

# Presidential Election: Impact of the 2025 Election on Regulatory Compliance

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PRESENTED BY

John Zasada, JD / CAMS  
Principal, Financial Institutions Group  
Doeren Mayhew Advisors, LLC

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## Bio



### John Zasada, JD, CAMS - Principal

- Over 30 years of financial institution compliance experience
- Created first nationwide credit union compliance consulting practice
- Assist hundreds of financial institutions to improve their regulatory compliance performance
- Trained NCUA and state examiners on consumer compliance
- Lead Doeren Mayhew's national compliance practice
- Perform ongoing compliance reviews of financial institution websites, social media and advertising

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## Compliance Practice

- Assist financial institutions nationwide with regulatory compliance
- Compliance Advantage Program
- BSA Independent Testing
- BSA/AML data validation
- Fair Lending Testing
- Fair Lending Risk Assessment
- Targeted Testing
- Website and Social Media Testing

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## Biden to Trump

- Based on what we have heard and read, the CFPB is on life support
  - CFPB writes the rules and sets the tone
- Tsunami to black hole
- CFPB budget cut by 70%
- CFPB staff slashed by 90%
- Enforcement actions stopped, new regulations dropped, and guidance rescinded
- Does regulatory compliance even matter anymore?

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## Bucket Full of Scorpions

- Regulatory risk has spread and become more fractured and complex
- Scorpion
- Filling the gaps left by the CFPB
- State agencies
- State AG offices
- Law firms
- Private actions

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## Compliance Uncertainty

- When one arm of our government acts in keeping with the old approach, another arm of the government or private group sues them
- Endless court appeals regarding the legality of rules
- CFPB dropping court cases it was previously leading or being involved in
- Next administration
- Current cycle has led to chaos and uncertainty for compliance professionals, and compliance professionals do not thrive in periods of uncertainty
- But as the year goes on, some things are becoming clearer

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## Townstone and Tale of Two CFPBs

- Townstone Financial is a small mortgage lender in Chicago
- Townstone generated up to 90% of its mortgage-loan applications from **radio advertising, including a weekly radio show and podcasts**
- Townstone’s website and the radio show described the hosts as “Chicago real-estate experts”
- “This show is brought to you by Townstone Financial, **the home-loan expert since 2002**. Townstone Financial is an Indiana, Michigan, Wisconsin, Florida, Illinois mortgage licensee 6629, NMLS 136639. **Remember no one values your mortgage business more than Townstone Financial.**”

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## Language Used

- Show guests and hosts, including the CEO, described Chicago’s South Side as a “jungle” and a “war zone” that became a “hoodlum” hive on weekends
- Hosts discussed a Jewel grocery store in downtown Chicago. Townstone’s CEO explained “We used to call it Jungle Jewel. There were people from all over the world going into that Jewel. It was packed. It was a scary place.”
- Townstone’s president stated, “it’s a great time to buy, it’s a great time to rent, it’s a great time to sell.” He and co-hosts then gave advice on how to get a home ready for sale, which included “change the light fixtures,” “paint it from top to bottom,” and “take down the Confederate flag.”

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## Chicago a War Zone

- CEO stated that the South Side of Chicago between Friday and Monday is “hoodlum weekend” and that the police are “the only ones between that turning into a real war zone and keeping it where it’s kind of at.”
- Townstone’s senior loan officer discussed a recent skydiving experience and the ensuing “rush” from the jump; Townstone’s vice-president responded that he thought skydiving was crazy and suggested that “walking through the South Side at 3AM [would] get the same rush.”

## Get a Better Job

- Caller from Markham, Illinois, asked how he and his wife could improve their credit scores. Markham’s population is 80.3% African-American
- Townstone President responded that the caller’s wife “probably doesn’t have good credit because she’s a woman,” and that “[you’ve] got to keep those women in line over there in Markham.”
- Closed the segment by telling the caller to “stop spending freaking money [on his wife] and tell her to get a better job.”

## Comments Triggered #s?

- Townstone drew less than 1% of its applications for mortgage loans for properties in high African-American census tracts from 2014 through 2017 while other similar lenders drew over 5% of their applications from the same areas
- From 2014 through 2017, only 1.4% of applications came from African-Americans in Chicago while other mortgage lenders in Chicago drew 9.8% of applications from African-American applicants

## Biden's CFPB Settlement

- \$105,000 settlement in late 2024
- “Totality of Townstone’s statements, acts, and practices described herein constitute **redlining** of African-American neighborhoods in the Chicago MSA and discouragement on the basis of race.
- Townstone’s statements, acts, and practices directed at prospective applicants are intended **to discourage prospective applicants on the basis of their race or the racial composition of their neighborhoods**, or have the effect of discouraging on such bases, African Americans and prospective applicants seeking credit to purchase homes in majority-African-American neighborhoods in the Chicago MSA from obtaining mortgage loans.”

## Trump's CFPB Take

- “CFPB made their life hell”
- Townstone was targeted because it was a small firm with less than 10 employees and had a radio show that touched on political topics, making it easy for the CFPB to bully
- CFPB targeted Townstone not based on any act of discriminatory conduct, but solely on perceived racial disparities in mortgage application and origination statistics
- CFPB wanted a de-facto mortgage quota
- It was a “redlining screen” based on an arbitrary number of mortgages

## Audio Mining

- CFPB used an audio mining software to search Townstone's radio show and podcasts finding that they engaged in political speech critical of the CFPB
- CFPB identified 16 minutes out of nearly 79 hours of radio content (.33%) that they deemed “disconcerting” and that “could be interpreted as inappropriate, incorrect, or insensitive.”

## No Offense Taken

- In a survey of black respondents conducted by a consumer testing firm paid for by Townstone, no one took offense to Townstone's radio show
- One respondent even said that Townstone's comments on crime were "reliable and helpful."
- Biden's CFPB lawyers wrote in an internal memo that Townstone could be penalized \$28,906 per day for four years, a total of \$42,202,760 for alleged violations of civil rights law
- "All for 16 minutes of radio banter that were not racial in nature"

## Trump's CFPB to Undo the Settlement

- On March 26, 2025, in its first press release since February 3, 2025, the CFPB announced that its Acting Director, Russ Vought, wants to vacate the settlement the CFPB reached Town with Townstone Financial in 2024
- "CFPB abused its power, used radical 'equity' arguments to tag Townstone as racist with zero evidence, and spent years persecuting and extorting them – all to further the goal of mandating DEI in lending via their regulation by enforcement tactics. The more we uncover at CFPB, the more we see how this agency was weaponized against targeted Americans," said Vought
- CFPB is seeking to return the \$105,000 Townstone was forced to pay



## CFPB Was Firing on all Cylinders

- Regulatory Tsunami
- Since the Supreme Court upheld the CFPB's constitutionality in 2024, a notably stronger stance was taken by the CFPB
- According to the CFPB, it was behind in its enforcement actions due to the months spent waiting for the Supreme Court to issue its ruling
- Chopra said after the Supreme Court ruling that the agency "will be firing on all cylinders"
- And fire they did

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## CFPB Even Took Action Against Credit Unions

- Only has ever happened three times, but twice at the end of 2024
- 1st time - In 2016 Navy Federal Credit Union had to pay \$28.5 million for improper debt collection practices
- 2nd time - October 2024 VyStar Credit Union must pay a \$1.5 million civil fine and refund fees to members for UDAAP issues related to the roll-out of its new online and mobile banking system in 2022
- 3rd time - November 2024 Navy Federal Credit Union had to pay \$95 million for "charging illegal overdraft fees" related to APSN and delayed peer-to-peer payments with undisclosed processing times

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## Heavy Hitters Oppose CFPB's Actions and Attitude

- At the October 2024 ABA conference, Jamie Dimon, CEO of the biggest bank in the U.S., called the recent CFPB proposals, including the open banking rule, an onslaught and said the industry is ready to push back in court:

“It's time to fight back,  
I've had it with this sh\*t.

We don't want to get involved in litigation just to make a point, but I think if you're in a knife fight, you'd better damn well bring a knife.”

## Elections Have Consequences

- Pendulum swung more violently than ever before
- Republicans hold White House, Senate and House of Representative
- We knew CFPB changes were coming, although candidate Trump did not share in any great detail plans for the CFPB during the campaign
- Department of Government Efficiency (DOGE) called for deleting the CFPB
- Remember – the CFPB remained intact through the first Trump term

## Past is Prologue for Enforcement Actions?

- We knew it was not as simple as Trump 2.0 meant less compliance
- Number of enforcement actions under Trump was about the same as under Obama
- During first Trump term, the CFPB issued 114 enforcement actions, while during the Biden term, the CFPB issued only 101 enforcement actions
- However, the average penalty was less
- Fair lending compliance enforcement did not slow down during his first administration

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## Many Aspects of Compliance Still Challenging

- The election brought changes not all favorable to the financial institution lobby
- Elizabeth Warren is now the ranking democrat on the Senate Banking Committee
- Some Republicans are worked up about junk fees as much as democrats
  - Just because the party in control has changed, the focus on fees may not be totally subsiding
- During first Trump term, CFPB still went after redlining and unfair practices, so even in a deregulatory administration some compliance areas are still in focus
- Caution – an exam finding today can be the basis of an enforcement action under the next administration's CFPB
- Some experts say consumer protection is non-partisan

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## Four CFPB Directors in Four Weeks

- Trump election guaranteed a new CFPB director would be appointed
- And then we got four different CFPB directors in four weeks...
- Always a lot of activity at the beginning and ending of administrations
  - First and last weeks always the busiest
- February 3, 2025, President designated Treasury Secretary Scott Bessent as acting director #1 of the CFPB
- Bessent instituted an immediate about-face
- CFPB on hiatus – not unusual under new administration
- Eventual “minimalization” of CFPB

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## Vought Acting Director #2 of CFPB

- On February 7, 2025, Russell Vought was named acting director of the CFPB
- Vought is the director of the Office of Management and Budget
- Vought is also the former vice president of the Heritage Action for America, the sister organization of the foundation responsible for the policy blueprint, Project 2025, the Heritage Foundation
  - Proponent of merging different regulators into one agency
- President Trump has said Vought “knows exactly how to dismantle the Deep State and end Weaponized Government, and he will help us return Self Governance to the People”
- Calls CFPB “Woke”

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## CFPB Ceases Operations

- CFPB employees were instructed to cease all supervision and examination activity and all stakeholder engagement, effectively stopping CFPB operations
- Vought notified the Federal Reserve that the CFPB “will not be taking its next draw of unappropriated funding because it is not ‘reasonably necessary’ to carry out its duties.”
- “The Bureau’s current balance of \$711.6 million is in fact excessive in the current fiscal environment”
- “This spigot, long contributing to CFPB’s unaccountability, is now being turned off”

## Jonathan McKernan Nominated as CFPB Director

- Previously served as an FDIC board director
- Seemed like a serious guy interested in institutions
- “Not the sort of guy who wants to run an agency with 5 guys and a phone”
- Vought is different and might want that
- Question was is Vought the main agency driver or McKernan?

## CFPB Back Online

- During his confirmation hearing before the Senate Banking Committee, McKernan stated that the CFPB would “implement and enforce the federal consumer financial laws and perform each of its other statutorily assigned functions.”
- “It’s clear that the CFPB suffers from a crisis of legitimacy. This must be corrected if the CFPB is to reliably do what it’s supposed to do, look out for the American consumer. To that noble end, the CFPB needs to be made accountable to our elected officials and its past excesses need to come to an end.”
- As of May 2025, it appears the CFPB’s funding will be decreased by 70%

## McKernan Out

- On May 9, President withdraws McKernan as CFPB director nominee
- McKernan to serve as under secretary of domestic finance
- Temporary director back to Russell Vought
- Possible that McKernan could fill both rolls?

## Democrats Not Giving Up

- More than 185 Democrats in the House and Senate wrote a letter to Vought urging the administration to restore the CFPB's enforcement and supervisory powers
- Accused the administration of an incursion into the CFPB by closing the CFPB building and ordered all work be halted
- Expressed significant concern that on February 6 employees of Elon Musk entered the CFPB building on requested access to sensitive CFPB information
- Stated that it raises uncomfortable questions if Musk's company X launches a long-rumored payments system, because the CFPB has data on competitor payment systems

## Groups Suing CFPB to Keep it Functioning

- On February 12, the mayor of Baltimore and the city council sued the CFPB, asking a judge to make them keep it open
- “Without [the] CFPB, people in Baltimore would be more at risk of being tricked and trapped by shady financial practices, and the city would be forced to divert resources from other essential functions just to provide the same level of protection that residents enjoy now,” according to the city of Baltimore

## Judge Prohibits Dismantling the CFPB

- March 28, 2025, injunction by Judge Amy Berman Jackson stopped the Trump administration from firing employees without cause and orders to the CFPB to resume work
- Judge is worried that the CFPB would be dismantled but for the injunction and dismantled in such a way that it would be impossible to rebuild

## April 16 Memo to CFPB Staff from CLO

- 2025 exam and supervision priorities sent to staff
  - **Fewer Supervisory Exams**
    - CFPB decreasing by 50% the overall number of supervisory exams
  - **Focus Back on Depository Institutions**
    - CFPB shifting its focus back to depository institutions
    - In 2012, 70% of the CFPB's supervision focused on depository institutions
    - In 2024, over 60% of exams were performed on nonbanks
    - CFPB will go back to old proportions and focus on largest depository institutions



## Focus on Mortgage Compliance

- Focus on actual fraud against consumers, with particular emphasis on:
  - Mortgages (highest priority)
    - Add a Real Estate Lending Compliance Officer?
  - FCRA/Reg V related to data furnishing violations
  - Fraudulent overcharges and fees
- Won't focus on matters based on the perception that consumers made "wrong" choices

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## Duplicative Exams

- Eliminate duplicative supervision and coordinate exam timing with other federal regulators and state agencies

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## Fair Lending Focus

- Pursue matters with proven actual intentional racial discrimination and actual identified victims
- Will not engage in redlining or bias assessment supervision based solely on statistical evidence
- Will not issue enforcement orders based on stray remarks that may be susceptible to adverse inferences – remember Townstone

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## Disparate Impact Executive Order

- DI - a policy or practice, although neutral on its face, disproportionately affects a protected group (such as race, gender, or age) in a negative way, even if there was no intent to discriminate
- April 23, 2025, EO aligns with CFPB Supervisory Priorities in eliminating DI
- Equality of opportunity, not equal outcomes
- Deprioritize enforcement of statutes and regulations if they include disparate impact liability
- Review all pending investigations, lawsuits, and ongoing matters relying on disparate impact
- Will the federal CU/banking regulators follow this order?

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## Staff for Supervisory Priorities?

- On April 17<sup>th</sup> the CFPB continued with its reduction-in-force plans, with 90% of the CFPB's staff receiving lay-off notices
- 1,483 out of 1,700
- Leaves about 200 employees to carry out the priorities
- In a declaration filed in U.S. District Court on Friday, CFPB 's chief legal officer **Mark Paoletta stated:**
  - "An approximately 200 person agency allows the Bureau to fulfill its statutory duties and better aligns with the new leadership's priorities and management philosophy."
- A federal judge then temporarily barred the reduction-in-force from happening

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## Don't Let Up

- Compliance is not paused
- The obligation to comply continues until rules are rescinded, and that takes an act of Congress, which is unlikely
- Don't immediately reduce inherent risk because of CFPB happenings, as there are several other things to consider
- Civil liability provisions often provide for a private right of action for compliance violations
- Agencies look back 3-5 years in determining penalties based on past violations
  - Redlining cases can look back 10 years

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## Some Areas of Compliance Harder

- March 11, 2025, FinCEN Geographic Targeting Order (GTO) example
- Requires MSBs (check cashing, sell money orders) near the southwest border in CA and TX to file CTRs for cash transactions above \$200
  - Instead of at standard \$10,000 threshold
- Purpose is to combat illicit activities and money laundering on Mexico-based cartels and other criminal actors
- You might have MSBs as members and need to perform due diligence to verify CTRs are being filed correctly
- Also, individuals trying to evade this lower MSB reporting threshold might seek to avoid detection by using credit unions instead

## States Fill the Vacuum

- State regulators and AGs historically step in and fill perceived gaps during periods of federal pullback, resulting in a more fragmented and complicated compliance landscape
- Where the CFPB retreated during the first Trump administration, some states tried to fill the gap
  - NJ went from 20 enforcement attorneys to 150
- State's controlled by Democrats created state-level consumer protection bureaus, mini CFPBs, to protect consumers because they felt the Republican-controlled CFPB was not doing so

## States have been Preparing

- As far back as November 2024, some state AG offices have been strategizing and planning and preparing for administration change
- What AGs are saying is consistent with what AGs said back in 2016
- Coordination of multi state AG actions
  - Blueprint set in first Trump term
- Already seeing more involvement by state AGs as less enforcement by CFPB expected

## CFPB Provides Playbook

- CFPB released state action playbook on January 14, just before start of new regime – “Strengthening State Level Consumer Protections”
  - Guide to how to build consumer protection programs
- Compendium of Recent CFPB Guidance
- Intended by CFPB to provide “...clarification on the best interpretations of the federal consumer financial laws for those tasked with enforcing them, as well as the courts.”
- Did the old CFPB know what was coming?

## NY Regulatory Example

- “We’re hiring” - Adrienne A. Harris, NY State Superintendent of the Department of Financial Services (DFS), said during a presentation on March 12 at the Brookings Institution
- She delivered a message to financial services professionals, “We welcome you”
- Harris said the NYDFS has taken 111 enforcement actions since January 2022
- On March 13 the DFS announced that it was hiring former CFPB Deputy Enforcement Director Gabriel O’Malley to head the DFS’s Consumer Protection and Financial Enforcement Division.
- O’Malley worked at the CFPB for more than 10 years and left in February

## NY Legislation Example

- On January 22, 2025, NY State proposed “enhancing consumer protections against unfair overdraft fees”. Amongst the proposed prohibitions:
  - Charging overdraft fees on overdrafts of less than \$20
  - Charging overdraft fees that exceed the overdrawn amount
  - Charging more than three overdraft or non-sufficient funds (“NSF”) fees per consumer account per day
  - Charging NSF fees for instantaneously declined electronic transactions.

## Pennsylvania Expands Consumer Protection Focus

- Pennsylvania Governor Josh Shapiro launched a new, centralized consumer protection hotline, website, and email address
- Part of an initiative to protect Pennsylvania consumers and fill the void left by what it deems as weakened federal consumer protections
- The governor said the state is **expanding its focus on consumer protection using the enforcement authority granted to states under the Dodd-Frank Act, allowing state regulators to enforce federal consumer protection laws when federal agencies fail to act, or to work with federal agencies in enforcement activities**

## NJ Fair Lending Action

- State issued Finding of Probable Cause of fair lending violations against lender, Advance Funding – mediation and possible prosecution next
- Maintained a policy of refusing to lend to prospective clients based on race, national origin, and nationality.
- **Owner instructed sales staff not to do business with “Chinese, African, and Spanish” prospective clients.**
- **Owner expressly told them “no Chinese, no Africans, no Spanish,” and told them not to “waste your time with the Chinese, with the Africans, and Spanish.”**

## Ultimately Fewer Rules

- Not proposing new rules or issuing any guidance while this freeze is in effect
- Term “smart regulation” being bandied about
- Recently issued rules being closely looked at and perhaps rescinded or significantly changed
- Small business data collection rule (court of appeals paused rule, CFPB says it will issue a new proposed rule to change/replace final rule, CFPB said they will not enforce compliance with the rule)

## 10 for 1

- “10-for-1” deregulation initiative
- January 31 order by President Trump mandated that for every new regulation proposed the agencies eliminate at least 10 existing regulations
- Emphasized that the total incremental regulatory cost for fiscal year 2025 should be “significantly less than zero.”



## Regulation by Enforcement Action Over For Now

- Back in 2016 former CFPB Director Richard Cordray was promoting the idea of regulation by enforcement actions
- He stated that CFPB enforcement actions “... provide detailed guidance for compliance officers across the marketplace about how they should regard similar practices at their own institutions.”
- He even indicated that it was compliance malpractice for financial institution senior management to not consider enforcement actions when analyzing how to comply with consumer protection laws

## Turned the Corner Away From This

- NCUA Chair Hauptman’s take - protect Americans from regulation-by-enforcement action
- Most credit unions do not have the bandwidth to track, analyze, and discern the change every enforcement action is supposed to dispel
- And even if a credit union does have the time and resources, the lessons gleaned from enforcement actions are specific to the facts of that situation
- Would regulations not be a better avenue to instruct financial institutions on what they can and cannot do, instead of the guesswork involved in regulation by enforcement order?

## Enforcement Changes Impact

- Enforcement actions might less frequently name individual management/officers
- Current investigations and pending lawsuits are being reviewed and analyzed
- On April 24, 2025, withdrew previously filed statement of interest in a lawsuit brought by New York AG against Citibank supporting expanding Reg E in relation to wire transfers, which would functionally amend Regulation E
- On April 11, 2025, dropped suit against Comerica Bank, which alleged that Comerica deliberately charged illegal ATM fees to over 1 million cardholders and mishandled fraud complaints

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## Self-Identify and Remediate

- Lawyers suggesting financial institutions self-identify and remediate violations and will escape enforcement as a result under new CFPB
  - Expectation that CFPB will be more transparent and communicative

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## UDAAP

- CFPB will not keep pushing for more meaning and definition around UDAAP
- Less UDAAP guidance and circulars issued
- Chopra – disclosures are useless
- **New CFPB view that Reg Z is a disclosure rule and not a price setting rule**
- **However, mortgage origination “junk fees” might come up under Trump as some Republicans have come out against it**

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## Guidance Rescinded

- May 12<sup>th</sup> the CFPB rescinded 67 guidance documents
- Less litigation risk based on UDAAP and non-technical compliance violations
- The guidance documents go back to 2011
- The list includes eight policy statements, seven interpretive rules, 13 advisory opinions, and 39 documents described as “other guidance”

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## Junk Fees (also known as Legally Permitted Fees) were in the CFPB Crosshairs

- “A junk fee is whatever fee Director Chopra does not like”
  - Courtesy Pay Fees
  - Returned Deposit Fees
  - Representment Fees
  - NSF Fees
  - Authorize Positive Settle Negative (Navy Federal Credit Union \$95 million penalty)

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## NCUA Issues Letter to Credit Unions on Junk Fees

- December 2024 letter highlights NCUA’s concerns regarding overdrafts/junk fees
- NCUA most concerned about credit unions charging overdraft and NSF fees when a member cannot reasonably anticipate and prevent the fee from being charged:
  - APSN
  - Representment fees
  - NSF fees
  - High or no daily limits on the number of fees assessed
  - Insufficient or inaccurate fee disclosures
  - Ordering transactions to maximize fees

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## Reoccurring NCUA Comment on Junk Fees

- “Overdraft programs policies, procedures, controls, and disclosures that expose credit unions to potential reputational, consumer compliance, third-party risk, and exposure to litigation are a concern for the NCUA. You are encouraged to closely review all aspects of your overdraft fee practices, review recent regulatory developments regarding overdraft programs and unanticipated fees, and take appropriate action to mitigate any risks. Oversight of overdraft programs may include seeking legal counsel to determine consumer compliance risk and responsibilities.”

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## \$2 Million Reasons to Care

- Why does this matter?
- Eliminating these fees has real consequences
- Some credit unions lost millions of \$ in fee income when they moved away from these fees

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## Plaintiff Attorneys Still Seeking Clients

- If you have junk fees, PAs are still looking for plaintiffs to file suits
  - Texas CU example on representment fees
- Members generally not reaching out to PAs
- PAs reach out to members via social media
- A lot more than in past years
- Smaller credit unions getting hit with lawsuits. “Oh, I am a small credit union” defense not working
- Junk fees lawsuits have targeted fees assessed back to 2018, even though agencies did not bring this up as an issue until 2022

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## Advertising “As Low As” Rates

- On Oct. 7, 2024, the CFPB released Supervisory Highlights: Auto Finance Special Edition, Issue 35 (Fall 2024)
- Subprime loan originators engaged in deceptive practices by mailing prescreened as marketing “as low as” APR rates to consumers who in fact had no reasonable chance of qualifying for or being offered rates at or near that level
- The lowest interest rate offered to consumers by the servicers was more than twice the advertised rate

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## Takeaways

- Auto loan companies were ordered to stop advertising specified "as low as" rates to consumers who have no reasonable chance of qualifying for or being offered rates at or near that level
- Must have a reasonable chance of obtaining the "as low as rate"
- Carefully consider advertisements and promotions that include "as low as" rates
- Analyze beforehand the probability of the target audience obtaining these rates and consider whether they have a reasonable chance of obtaining the "as low as" rates

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## Capping CC Rates at 10%

- During campaign, Trump threw out idea of capping credit card interest rates at 10%
- Might evidence Trump's interest in reducing costs to consumers, including "junk fees"?
- Or was Trump's populist stance on credit card interest rate just a political move during the campaign?

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## Legislation Introduced to Cap CC Rates

- On February 4, 2025, Sens. Bernie Sanders (I-VT) and Josh Hawley (R-MO) introduced bipartisan legislation to cap credit card interest rates at 10%
- Two possibilities
  - Issuers can maintain existing balances at existing rates subject to current rules, but new balances and new accounts must be set at the lower rate
  - Issuers are obligated to immediately reduce rates on existing balances
- Included in the one big beautiful bill act

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## Preparation for Exams Going Forward

- Focus on complying with technical requirements
  - TRID
  - Fair Lending
  - Reg. E Error Resolution
- Demonstrate a strong CMP
- Utilize a current compliance risk assessment
- Review website and ads for trigger terms, deceptive information

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## Eliminate NCUA?

- Banking lobby wants NCUA eliminated
- Idea floated of FDIC and NCUA merging
- Or NCUA strictly an insurer?
- Difficult to effectuate
  - The elimination or combining bank/credit union regulators requires congressional approval
  - Republican control of Congress is thin
  - Low on list of Trump priorities and probably not worth the uphill battle
  - Take years to merge administratively
  - Not interested in disrupting the financial system

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## Bessent Opposes Consolidating Agencies

- Treasury Secretary Scott Bessent has indicated he is not in favor of consolidating federal financial regulators
- "We need our financial regulators singing in unison from the same song sheet. To be clear, this does not mean consolidation of agencies, but coordination via Treasury, such that our regulators work in parallel with each other and industry"

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## NCUA Board

- President Trump selected Kyle Hauptman new NCUA Chair, replacing Todd Harper as chair
- Kyle Hauptman, a Republican and initially one of three NCUA Board members, served on Trump's transition team in 2016
- Appointed to NCUA Board by Trump

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## NCUA's New Direction?

- Immediate change in tone set by Hauptman
- Hauptman trying to take NCUA in a much different direction than Harper
- Ease up on compliance exams and pressure?
- His initial stated priorities indicates as such and it appears he is singing from the same hymnal as credit union trade groups
- 240 NCUA staff have left
- Hauptman says they are not going to do the cliché of “do more with less”
  - “We know we can't lose more than 200 employees and think we're going to have the same people do the same things in the same manner and at the same intervals.”

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## Hauptman Priorities

- When his appointment was announced, Hauptman shared the following priorities related to regulatory compliance:
  - “Right-sizing credit unions’ obligations where possible under the Bank Secrecy Act, including NCUA’s regulations surrounding Suspicious Activity Reports.
  - Codifying our procedures to protect Americans from regulation-by-enforcement. For example, **no enforcement action should ever set - even clarify - policy. In America and other free societies, the sequence is: set speed limits, then give speeding tickets (no one has any obligation to be aware of someone else’s ticket)”**
  - Focusing on true financial inclusion, which means removing barriers to de novo credit unions and **removing the ‘pain points’ that have led to fewer and fewer small credit unions. NCUA should be mindful that the only people who think compliance is easy are those that don’t have to do it.**

## Pivoting was not going to be easy, then...

- Although Hauptman is a Republican, the NCUA Board agenda was heavily influenced by the two Democrats on the Board
  - Harper faced same scenario when he became chair in 2021, but the other two board members were republicans
- Without another Republican as a second vote to pass rules, Hauptman was going to have to attempt to drive his agenda through Letters to Credit Unions and internal policy shifts rather than regulations
- **Then in April Todd Harper and Tanya Otsuka were fired from the board**
  - Filed lawsuits in April to be reinstated on the board
- Hauptman’s term on the board expires in 2025 and Trump will pick replacement

## NCUA (Harper's) 2025 Supervisory Priorities

- **Overdraft programs.** Examiners will continue a review of credit union overdraft programs, including policies, procedures, disclosures, fees, account statements, member complaints, internal reviews and websites.
- **Fair lending.** Examiners will assess policies and practices for identifying and mitigating potential discrimination in residential real estate valuation practices.
- **Home Mortgage Disclosure Act (HMDA) and Regulation C.** Examiners will evaluate compliance with HMDA data collection and reporting policies and practices, including transaction testing, for credit unions above the reporting threshold.
- **Military Lending Act.** Examiners will review compliance with the Military Lending Act requirements, including policies and procedures, compliance management systems, and checking and monitoring for military status.
- **Electronic Fund Transfer Act and Regulation E.** Examiners will assess policies and procedures related to payments and error resolution.

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## Takeaways

- Some regional directors saying they are following Harper's priorities
- Internally or externally test each of these areas before your next exam?
- No BSA?
- Harper's priorities much different than Hauptman's so focus on both?

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## BSA Changes?

- Secretary of Treasury pick least controversial
- BSA enforcement probably not changing much
- BOI/CDD rule might not be impacted by Trump administration

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## Open Banking Rule

- On Oct. 22, 2024, the CFPB issued a final rule implementing Section 1033 of the Dodd-Frank Act
- Grants consumers greater access rights to the data financial institutions hold
- Consumers can demand, download and transfer their financial data to another financial institution or financial services provider for free
- Makes it easier for consumers to shop around
- Hope is that this will spur more competition, better rates and lower the price of loans

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## Depends On Your Vantage Point

- Consumers - Encourage competition by allowing consumers to more easily transfer financial data

Or

- Financial Institutions - Permit third parties to profit from consumer data at the expense of financial institutions

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## Fate Was Up in the Air

- This rule is different than the others
- There is some bipartisan support of the open banking rule
- The CFPB has **optionality** regarding what they can do with the rule
- **Comment period extended 30 days**
- **Very interesting dynamic – FIs vs. Fintechs**

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## What Does it Require?

- Data providers (including credit unions and banks) must provide a right of access to covered data to authenticated consumers and third parties
- Access must be via electronic format that is transferrable to consumers and third parties and usable in a separate system (portability under privacy laws)
- Data providers cannot impose a fee or charge to consumers or third parties

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## Accounts Covered and Not Covered

- Covered
  - Checking accounts
  - Prepaid accounts
  - Credit cards
  - Digital wallets
- Not covered
  - Mortgages
  - Student loans
  - Auto loans

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## What is Covered Data?

- Transaction information, including historical transaction information
- Account balance information including information to initiate payment to or from a Regulation E account
- Terms and conditions of the account
- Upcoming bill payment information
- The name, address, email address and phone number of the associated with the account
- A truncated account number or other identifier for that account

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## Developer Interface and Policies and Procedures

- Financial institutions must build an interface through which the institution receives requests for covered data and makes available covered data to authorized third parties
- There are several requirements related to security, formatting and performance
- Develop written policies and procedures covering data availability, accuracy, data retention and requests for access

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## Public Information

- Make certain information readily identifiable to members of the public and available in both human-readable and machine-readable formats
- Information includes the financial institution's legal name, any assumed name, a link to its website, its LEI, contact information and documentation sufficient for a third party to electronically access covered data
- Each month the financial institution must disclose to the public information about its data interface's response rate to third party requests for covered data in the previous month

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## Credit Union Applicability

- Data showed nearly 90% of the nation's 4,594 credit unions would be exempt from the rule
- As of June 30, 24 there were:
  - 21 credit unions with more than \$10 billion in assets that would start reporting April 2027.
  - 131 credit unions with \$3 billion to less than \$10 billion that would start reporting April 2028.
  - 162 credit unions with \$1.5 billion to \$3 billion in assets that would start reporting April 2029.
  - 193 credit unions with \$850 million to \$1.5 billion in assets that would start reporting April 2030.
  - 4,087 credit unions with less than \$850 million in assets that are exempt.

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## Immediate Industry Criticism

- America's Credit Unions President
  - “From a few lines of text concerning consumer data portability in Dodd-Frank, the CFPB has spun a weighty rule intended to reengineer financial sector competition. **The rule demands that credit unions share, at no cost, information with Fintechs** and other third parties who receive permission from consumers. In doing so, **the CFPB reduces one of the most valuable assets of a financial institution, its data, to a commodity**, which will likely put even greater competitive pressure on credit unions to merge,” Nussle said.
  - **Financial institutions worry about the rule exposes them to liability if the third-party compromises data**

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## CFPB Rewriting the Rule?

- May 23, 2025, the CFPB announced it intends to rescind the rule
- According to a legal filing, the CFPB has “determined that the rule is unlawful and should be set aside.”
- Some experts believe the CFPB will rewrite it
- Might allow banks to charge fees for sharing data and limits their liability for breaches
- Could also expand the rule's scope, requiring the sharing of data on other financial products beyond deposit accounts and credit cards
- The first rule took 14 years to write. Does the much smaller CFPB even **have the bandwidth to rewrite it?**

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## Fair Lending and Artificial Intelligence (AI)

- AI is seeping into underwriting
- Algorithmic bias/discrimination
- AI could look at zip code, occupations – these could implicate prohibited bases
- Not much info being shared about algorithm in AI
- Financial institutions must review outcomes
- Perhaps have a manual overlay
- A positive is it reduces manual decision bias

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## AI Example

- Job applicant applied for a job
- System generated response that the employer was not moving forward with her application
- Resubmitted her application and changed her date of birth only
- She received message telling her she was eligible for an interview

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## CFPB and AI

- Over the years CFPB has generally taken a fairly flexible approach with respect to AI, but not as encouraging under Chopra
- Chopra said all regs apply to AI and emerging technologies
- But there was a negative undertone
- Chopra seemed skeptical of innovation
- New CFPB could reverse course and go so far as support/encourage the use of AI

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John Zasada, JD / CAMS  
Principal, Financial Institutions  
Group  
Doeren Mayhew Advisors, LLC  
zasada@doeren.com

# Thank you ▶▶

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