

Changes to CFPB Actions and Interpretations

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It has been difficult to keep up with all of the changes that have been happening with Consumer Financial Protection Bureau (“CFPB”) lawsuits and interpretations because the CFPB has not been sending out press releases announcing all of its actions, nor is there a Director of the CFPB that is making these announcements through other channels. Indeed, the last [press release they posted](#) was May 6.

While we have been keeping track of many of the CFPB changes in our newsletter, there are some that we have not mentioned yet. With respect to each of the changes discussed below, it is important to keep in mind that so far many of them have been welcomed by the financial services industry, so far. In many cases, we note that not only is the marketplace in a better position because of the certainty these changes provide (at least for the short-term), but we also think that consumers will not particularly suffer as a result because the changes were more focused upon industry players and less upon whether the rules and guidance would, in the end, help consumers.

The CFPB has conceded to two lawsuits brought by the financial services industry:

1. American Bankers Association (“ABA”) [lawsuit](#) regarding changes to the Unfair, Deceptive or Abusive Acts and Practices (“UDAAP”) examination manual that expanded the concept of UDAAP to include discrimination in advertising, pricing and other activities. In other words, if an examiner reviewed advertising data and found that such data either showed evidence of discrimination or showed merely “disproportionately adverse impacts on a discriminatory basis,” then the examiner would not have to prove violations of the Equal Credit Opportunity Act or Regulation B, they could just allege a UDAAP violation. [The ABA’s CEO Rob Nichols said](#): “We welcome today’s joint stipulation with the CFPB to dismiss its appeal in the UDAAP manual case, which reaffirms that the Bureau exceeded its statutory authority when it ‘updated’ its exam manual and announced an open-ended and novel power to examine banks for alleged discriminatory conduct. We strongly support the fair enforcement of nondiscrimination laws, but the Bureau’s extraordinary expansion of its statutory authority crossed the line. We appreciate that the Bureau recognizes this and has agreed to dismiss its appeal with prejudice in this case.”
2. In another ABA lawsuit (that was brought with the U.S. Chamber of Commerce and the Consumer Bankers Association (“CBA”)), the ABA challenged the CFPB rule finalized in early 2024 that capped credit card late fees at \$8. The ABA filed suit and won a preliminary injunction against the rule going into effect. On May 2 the court [granted a joint motion among the parties](#) to agree that the late fee rule “violated the CARD Act by failing to allow card issuers to ‘charge penalty fees reasonable and proportional to violations.’”

Pursuant to the Congressional Review Act, which we described [here](#), Congress voted to overturn the CFPB’s limit of a \$5 maximum fee for overdrafts. The [rule, which was announced as final on December 14, 2024](#), was described by the CFPB at the time as intended to “close an outdated overdraft loophole that exempted overdraft loans from lending laws” and as being expected to “add up to \$5 billion in annual overdraft savings to consumers.” Meanwhile the industry was very concerned by this final rule, in particular, because a limit of \$5 meant that some banks would not have been able to provide overdraft services going forward. In lieu of available overdraft services, many consumers would have been stuck with obtaining products like payday or vehicle title loans. See [this opinion piece](#) discussing how and why that happens, as well as this [discussion by the CBA regarding the value of overdraft services](#).

And, finally, the CFPB had filed a “Statement of Interest” in a case brought by the New York Attorney General against Citibank that purported to interpret the Electronic Funds Transfer Act (“EFTA”) as applying to wire transfers, which was a novel position. The EFTA has been around since 1978, and at no point since then had it ever been interpreted to extend to wire transfers, which are governed instead by Article 4A of the Uniform Commercial Code. On March 25, 2025 the CFPB [informed the court that it was withdrawing its Statement of Interest](#), explaining that “The

Statement represents an unsuitable method of advancing a novel and significant interpretation of the EFTA that could impose significant liability on regulated parties without fair notice.” The motion also pointed out that by filing the Statement of Interest in a case where the CFPB was not even a party to the action, it “insulated this novel position from judicial review under the Administrative Procedure Act’s arbitrary and capricious standard [which means that the] interpretation was not informed by the process for legislative rulemaking defined in the APA.”