THE REVIEW OF
BANKING & FINANCIAL SERVICES
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 41 No. 5 May 2025

CHANGES FROM THE TOP: THE 2nd TRUMP ADMINISTRATION'S EFFORTS TO SHARPLY LIMIT THE CFPB AND THE GROWING ROLE OF STATE AGs AND OTHER ACTORS IN THE CONSUMER PROTECTION LANDSCAPE

This article explores some of the key changes for financial services enforcement in the beginning of the second Trump presidency. During this time, the administration has emphasized certain enforcement areas — such as de-banking and lending to servicemembers — while also revamping one of the primary mechanisms through which financial services institutions are investigated with drastic changes to the Consumer Financial Protection Bureau. The authors contemplate what may come next — and how other actors may take a more leading role.

By Elizabeth J. Ireland and Starling Gamble *

Perhaps Heraclitus was right, and the only constant in life is change. That seems to be true of the second Trump administration, at least. Indeed, the financial services industry has been rife with change in the opening months of the second Trump administration, and it is hard to argue that the administration's "flood-the-zone" strategy has not been largely effective, as many industry players struggle to keep up with the daily — or hourly — changes being suggested and/or made. Financial services institutions, which usually benefit from Republican administrations, have not been spared from the uncertainty of the second Trump administration.

Take, as one example, the Consumer Financial Protection Bureau ("CFPB" or "Bureau"). Despite initial commentary that the CFPB might not exist in the near future, key indicators suggest the Bureau will not only exist — albeit in a different, more "streamlined" form — but will continue to pursue significant enforcement actions pertaining to certain focal areas. Moreover, enforcement gaps left by the Trump administration's "streamlined" CFPB will very likely be filled by state attorneys general ("AGs"), aggressive state and nonprofit actors, and class-action plaintiffs.

Yet the President has been able to *claim* — through actions that largely are not being upheld yet in court — that he is taking swift and decisive action to reduce government spending. On balance, it seems that it may be more of a shift of priorities than a complete rollback,

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RSCR Publications LLC Published 12 times a year by RSCR Publications LLC. Executive and Editorial Offices, 2628 Broadway, Suite 29A, New York, NY 10025-5055. Subscription rates: $650 per year in U.S., Canada, and Mexico; $695 elsewhere (air mail delivered). A 15% discount is available for qualified academic libraries and full-time teachers. For subscription information and customer service call (866) 425-1171 or visit our Web site at www.rscrpubs.com. General Editor: Michael O. Finkelstein; tel. 212-876-1715; e-mail mofinkelstein@gmail.com. Associate Editor: Sarah Strauss Himmelfarb; tel. 301-294-6233; e-mail shimmelfarb@comcast.net. To submit a manuscript for publication contact Ms. Himmelfarb. ISSN: 1051-1741.

but there is still uncertainty even as we pass the 100-day mark of President Trump's second term.

HIGH-LEVEL CHANGES IN THE INDUSTRY

Since January 20, 2025, the financial services industry has been called to shift its focus to topics that align with this administration: namely, digital assets, de-banking, and immigration. During President Trump's campaign, he "promised to make America the bitcoin superpower of the world and the crypto capital of the planet," and so far, the administration seems to be making good on that promise. [1] In March 2025, President Trump hosted the first-ever White House crypto summit, and he has created a strategic bitcoin reserve and digital asset stockpile that will "position[] the United States as a leader among nations in government digital asset strategy."[2] Administrative agencies are following that guidance, as they have recently clarified that supervised institutions may engage in permissible crypto-related activities without first seeking approval from regulators.[3] Banks are therefore grappling with more complicated questions about entering, or increasing their role within, the digital-asset arena.

"De-banking" is another key area. Media coverage concerning this concept has increased dramatically during President Trump's second presidency. In March, the Trump Organization sued Capital One, alleging that Capital One closed accounts due to its "unsubstantiated, 'woke' beliefs that it needed to distance itself from President Trump and his conservative political views."[4] The complaint sets out views regarding the problem of de-banking and alleges that it is "a matter of public interest and significant importance to all consumers and businesses in the United States of America." Simultaneously, financial institutions may be faced with choices about de-banking immigrants, given President Trump's staunch policy on immigration. The *New York Times* recently reported that approximately 6,300 immigrants' names and Social Security numbers were moved to a database that the federal government normally uses to track deceased individuals — meaning that an immigrant who appears on that list would not be able to access financial services as before.[5] Regardless of how banks decide to respond — to allegations of "de-banking," requests from immigrants to open accounts, or even requests from the government to close immigrant accounts — the financial services industry has certainly seen changes in the administration's priority areas since President Biden left office.

As is to be expected, the players in the industry have also changed since January 2025. The current roster includes (or will likely include):

- Treasury: Scott Bessent was confirmed as Secretary in late January.

- Federal Reserve: Michelle Bowman, a current member of the Federal Reserve Board of Governors, has been nominated to take the role of Vice Chair for Supervision of the Federal Reserve. Jerome Powell will stay in his role as Chair.

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[1] Peter Stone, *Critics slam deregulation of crypto as Trump family expands its footprint in industry*, The Guardian, Apr. 14, 2025, https://www.theguardian.com/us-news/2025/apr/14/critics-slam-deregulation-of-crypto-as-trump-family-expands-its-footprint-in-industry.

[2] *Fact Sheet: President Donald J. Trump Establishes the Strategic Bitcoin Reserve and U.S. Digital Asset* Stockpile, The White House (Mar. 6, 2025), https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-establishes-the-strategic-bitcoin-reserve-and-u-s-digital-asset-stockpile/.

[3] *See, e.g.*, OCC Interpretive Letter No. 1183, Mar. 7, 2025, https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1183.pdf; *FDIC Clarifies Process for Banks to Engage in Crypto-Related Activities*, FDIC (Mar. 28, 2025 https://www.fdic.gov/news/financial-institution-letters/2025/fdic-clarifies-process-banks-engage-crypto-related.

[4] *Donald J. Trump Revocable Trust et al. v. Capital One*, No. 2025-004022-CA-01 (Fla. Cir. Ct. Mar. 7, 2025), removed to federal court as *Donald J. Trump Revocable Trust et al. v. Capital One*, No. 1:25-cv-21596 (S.D. Fla. Apr. 7, 2025). Capital One's response to the suit is due in early May.

[5] Alexandra Berzon, *Social Security Lists Thousands of Migrants as Dead to Prompt Them to "Self-Deport,"* New York Times (Apr. 10, 2025), https://www.nytimes.com/2025/04/10/us/politics/migrants-deport-social-security-doge.html.

- FDIC: Travis Hill, the Former Vice Chair, is the Acting FDIC Chair.

- OCC: Rodney Hood is the Acting Head of the OCC. Jonathan Gould has been nominated to lead the agency as its Head.

- CFPB: Russ Vought is the current Acting Director of the CFPB. Jonathan McKernan, an experienced federal regulatory attorney who most recently served at the FDIC, was nominated to serve as Director but his nomination was withdrawn in mid-May. As of the time of printing, a new nominee has not been announced.

Given the adage that "personnel is policy," once these individuals are in their longer-term roles, it is likely that financial institutions will face even more changes.

AN EXAMPLE OF CHANGE: THE CFPB

President Trump's recent efforts to dismantle — or at least drastically change — the CFPB provide a compelling case study in how his second administration's "flood-the-zone" strategy has played out and sparked uncertainty for financial services institutions. The CFPB formally began in July 2011, and though it has gone through turmoil in the past, no changes were as dramatic as those implemented since President Trump came back into office. Roughly two weeks after his inauguration, President Trump fired CFPB Director Rohit Chopra and appointed Secretary of Treasury Scott Bessent as the Bureau's Acting Director. Bessent swiftly moved to defang the CFPB — pausing many of the Bureau's supervisory and enforcement activities in the days after his appointment by instructing all Bureau personnel via e-mail to halt the approval or issuance of any proposed or final rules or formal or informal guidance, to cease all efforts related to settling enforcement actions, and to refrain from initiating supervisory designation proceedings or designating any nondepository institutions for supervision.[6]

Less than a week after his appointment, Acting Director Bessent was replaced by Russ Vought, the director of the White House Office of Management and Budget. Vought intensified Bessent's efforts to weaken the Bureau by issuing another internal e-mail memorandum instructing all personnel that they were prohibited from opening new investigations and that they were mandated to cease any pending investigations, and all supervision and examination activity.[7]

Hours after his appointment, Vought also posted on X that "the CFPB will not be taking its next draw of unappropriated funding," and that the "spigot [of Bureau funding], long contributing to CFPB's unaccountability, is now being turned off."[8] Shortly thereafter, Vought instructed all CFPB staff to "stand down from performing any work task" and not to come into the Bureau's headquarters the following week. With the assistance of the Bureau's acting human capital officer, Vought then terminated over 100 probationary and term employees and contractors at the agency via e-mail. Many of the e-mails addressed the contractors and probationary employees as "[EmployeeFirstName][EmployeeLastName], [Job Title], [Division]" and claimed, "the Agency finds that that [sic] you are not fit for continued employment because your ability, knowledge and skills do not fit the Agency's current needs."[9]

Before the mass layoffs, the National Treasury Employees Union ("NTEU") and other groups sued Vought and the CFPB in federal court in Washington, D.C., challenging the legality of Vought's alleged attempts to shut down the Bureau. On February 13, 2025, the NTEU amended its complaint and moved for a preliminary injunction prohibiting Vought and the CFPB from ceasing the Bureau's operations.[10] The next day, the D.C. federal court ordered that Vought and the Bureau were prohibited from terminating additional CFPB employees, deleting or removing data held by the CFPB, and transferring money from the Bureau's reserve funds.

On March 28, 2025, the court granted the NTEU's preliminary injunction and entered an order to preserve the CFPB while the case moves forward on the merits.[11] Among other things, the preliminary injunction mandates that the CFPB reinstate all probationary and term employees terminated since February 10, not enforce Vought's stop-work order, and provide all employees with either fully equipped office space or

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[6] *Nat'l Treasury Emps. Union, et al. v. Vought*, Case 1:25-cv-00381-ABJ Dkt. 87 at 10 (D.D.C. Mar. 28, 2025).

[7] *Id.* at 12.

[8] *Id.* at 13.

[9] Makena Kelly and Dhruv Mehrotra, *Dozens of CFPB Workers Fired in After-Hours Blitz*, Wired, Feb. 11, 2025, https://www.wired.com/story/dozens-of-cfpb-workers-terminated-in-after-hours-firing-blitz/.

[10] *Supra* note 6, Dkt. 7.

[11] *Supra* note 6, Dkt. 87.

permission to work remotely. By all accounts, the preliminary injunction — which concluded that the NTEU is likely to succeed on the merits of some of its Administrative Procedure Act claims — was a major win for proponents of the Bureau. However, the fate of the CFPB's probationary employees who were laid off and then reinstated remains unclear, as the Supreme Court recently paused a preliminary injunction issued by a federal judge in California to reinstate probationary employees who were fired from six federal agencies, including the Treasury.[12] To complicate matters further, after previously modifying the preliminary injunction to permit a reduction in force at the Bureau, the D.C. Circuit Court of Appeals reversed itself on April 28 and barred the Trump administration from attempting to fire over 1,400 Bureau employees.[13]

Despite the preliminary victory for the Bureau in the NTEU suit, the CFPB has dropped a slew of enforcement actions under Acting Director Vought that were filed by the Biden administration, leaving questions about how the Bureau would utilize the probationary and term employees if they were to return. Many of the suits dropped by the CFPB were against major financial services institutions and filed by former Director Chopra weeks before he was fired But other suits recently voluntarily dismissed by the Bureau had been litigated for years — including an April 2022 lawsuit in which the CFPB sued TransUnion for failing to comply with a 2017 consent order the company entered with the Bureau related to luring consumers into costly subscription plans.[14] The Bureau's decision to drop suits against financial institutions that chose to litigate rather than cooperate in good faith, as recommended by Bureau guidance,[15] places financial institutions in the crosshairs of future CFPB investigations in an awkward position, and it may even suggest that institutions would be better served by fighting against the Bureau instead of working to reach a compromise.

Although President Trump and Acting Director Vought have taken significant actions to grind the CFPB's activities to a halt, recent events prove the Bureau will still exist. In its opposition to the NTEU's motion for a preliminary injunction, Vought and the CFPB argued that the NTEU's fears of a shuttered Bureau were unfounded because Acting Director Vought had noted in a letter to the Federal Reserve that the "Bureau's new leadership will run a substantially more streamlined and efficient bureau," and the "predicate to running a 'more streamlined and efficient bureau' is that there will continue to be a CFPB."[16]

Further, recent actions by the Bureau signal that it will still pursue enforcement in a few key areas. For instance, the CFPB has pressed forward with two lawsuits alleging violations of the Military Lending Act, indicating that practices harming servicemembers will be a key focus for the current administration.[17] The Bureau has also signaled continued enforcement of telemarketing rules and deceptive practices targeting debtors.[18] The CFPB's decision to still pursue enforcement actions in these areas signal a shrunken and reconfigured Bureau, but not a dismantled one.

WHO WILL ENFORCE CONSUMER PROTECTIONS: THE ROLE OF STATE ATTORNEYS GENERAL AND OTHER KEY ACTORS

Given the CFPB's reduced enforcement priorities, it is widely expected that state AGs, state regulatory agencies, nonprofits, and class action plaintiffs will ramp up their oversight efforts relating to financial services institutions. Of this group, state AGs in progressive states are most likely to take the helm in gearing up enforcement efforts to appeal to constituents who feel that the current administration is soft on corporate interests. An early leader in this space is New York's Attorney General, Letitia James, who through a proposed bill has pushed to broaden the scope of New York's unfair or deceptive acts or practices ("UDAP") statute.[19] James' proposed bill would also permit private

[12] *OPM et al. v. AFGE et al.*, Order in Pending Case, https://www.supremecourt.gov/orders/courtorders/040825zr_1b8e.pdf.

[13] *Nat'l Treasury Emps. Union, et al. v. Vought*, Case No. 25-5091 (D.C. Cir. Apr. 28, 2025).

[14] *CFPB v. TransUnion et al.*, No. 1:22-cv-01880 Dkt. 1 (N.D. Ill. Apr. 12, 2022).

[15] *CFPB Bulletin 2020-01*, Consumer Financial Protection Bureau (Mar. 6, 2020), https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2020-01_responsible-business-conduct.pdf.

[16] Supra note 6, Dkt. 31.

[17] *CFPB v. MoneyLion Techs. Inc. et al.*, No. 1:22-cv-08308-JPC Dkt. 109 (S.D.N.Y. Feb. 28, 2025); *CFPB v. FirstCash, Inc., et al.*, No. 4:21-cv-01251-P Dkt. 120 (N.D. Tex. Mar. 10, 2025).

[18] *CFPB v. FDATRs, Inc., et al.*, No. 1:20-cv-06879 Dkt. 122 (N.D. Ill. Mar. 13, 2025); *CFPB et al. v. StratFS, LLC et al.*, No. 24-cv-40-EAW-MJR Dkt. 627 (W.D.N.Y. Feb. 28, 2025).

[19] Press Release, New York Attorney General Letitia James, *Attorney General James Takes Action to Protect New York Consumers and Small Businesses* (Mar. 13, 2025), https://ag.ny.gov/press-release/2025/attorney-general-james-takes-action-protect-new-york-consumers-and-small.

class actions for UDAP violations, and includes provisions for fee-shifting, statutory, and treble damages. The proposed bill suggests that private enforcement could become a significant aspect of consumer protection enforcement in some states, potentially empowering individuals and groups to take legal action against unfair business practices independently of state agencies.

In a likely attempt to encourage state actors to fill the gaps left by a hobbled CFPB, days before Trump's second inauguration, the Bureau issued a comprehensive road map for states to strengthen their consumer protection laws.[20] The guidance recommends that states strengthen their consumer protection statutes by incorporating the term "abusive" to better capture modern misconduct, eliminating the need to prove monetary injuries and revitalizing private enforcement mechanisms. Curbing junk fees is another area emphasized in the guidance. Massachusetts, a frequent leader in enacting consumer protections, has already issued regulations in this space mandating that the total price of a service be provided before a consumer provides any personal information and every time that a price representation is made, with some narrow exceptions.[21] Similarly, a bill was recently proposed in California to expand the scope of the state's consumer finance statute and address gaps in enforcement left by Trump's reconfigured Bureau.[22] Other states will likely follow Massachusetts' and California's lead in strengthening consumer protections based on the Bureau's guidance.

On the other hand, AGs in red states are expected to echo the Trump administration's policies and hold off in implementing the Bureau's guidance or pursuing aggressive enforcement actions against financial institutions. Recent actions indicate that AGs in red states may probe major financial institutions' diversity, equity, and inclusion ("DEI") and environmental, social, and governance ("ESG") commitments in the coming months. For instance, in January, Texas Attorney General Ken Paxton and other AGs in red states wrote a joint letter to financial institutions warning them about enforcement risks associated with maintaining DEI and ESG programs.[23] In the past, DEI and ESG programs have not been the subjects of significant scrutiny from state law enforcement but financial services institutions should stay abreast of developments in this space.

State agencies in progressive states have also been bolstering their resources in response to federal regulatory rollbacks. For instance, Adrienne Harris, the Head of New York's Department of Financial Services ("NY DFS"), publicly stated that because of the Trump administration's shift in enforcement priorities, the agency will "certainly increase the volume of consumer protection cases that we may bring on the enforcement side."[24] Notably, the creation of the NY DFS largely mirrors the establishment of the CFPB, as both were created in the wake of the 2008 financial crisis with the shared ultimate goal of protecting consumers. Even though it is a state agency and does not share the same breadth as a federal regulator, the depth of the NY DFS' expansive resources and its capability of pursuing enforcement actions against the world's largest financial services institutions cannot be underestimated. And the Trump administration's mass layoffs seem to have only invigorated the NY DFS, as it recently announced that it is actively recruiting federal employees and it has over 200 open positions, with plans to increase its total staffing to over 1,400. Further, the NY DFS has focused many of its recent enforcement efforts on cryptocurrency companies, a sector that President Trump has vowed to deregulate. For instance, the NY DFS recently secured a $40 million settlement with Block, Inc. for significant failures in its Bank Secrecy Act and Anti-Money Laundering compliance program.[25]

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[20] *Strengthening State-Level Consumer Protections: Promoting Consumer Protection Federalism*. https://www.consumer finance.gov/data-research/research-reports/strengthening-state-level-consumer-protections/.

[21] Press Release, Massachusetts Office of the Attorney General, *AG Campbell Releases "Junk Fee" Regulations To Help Consumers Avoid Unnecessary Costs* (Mar. 3, 2025), https://www.mass.gov/news/ag-campbell-releases-junk-fee-regulations-to-help-consumers-avoid-unnecessary-costs.

[22] Andrew Oxford, *CFPB Cuts Spur California to Boost State Regulator*, Bloomberg Law News (Apr. 2, 2025) https://news.bgov.com/bloomberg-government-news/cfpb-cuts-spur-california-senate-vote-to-boost-state-regulator.

[23] Press Release, Texas Attorney General, *Attorney General Ken Paxton Warns Major Financial Institutions that DEI and ESG Commitments Could Lead to Enforcement Actions if Found to Violate State or Federal Laws,* Jan. 23, 2025, https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-warns-major-financial-institutions-dei-and-esg-commitments-could-lead.

[24] *NY Hopes to Offset Trump's "Aggressive Regulatory Reduction,"* (Dec. 26, 2024) https://www.pymnts.com/bank-regulation/2024/ny-hopes-to-offset-trumps-aggressive-regulatory-reduction/.

[25] Press Release, NY DFS, *Superintendent Adrienne A. Harris Secures $40 Million Settlement with Block, Inc. for Inadequate Anti-Money Laundering Program and Virtual Currency*

Outside of enforcement entities such as state AGs and state agencies, nontraditional actors have also stepped up in the wake of the CFPB's reconfiguration. Many of the Bureau's top enforcement attorneys have signed on at nonprofit legal advocacy groups to challenge the Trump administration.[26] Perhaps the most notable example of nontraditional actors stepping up came recently when two nonprofits, the Mississippi Center for Justice and MyPath, were granted intervenor status in a federal lawsuit originally brought by the Bureau defending its $5-overdraft-fee rule.[27] The rule, which amends Regulation E and Regulation Z, caps overdraft fees at $5 for larger banks and credit unions. Following the Trump administration's attempts to significantly disrupt the Bureau in early February, the nonprofits were granted intervenor status. This move allows the nonprofits to fully participate in the lawsuit and mount a vigorous defense, which the court conceded the Bureau was no longer interested in mounting. Although certainly not a common procedural reconfiguration, federal courts may experience an increase in nontraditional entities moving for intervenor status on behalf of federal agencies that have been weakened under the Trump administration.

Banks can also expect an uptick in private, consumer-led class action suits. These suits often combine federal consumer protection claims, common-law tort and contract claims, and claims under state unfair-competition and deceptive-trade-practices statutes. Given the CFPB's weakened state, an increased number of lawsuits could potentially be attributed to consumers with grievances against financial institutions who turn to plaintiff's lawyers instead of submitting complaints to the Bureau.[28] Regardless of the reasons behind the uptick, its emergence will have costly implications for financial services institutions — especially where the proposed class size is large and class-specific statutory damages are sought.

CONCLUSION

To put it mildly, the first 100 days of the second Trump administration have been a whirlwind for financial services institutions, as they must quickly monitor and respond to the increased focus on different sectors and the administration's dramatically different approach to some agencies. At the same time, financial services institutions must prepare for increased efforts by other actors, such as state AGs and state agencies, to prioritize enforcement areas that the current administration has cast by the wayside. Moreover, they must be ready for continued change, as the second Trump administration shows no signs of slowing down its sweeping reforms. ■

footnote continued from previous page…

Compliance Failures on Cash App Platform (Apr. 10, 2025), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202504101.

[26] *See* Jon Hill, *Ex-CFPB Senior Attys Sign On With Democracy Forward*, Law360 (Apr. 29, 2025) https://www.law360.com/banking/articles/2332030/ex-cfpb-senior-attys-sign-on-with-democracy-forward.

[27] *Miss. Bankers Ass'n v. Consumer Fin. Prot. Bureau*, No. 3:24-c-v00792 Dkt. 56-1 (S.D. Miss. 2025).

[28] This potential sequence would be a significant departure from how plaintiff's firms during the Biden administration rode on the coattails of enforcement actions brought by the Bureau. *See, e.g.*, *Ballard v. Bank of Am., N.A.*, No. 23-cv-422, ECF No. 1, at 3 (W.D.N.C. July 13, 2023) (structuring claim to follow CFPB consent order related to "this exact conduct"); *Penuela v. Wells Fargo Bank, N.A.*, No. 24-cv-02098, ECF No. 14, at 4 (N.D. Cal. Apr. 26, 2024) (fixating on CFPB consent decree regarding "one of the very claims alleged here"); *Egahi v. Worldremit Corp.*, No. 24-cv-03728, ECF No. 1, at 3–9 (D. Md. Dec. 23, 2024) (bringing allegations based on prior CFPB consent order).