
  - OCC rulemakings on both
  - FDIC has not addressed True Lender to date
  - State actions continue



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# Payments

Dynamic landscape shapes the movement of money

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# Payments: Legal and Regulatory Topics

- **BSA/AML** – In early January 2021, the National Defense Authorization Act for 2021 went into law, which included sweeping reforms to the Bank Secrecy Act and anti-money laundering rules.
  - Creates a new beneficial ownership registry within FinCEN for domestic and international corporate entities
  - Expands the definition of “financial institution” under the BSA to include businesses that exchange or engage in the transmission of cryptocurrency
- **Faster Payments:**
  - The promise of "faster payments" is becoming a reality, with the launch of various services, including the Clearing House's Real-Time Payments Network (RTP Network), "push to card" services, Nacha's same-day settlement, and the Federal Reserve's in-development FedNow service. At this time, however, only banks have direct access to these networks, and fintech companies are seeking to capitalize on these payments systems.
  - Under President Biden's Unity Plan, there is a proposal to ramp up the Federal Reserve's FedNow service to facilitate greater access to real-time payments and allow consumers to have more immediate access to their funds. The Biden administration would likely treat access to faster payments as part of a larger effort to provide service to the underbanked.

# Payments: Continued Law Enforcement Focus

- In 2020, the FTC announced settlements with at least half a dozen payment processors alleged to have assisted and facilitated the unlawful conduct of their merchant-clients. These orders often ban defendants from payment processing, or assisting others in processing, for entire industries or types of merchants.
  - Recent FTC actions continue to target certain “bad conduct,” such as distributing sales transaction volume or activity among multiple merchant accounts or billing descriptors (or “load balancing”), using shell companies to apply for additional merchant accounts, etc.
  - Recent FTC actions continue to target certain high-risk industries, including those selling “how to” and “work from home” business opportunities, continuity programs, seminar and coaching services, and subscriptions.
  - In the First Data settlement, the FTC alleged that the processor and one of its ISOs approved numerous merchant accounts under shell companies with straw owners and allowed processing to occur despite numerous red flags. In addition to a \$40 million penalty, the settlement requires that First Data implement stringent underwriting and monitoring programs and launch a “Wholesale ISO Oversight Program.”
- Under the Biden administration, expect the CFPB to refocus its enforcement, which may include bringing actions against the payments industry. The CFPB (and others) brought a number of actions against payments companies under the Obama administration.

# Payments: Limits to the FTC's Enforcement Authority?

- The FTC continues to seek equitable monetary relief from payment processors, including restitution and disgorgement, under Section 13(b) of the FTC Act, but this authority is being challenged under multiple cases, including one that is currently under Supreme Court review.
- In early January, the Supreme Court heard oral argument in *AMG Capital Management v. FTC*. The Supreme Court is set to decide whether Section 13(b) of the FTC Act, which expressly grants the FTC the right to obtain “a permanent injunction,” also grants the FTC the authority to obtain “equitable monetary relief.”
- Even if the FTC loses the case, there are numerous options for how the FTC can continue to bring similar enforcement actions and seek equitable monetary relief. One option would include referral of cases to the CFPB.

# Payments: Marijuana and CBD Banking and Payments

- Marijuana remains illegal under the federal Controlled Substances Act.
  - There has been an increase in banks and credit unions providing banking services to marijuana-related businesses in states where marijuana has been legalized.
  - Card brands continue to take the position that card payments for marijuana are illegal under federal law and therefore prohibited by card brand rules.
  - Will Congress and the Biden administration push to legalize marijuana, or provide a safe harbor to financial institutions providing services to the industry?
- Hemp/CBD
  - Hemp/CBD are no longer controlled substances, but there are still various federal and state laws that may apply (e.g., Federal Food, Drug, and Cosmetics Act).
  - Some banks and payment processors are beginning to provide services to Hemp/CBD merchants through controlled, focused programs.

Disclaimer: Using, distributing, possessing, and/or selling marijuana is illegal under existing federal law. Compliance with state law does not guarantee or constitute compliance with federal law. This informational overview is not intended to provide any legal advice or any guidance or assistance in violating federal law.



# Payments: Prepaid Card Developments

- *PayPal v. CFPB* (D.D.C. Dec. 30, 2020)
  - On May 6, 2020, PayPal, Inc. sued the CFPB in the United States District Court for the District of Columbia, alleging violations of the Administrative Procedure Act related to the manner in which CFPB regulated digital wallets and credit associated with digital wallets as GPR cards
  - On December 30, 2020, the District Court issued an order invalidating two parts of the Prepaid Rule:
    - (1) the mandatory short-form disclosure requirement, and
    - (2) the requirement for a thirty-day delay before the linking of any prepaid product to credit.
  - In both cases, the District Court held that the CFPB exceeded its statutory authority in promulgating the requirements.
  - The CFPB may still appeal the decision to the D.C. Circuit.



# Payments: Payments Company Charter Options

- OCC Foundation – Curry, Otting & Brooks
  - It’s about the activity, not the charter
  - Payments Charter 1.0
  - Digital activities ANPR
  - Figure
- What now?
- Options
  - Full-service national bank
  - Full-service state bank
  - National trust bank
  - State trust bank
  - Special-purpose national bank (fintech charter)
  - Industrial loan company (ILC)
- Buying a bank?

# Payments: Payments Company Charter Options (*other than buying a bank*)

Charter Type	Deposit Insurance	Parent Company Oversight	Examples
Full-Service National or State Bank	Yes	Yes	Varo Bank Jiko Bank
Industrial Loan Company (ILC)	Yes	No	Square Financial Services
National Trust Company	No	No	Anchorage Digital Bank (Pending) Paxos (Pending) Bitpay (Pending)
State Trust Company	No	No	Anchorage Trust Company (SD) Fidelity Digital Assets (NY)
Uninsured State Bank	No	No	Avanti (Wyoming) Kraken (Wyoming)



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# Debt Collection: Rulemaking and More

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# Coverage and Definitions

- **The Final Rule covers “debt collectors,”** as that term is defined in the FDCPA.
  - “Debt collector” is defined in the FDCPA, subject to certain exceptions, as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.”
- **CFPB declined to expand the rule to apply to first-party debt collectors,** who are not FDCPA “debt collectors.”
- The CFPB stated the Final Rule is **not intended to address whether activities performed by entities that are not subject to the FDCPA may violate other laws,** including the prohibitions against unfair, deceptive, or abusive practices (**UDAAP**) in the Dodd-Frank Act.



# Key Takeaways – Communications

- **Time and Place Restriction** – The Final Rule restricts the times and places at which a debt collector may communicate or attempt to communicate with a consumer, including by clarifying that a consumer need not use specific words to assert that a time or place is inconvenient for debt collection communications.
- **Opt Out** – Consumers may restrict the media through which a debt collector communicates or attempts to communicate by designating a particular medium, such as email or telephone, as one that cannot be used for debt collection communications.
- **Call Frequency** – Debt collectors are presumed to violate the FDCPA’s prohibition on repeated or continuous telephone calls if the debt collector places a telephone call to a person more than seven times within a seven-day period or within seven days after engaging in a telephone conversation with the person.
- **Email and Text** – Debt collectors may use communication technologies such as emails and text messages in debt collection, and the Final Rule provides a safe harbor for collectors when they use these communication with consumers, provided that the Final Rule’s procedural framework is followed. In addition, these communications must include instructions for a reasonable and simple method that consumers can use to opt out.

# Key Takeaways – Communications Cont'd

- **Social Media** – A debt collector is prohibited from communicating or attempting to communicate with a person, in connection with the collection of a debt, through a social media platform if the communication or attempt to communicate is viewable by the general public or the person's social media contacts.
- **Limited-Content Message** – The Final Rule defines a new term related to debt collection communications: “limited-content message.” If a message meets this definition, then it is not a “communication” under the FDCPA. Limited-content messages are limited to voice mails left with a debtor, and the Final Rule identifies what information a debt collector must and may include in such messages.

# Key Takeaways – Disclosures

- **If Initial Communication Is Oral** – Must provide full mini-Miranda in the oral communication and again in first written communication.
- **If Initial Communication Is in Writing** – Must include full mini-Miranda in such initial communication. Do not need to provide it again.
- **Translation Requirements** – Required disclosures must be in language used for rest of the communication.
- **Validation Notice** – Must provide notice of consumer's rights and specific information about the debt in initial communication or within 5 days of that initial communication either in writing or electronically. Must use Model Validation Notice to rely on safe harbor.

# Key Takeaways – Miscellaneous

- **Sale Restrictions** – A debt collector is prohibited from selling, transferring for consideration, or placing for collection a debt if the debt collector knows or should know that the debt has been paid or settled or discharged in bankruptcy.
- **Record Retention** – Must maintain evidence of compliance or non-compliance for 3 years after last collection on that debt. If debt collector records telephone calls, must maintain for 3 years.
- **Credit Reporting** – Cannot report to credit bureaus until communicating with a consumer.
- **Time-Barred Debt** – Cannot file suit, or threaten to file suit, if debt is time-barred.



# What's Not in the Rule?

- E-SIGN Act consent is necessary only for debt collectors to respond electronically to consumers' initial, nonduplicative disputes. This means there may be situations where a debt collector must respond to the initial dispute in paper form, but where subsequent duplicative disputes may be responded to electronically.
  - The Final Rule does require, however, that certain validation and disclosures must comply with E-SIGN Act section 101(c).
- No time-barred debt notices/ disclosures.
- No safe harbor for meaningful attorney involvement.

# What Does This Mean for Collectors and Creditors Today?



One Year Ramp-up Period



Compliance Policy, Procedures, and Practices



Preparing for Vendor Management Oversight



Contracts, Creditor Notices Prior to Placement

**Several years ago, when the CFPB launched a rulemaking on third-party debt collection, the agency indicated that it planned to address first-party debt collection on a separate track. Despite support for this approach, it never did. Commonsense rules for ensuring accuracy in the collection and sale of debt would cut off at the source abuses like those seen in this case. - Rohit Chopra, In the Matter of Midwest Recovery Systems, Commission File No. 1923042 (Nov. 25, 2020)**



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# **Supervision, Examination, and Enforcement Outlook**

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# CFPB Enforcement Statistics

Source: CFPB FOIA Request #CFPB-2021-0025-F

FY	Investigations Opened	Pending	Closed
2014	99	163	69
2015	45	134	74
2016	70	153	51
2017	63	145	71
2018	15	106	54
2019	20	118	8
2020	54	129	40
2021	?	?	?

## ARC Decisions FY 19 and FY 20\*

	FY 19	FY 20
Referred to Enforcement for Follow-up	5	9
Referred to Supervision for Follow-up	32	33
Findings Referred in Part to Supervision for Follow-up and in Part to Enforcement for Follow-up**	2	2
	<u>39</u>	<u>44</u>

\*Supervision uses a risk-based approach in planning its supervisory activities. The numbers in the chart do not reflect all supervisory activities or all enforcement investigations in any given year. Instead, the numbers show the ARC decisions made on that subset of matters that go through the ARC process.

\*\*With respect to some exams, some findings are referred to supervision and some findings are referred to enforcement. Either enforcement or supervision will exclusively consider each finding.



# CFPB Supervision and Examination

## CFPB Supervision and Examination Process Overview

### Background

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act)<sup>1</sup> established the Consumer Financial Protection Bureau (CFPB) and authorizes it to supervise certain consumer financial services companies and large depository institutions and their affiliates for consumer protection purposes.<sup>2</sup> The Bureau's purpose is set forth by Section 1021 of the Act:

**(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.**<sup>3</sup>

#### Federal consumer financial law

Subject to the provisions of the Act, the CFPB has responsibility to implement, examine for compliance with, and enforce "Federal consumer financial law."<sup>4</sup> Those laws include, among other things, Title X itself, which prohibits unfair, deceptive, or abusive acts and practices in connection with consumer financial products and services,<sup>5</sup> and the following "enumerated consumer laws"<sup>6</sup> and the implementing regulations.<sup>7</sup>

<sup>1</sup> The Act can be found here: <http://www.gpo.gov/fdsys/pkg/PLAW-111pubs203/pdf/PLAW-111pubs203.pdf>

<sup>2</sup> Sec. 1024 of the Act authorizes CFPB to supervise certain entities and individuals that engage in offering or providing a consumer financial product or service and their service providers that are not covered by Secs. 1025 or 1026 of the Act. Specifically, Sec. 1024 applies to those entities and individuals who offer or provide mortgage-related products or services and payday and private student loans as well as larger participants of other consumer financial service or product markets as defined by a CFPB rule, among others, plus their service providers. Sec. 1025 authorizes CFPB to supervise those entities that are large insured depository institutions and credit unions with more than \$10 billion in total assets and all their affiliates (including subsidiaries), as well as service providers for such entities. Sec. 1026 provides the prudential regulators with consumer compliance examination authority for smaller depository institutions (\$10 billion or less in total assets) not covered by Sec. 1025. The Bureau may, under Sec. 1026, include its examiners on a sampling basis at examinations of smaller insured depository institutions to assess compliance with the requirements of Federal consumer financial law. Under Sec. 1026, the Bureau has supervisory authority over a service provider to a substantial number of smaller depository institutions. "Insured depository institutions" include banks and savings associations. Under Sec. 1029, the Bureau may not exercise any authority over certain dealers predominantly engaged in the servicing and sale or leasing of motor vehicles. For ease of reference for purposes of this manual, entities and individuals within the scope of Sec. 1024 are referred to as "non-depository consumer financial service companies," and those within the scope of Sec. 1025 are referred to as "large depository institutions and their affiliates." The following are referred to as "supervised entities": (1) non-depository consumer financial service companies and their service providers; (2) large insured depository institutions, large insured credit unions, and their affiliates, as well as service providers to those entities; and (3) service providers to a substantial number of small insured depository institutions or small insured credit unions.

<sup>3</sup> Emphasis added. See also Sec. 1021(b)(4).

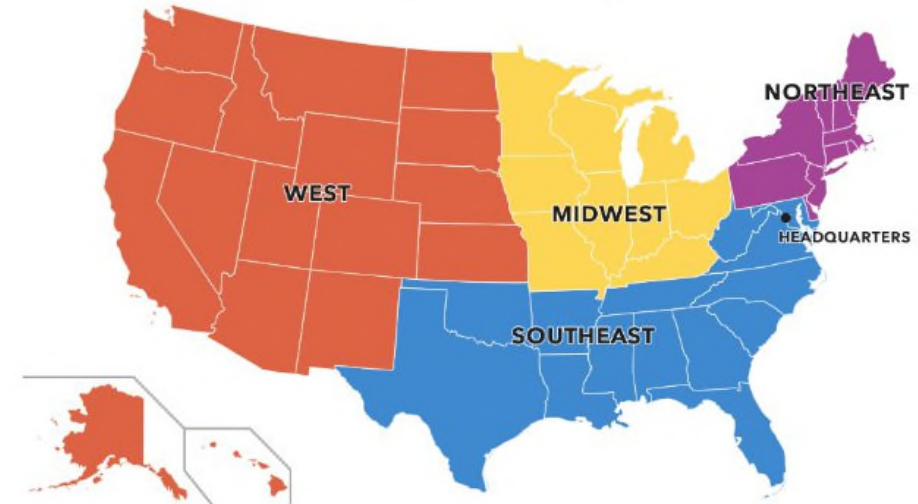
<sup>4</sup> See Sec. 1002(14) for the definition of "Federal consumer financial law."

<sup>5</sup> See Sec. 1036; see also 1031.

<sup>6</sup> See Sec. 1002(12). Parts of Title XIV of the Act are also designated as enumerated consumer laws. See Sec. 1400(b).

<sup>7</sup> See Sec. 1002(12).

CFPB Supervision Regions



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Enforcement
Compliance
Consumer Education
Data & Research
News

- Supervision & Examinations
- Supervisory Highlights
- Supervisory Guidance
- Advisory Opinion Program
- Registration and Submission Programs

### Advisory Opinion program

The Bureau's Advisory Opinion program provides written guidance to assist regulated entities to better understand their legal and regulatory obligations through advisory opinions.

The Advisory Opinion program focuses primarily on clarifying ambiguities in the Bureau's regulations, although advisory opinions may clarify statutory ambiguities. Parties may submit requests for advisory opinions regarding any issue under the Bureau's purview that can be resolved through an interpretive rule.

**Featured topic**

On December 21, 2020, the Bureau issued an [advisory opinion](#) related to special purpose credit programs.

**Purpose of the program**

The Advisory Opinion program provides a mechanism through which the Bureau can more effectively carry out its statutory purposes and objectives by better ensuring compliance in the face of regulatory and statutory uncertainty.

**Policy and related documents**

[Final Advisory Opinions Policy](#)

Advisory Opinion Letters

**EMAIL UPDATES**

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[Sign up](#) [See Privacy Act statement](#)

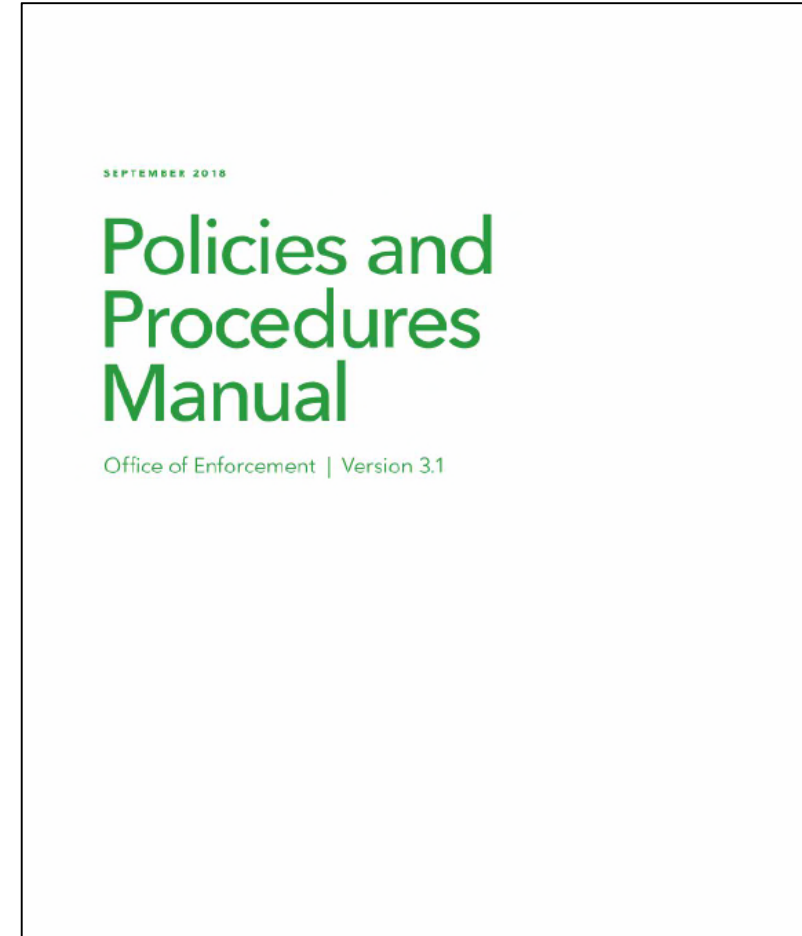
# Supervision and Examinations

## CFPB

- Renewed focus on supervision of student loan servicers by CFPB
- Renewed focus on fair lending examinations
- COVID-19-related examinations around servicing and collections practices
  - Under way, but will continue
  - Fair servicing an issue that will be closely scrutinized
  - UDAAP/Reg V compliance in connection with data furnishing
- Auto lending and other consumer verticals likely to come back to the forefront
  - Fair lending in indirect auto
  - Military Lending Act

# CFPB Enforcement

- Some likely areas of focus:
  - student loan servicing,
  - credit discrimination,
  - mortgage servicing,
  - debt collection,
  - credit reporting,
  - small dollar lending, and
  - matters in the pipeline
- Revoke the Kraninger Policy Statement on Abusive Acts or Practices (Jan. 24, 2020)
- Use of full UDAAP authorities
- Civil money penalties





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# A Brief Look at the State Regulatory Outlook

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# State Developments: Impact of Licensing, New Mini-CFPBs, Enforcement, Rate Caps

- State-driven initiative to streamline multistate licensing and supervision for nonbanks
  - Multistate Money Services Business Licensing Agreement – reducing burdens?
  - NMLS Enhancements
  - Joint CFPB/State Exams
  - One Company, One Exam Model?
- COVID-19 Response
- Mini-CFPB Model: CA Department of Financial Protection and Innovation
- State Usury Laws + Bank Partnership Models
- State Attorneys General

The image shows a screenshot of the Department of Financial Protection and Innovation (DFPI) website's Press Releases page. The page header includes the DFPI logo and navigation links: About, File a Complaint, Licensees, Publications, Search, and Contact Us. Below the header, the word "RELEASES" is displayed in large, white, block letters on a dark background. The main content area lists several press releases with their titles and dates. A sample press release document is also shown on the right side of the screenshot, featuring the State of California seal and the text of a press release dated January 19, 2021, regarding an investigation into multiple debt collectors.

**DFPI** DEPARTMENT OF FINANCIAL PROTECTION & INNOVATION

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## RELEASES

### Press Releases

**Under Expanded Consumer Protection Authority, the DFPI Launches Investigation into Multiple Debt Collectors**  
The California Department of Financial Protection and Innovation today announced an investigation into multiple debt collectors. Read more...

**California Consumer Financial Protection Law in Effect, DFPI Better Prepared to Protect Consumers and Foster Financial Innovation**  
January 4, 2021. With the California Consumer Financial Protection Law in effect, the DFPI will exercise expanded powers to better protect consumers. Read more...

**DFPI Joins \$88 Million Multi-State Settlement with Nationstar Mortgage**  
December 7, 2020, the Department of Financial Protection and Innovation (DFPI) joins in a \$88 million multi-state settlement with Nationstar Mortgage LLC. Read more...

**Department of Financial Protection and Innovation Secures Reimbursements for Victims of Eco Tech PACE Fraud**  
November 2, 2020  
SAN FRANCISCO – The Department of Financial Protection and Innovation (DFPI) has helped 22 California homeowners receive financial reimbursements and remove property tax liens ...

**Stronger Financial Protections on the way for California Consumers**  
September 25, 2020  
With Governor Gavin Newsom's signing of AB 1864, the California's Department of Business Oversight (DBO)

STATE OF CALIFORNIA  
Department of Financial Protection and Innovation  
GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

For Immediate Release  
January 19, 2021

Contact: Mark Leyes  
(916) 576-4984

**Under Expanded Consumer Protection Authority, the DFPI Launches Investigation into Multiple Debt Collectors**

SACRAMENTO – The California Department of Financial Protection and Innovation (DFPI) today announced an investigation into multiple debt collectors potentially engaged in unlawful, unfair, deceptive, or abusive debt collection practices in California based on consumer complaints. The DFPI is issuing subpoenas to a dozen companies with significant California customer bases, representing the first major action to be taken under the expanded oversight and enforcement authority of the California Consumer Financial Protection Law (CCFPL).

The new law, which went into effect Jan. 1, 2021, allows the DFPI to oversee previously unregulated financial products and services and enforce laws prohibiting financial service providers from using unlawful, unfair, deceptive, and abusive practices.

"We take our expanded responsibility very seriously and are moving swiftly to ensure debt collectors do not violate the rights of California consumers," said DFPI Commissioner Manuel P. Alvarez.

Subpoenas were issued to the following companies: Portfolio Recovery Associates, LLC; Encore Capital Group; Midland Credit Management, Inc.; Midland Funding, LLC; Atlantic Credit and Finance, Inc.; Enhanced Recovery Company LLC; Reurgent HP LLC and LNVV Funding LLC; IC System, Inc.; The Offices of Morgan and Moss; Convergent Outsourcing, Inc.; Spectrum Billing Services; and Monterey Financial Services LLC. Responses to the DFPI's subpoenas are due in mid-February.

The subpoenas request documents illuminating how the companies collect debts and communicate with consumers. Both California and federal laws prohibit debt collectors from calling repeatedly over a short period of time to annoy or harass, threatening harm, calling at inconvenient or unusual times, or attempting to collect on a debt that a consumer does not owe.

Consumers from around the country have filed complaints against the debt collectors under investigation by the DFPI. Among other things, consumers allege that these debt collectors call repeatedly, fail to validate debts, and threaten to sue the consumers for debts they do not owe.

The new Debt Collection Licensing Act or SB 908 requires California debt collectors and buyers to apply for a license from DFPI by Dec. 31, 2021. It will also give consumers a single location to check whether companies are licensed, and whether they have been subject to any enforcement actions, including license suspensions or revocations.

The DFPI will begin accepting applications for debt collector licenses in the late summer or early fall of 2021. The DFPI expects to review those applications and begin issuing licenses in 2022 and 2023.

The DFPI licenses and regulates financial products and services, including state-chartered banks and

CFPB and State Regulators Provide Additional Guidance to Assist Borrowers Impacted by the COVID-19 Pandemic

JUN 04, 2020

# Mini-CFPB: California

- Former California Department of Business Oversight division now California Department of Financial Protection and Innovation (DFPI)
  - Led by Manuel Alvarez, former CFPB enforcement attorney
  - Heavily modeled after CFPB
- Mission statement for DFPI:
  - License and examine new consumer financial industry areas, in part via new authority over debt collectors, credit reporting agencies, and fintech companies.
  - Research market developments of consumer financial products and services to support evidence-based policies.
  - Offer consumer services targeting financial empowerment and education for older Americans, students, military service members, and recent immigrants.
  - Prevent unfair, deceptive, and abusive practices by examining, investigating, and supervising unregulated products to protect California consumers.

## Mini-CFPB: New York

- New York's Department of Financial Services (NYDFS) created a new "Consumer Protection and Financial Enforcement Division" by merging its Enforcement & Financial Frauds and Consumer Protection Divisions.
- New York Governor Andrew Cuomo has also proposed legislative changes that would give DFS additional authority to require debt collectors operating in the state to apply for a license, which DFS could revoke for improper conduct. The legislative proposal would also codify under New York law a Federal Trade Commission rule prohibiting confessions of judgment.
- The proposed legislation would bring any activity subject to CFPB enforcement within the purview of DFS supervision and enforcement.



## Mini-CFPB: Other States

- New Jersey: In 2018, the governor appointed new leadership to the Division of Consumer Affairs, the lead state agency charged with enforcing the state Consumer Fraud Act and overseeing numerous state licensing boards, as part of ongoing state efforts to create a “state-level CFPB.”
- Maryland: The Maryland legislature passed the Maryland Financial Consumer Protection Act of 2018 to expand the preexisting Maryland Consumer Protection Act to include “abusive” trade practices, increase civil penalties of the MCPA, and establish a Student Loan Ombudsman within the Office of the Commissioner of Financial Regulation. The statute also requires appropriation of at least \$1 million for the purpose of enforcing consumer protection laws.
- Pennsylvania: In 2017, Attorney General Josh Shapiro formed a Bureau of Consumer Protection within the PA AG’s office, led by CFPB alum Nicholas Smyth.
- Virginia: In 2016, Attorney General Mark Herring added a predatory lending enforcement unit to the AG Office’s Consumer Protection Unit to investigate violations of state and federal consumer lending statutes, including those relating to payday loans, consumer finance loans, and online loans.



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# Questions and Closing Observations

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Stay tuned for the CLE Code for today's session

# View from our Panelists



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**Stay tuned for the CLE Code for today's session**



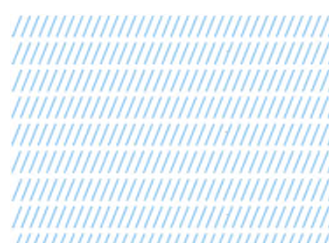
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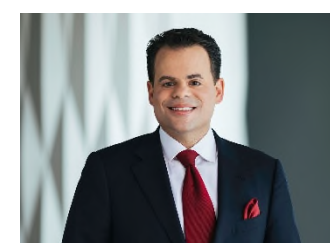
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