

PAUL HASTINGS

Running Through Second Base: Navigating the Current Landscape of Bank Regulation and Enforcement

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Agenda

1. Federal Regulator Update
2. State Update
3. Fraud and Payments
4. Digital Assets
5. Mortgage
6. FCRA
7. Other Hot Topics

CFPB or Not to Be?

Leadership and layoffs in limbo

Congress potentially drafting the Bureau's future

- Consumer Financial Protection Accountability and Reform Act of 2026: appropriations; dedicated Inspector General; narrowed UDAAP authority
- CID Reform Act: demands must cite specific facts; expanded grounds to challenge; six-year limitations period

A more narrow priority list

- Servicemembers and veterans, mortgages, credit reporting and furnishing, debt collection, fraudulent fees, and actual fraud with identifiable victims

Supervision recalibrated, not eliminated

- Examiners now read a “humility pledge” to open each exam
- Advance notice, narrower requests, shorter cycles
- Findings limited to pattern and practice with tangible harm

Strong focus on deregulation and rulemaking

- Guidance rescissions continue: 67 withdrawn in one May 2025 action, review ongoing
- 1071 scaled back; compliance pushed to January 2028
- 1033 open banking re-proposal; mortgage servicing streamlining; credit-card late fees under review

More limited enforcement under new principles?

- A card program's move to a new bank partner triggered overdraft, late, and insufficient-funds fees, which the company reimbursed after direct Bureau engagement rather than an enforcement action.

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Kinder, Gentler Examiners? Inside the OCC, FDIC, and FRB

Recalibrate what counts as a problem (OCC and FDIC joint rule)

- "Unsafe or unsound practice" now defined: conduct contrary to prudent operation that materially harms, or likely will harm, financial condition or present material risk of loss to the Deposit Insurance Fund
- Reputation risk unrelated to financial condition is excluded from the definition
- Final rule effective Nov. 2; failure to remediate an MRA is not itself unsafe or unsound
- Escalation, tailoring, focus: expectations scale with size and complexity
- Proposed: MRAs for legal violations limited to "substantive" violations; comments due Oct. 1
- FRB did not join in sponsoring the final rule; however, FRB previously called for examiners to prioritize material financial risks in examinations

Codify removal of reputation risk from supervision

- Respond to E.O. 14331, Guaranteeing Fair Banking for All Americans: targets politicized debanking
- Bar the agencies from criticizing or taking adverse action on reputation-risk grounds
- Bar directing a bank to close or deny accounts based on political, social, cultural, or religious views, protected speech, or lawful but disfavored business activities

The OCC remains aggressive on preemption

The States Step In

Why all banks should care?

- State laws of general application largely escape National Bank Act preemption
- ECOA expressly preserves greater state antidiscrimination protection
- Preemption of state escrow laws is unsettled and headed for the Supreme Court
- A pending NYAG action against a national bank has already survived dismissal

States are filling the federal void

- Legislatures enacting new consumer finance protections
- AGs bringing more state UDAP actions, including multistate coordination
- State financial regulators expanding supervisory and enforcement capacity

A decentralized enforcement ecosystem, not a single successor agency

- Former CFPB officials dispersing into state AG offices, state regulators, and cabinet-level posts
- Public-interest boutiques and advocacy organizations coordinating litigation
- No central authority; federal/state conflicting objectives

Divergence on discrimination theories

- Federal retreat: E.O. 14281 rejects disparate impact; Regulation B final rule strips it from the text and commentary
- Creditors remain liable under state antidiscrimination statutes
- Several states moving in the opposite direction: a split to manage in one compliance program

A Closer Look at Recent State Developments

California reorganization of consumer protection agencies

- Launch of the Business and Consumer Services Agency (BCSA) under former CFPB Director Rohit Chopra
- BCSA houses the DFPI and other consumer-protection boards and departments
- Target "harmful and corrupt practices that wrongfully raise costs for families and honest businesses"
- Announced plans to examine AI and chatbot deployments

New York rewrites its consumer protection statute

- FAIR Act, amending N.Y. Gen. Bus. Law Section 349, eff. Feb. 17, 2026
- First overhaul of Section 349 in 45 years: now reaches unfair and abusive practices, not just deception
- Unfairness borrowed from the FTC; abusiveness from the CFPA
- A law of general application; expanded powers run to the AG, not private plaintiffs

What the New York AG has already flagged

- Steering borrowers into unnecessarily costly loans/repayment options
- High-pressure tactics; obscured pricing and fees

Delaware amends Consumer Fraud Act

- Amending Consumer Fraud Act to clarify that use of "in connection with" should be interpreted to include unfair and deceptive acts and practices that occur before, during and after transaction
- Aligns statute with FTC Act and other states' UDAP laws

Fraud and Payments in Focus

Federal fraud enforcement is being centralized and coordinated

- New DOJ division for national fraud enforcement
- Focus on scam centers and cyber-enabled fraud (E.O. 14390)
- Task Force to Eliminate Fraud (E.O. 14395): federal benefits-focused
- Pending legislation would add a Treasury-led payment scams task force with industry seats

State enforcers are testing platform-level fraud liability

- Theory targets the design, operation, monitoring, and marketing of a payment platform
- A recent state court ruling let such claims past the pleading stage, filed after the federal agency dropped its own case
- Reaches authorized payment fraud, and could extend to other real-time systems, digital wallets, and bank instant payments
- A multistate settlement with a payment app shows the practical outgrowth of this focus on platform responsibility

Enforcement is migrating from payments law to unfair practices theories

- EFTA and TILA do not address evolving fraud and technology patterns
- Expect general fraud and UDAAP claims instead

Does the EFTA cover wire fraud?

- District court: a fraudulent payment order debiting a consumer account is not categorically excluded from the EFTA
- Bank argues the wire exclusion applies end-to-end
- On interlocutory appeal to Second Circuit

Stablecoins: the Framework Arrives, But the Gaps Remain

The federal framework: GENIUS Act

- Federal and state paths to becoming a permitted payment stablecoin issuer
- Full 1:1 reserve backing with high-quality liquid assets
- Carve-out from “security” and “commodity” definitions
- Issuers prohibited from paying yield

Consumer protections: real, but prudential in character

- Clear redemption procedures; monthly reserve disclosures and published fee schedules
- Anti-tying restrictions
- Bars deceptive names, marketing, and misrepresentation of insured status
- Built as a prudential and structural statute, not a consumer protection framework

Implementation in the works

- OCC, FDIC, and FRB rulemakings covering activities, yield prohibition, reserves, redemption, risk management, audits, supervision

Mark your calendar

- Act takes effect the earlier of 18 months after enactment (January 18, 2027) or 120 days after final rules

The yield loophole, still unsettled

- Statutory ban reaches issuers — arguably not affiliates, exchanges, or platforms
- Proposals presume violation where yield flows through affiliates or related third parties
- Final version of Clarity Act prohibits yield for holding stablecoin, but permits rewards tied to actual payment activity; Senate vote scheduled

Does the EFTA apply?

- Whether stablecoins are “funds” under EFTA and Reg E remains open
- Proposed interpretive rule answering yes was withdrawn
- Limited district court authority suggests EFTA can reach digital assets

State law and UDAAP exposure survive intact

- Act expressly preserves federal consumer financial law and state consumer protection law
- State UDAP, mini-EFTAs, anti-discrimination, and privacy laws all remain available
- Heightened UDAAP risk: unfamiliar product, unfamiliar technology

Tokenized Deposits: Blockchain Without Leaving the Bank

What they are — and how they differ from stablecoins

- Bank deposits recorded on blockchain platforms, moving instantly and programmatically
- Remain a claim on the issuing bank
- A stablecoin is a claim on an issuer's reserves

Regulators are treating them as ordinary deposits

- Prudential regulators generally applying existing deposit treatment
- GENIUS Act excludes deposits from the payment stablecoin definition
- FDIC proposal would confirm insured status for tokenized deposits meeting the statutory definition

The business case

- Instant settlement and around-the-clock transfers
- Blockchain speed and programmability without leaving the regulated perimeter
- Backed by existing supervision and customer protections

The operational limits

- Restricted reach outside a bank's own permissioned network
- No agreed standards for connecting competing bank platforms
- Legal framework still developing



Mortgage: Potential Relief on the Horizon, Preemption in the Courts

Executive action on mortgage credit access (E.O. 14393)

- Directs regulators to ease requirements and promote originations
- Particular attention to community banks and smaller institutions
- HUD has already modified FHA policies citing the order

Disclosure and rescission under review (CFPB RFI - July 9, 2026)

- Targets TRID integrated disclosures, the right of rescission, and reverse mortgage disclosures
- Asks whether tailored treatment is warranted for small banks and credit unions
- Comments closed August 10, 2026 — watch for what follows

State interest-on-escrow laws remain in active litigation

- Circuits are split on whether the National Bank Act preempts them
- The OCC has asserted preemption by rule, listing California and New York among 14 jurisdictions
- Ten state AGs are challenging those rules
- Supreme Court review looks likely



FCRA: Continued Enforcement and Growing State Patchwork

CFPB asserts broad FCRA preemption of state reporting-content laws

- Bureau interpretive rule reads the FCRA as broadly displacing state restrictions on report content
- Interpretation reaches state limits on evictions, arrest records, and rental arrears — not just medical debt
- Interpretive rule is nonbinding; contrary circuit authority and challenges remain
- CFPB's internal priorities list FCRA compliance as a top priority

Stated priority of the FTC

- Bureau of Consumer Protection Director stated the FTC will enforce specific laws such as the FCRA
- Echoes prior Commissioner statement calling for the FTC to focus on robustly enforcing the FCRA
- Proposed $2.5 million settlement against tenant screening company over alleged FCRA violations

States remain active on credit reporting

- States passing own consumer credit reporting laws imposing stricter standards beyond federal FCRA (e.g., California, New York, and Texas); but courts to decide whether preempted
- States reframing actions relating to credit reporting as unfairness or deception in consumer data handling
- California DFPI signaled the credit reporting industry as a supervisory target
- Expansion into adjacent consumer reporting ecosystems (e.g., fintech underwriting and alternative data firms, data brokers, etc.)

More to Watch

Open banking is being rebuilt: Section 1033 reconsideration NPRM at OIRA since August 2026

- Existing rule remains on the books but unenforceable
- Data-access fees are the flashpoint: reconsideration asks whether data providers may charge authorized third parties, which the 2024 rule generally barred
- Also in play: authorized representatives, data security, privacy
- Core data-sharing obligations likely survive in some form

Feds step back on AI, while the states step up

- Revised interagency model risk management guidance
- State law is the binding constraint; new state requirements take effect January 2027
- State AG settlement over untested AI underwriting remains the enforcement template

BSA/ALM modernization and areas of increased scrutiny

- FinCEN proposed rule to "fundamentally reform" anti-money laundering and countering the financing of terrorism program requirements under the Bank Secrecy Act (BSA)
- OCC, FDIC, and NCUA issued companion NPRM conforming their BSA program rules
- Executive action on immigration and citizenship (E.O. 14406), directing financial regulators to increase scrutiny of certain banking activities involving immigrants

Complaint database narrowed (CFPB announcement on Aug. 14, 2026)

- Discretionary publication of complaint narratives and visualizations will cease

Community bank group sues OCC over national trust bank charter rule

- Independent Community Bankers of America challenged OCC's national bank charter final rule
- Alleges final rule exceeds OCC's authority under the National Bank Act and violates the Administrative Procedures Act

Questions?

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