



Consumer Finance Update

Illinois Bankers Association

Bank Counsel Conference

December 1, 2023

Marc Franson

Chapman and Cutler LLP

franson@chapman.com





On the Supreme Court Docket

- ▶ Preemption: Payment of Interest on Escrow Accounts – Cantero v. Bank of America
- ▶ Deference to Regulatory Agencies (Chevron Doctrine) – Loper Bright Ent. v. Raimondo and Relentless v. Dep’t. of Commerce
- ▶ Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd. - is the funding mechanism of the CFPB constitutional?
 - ▷ Oral Argument held October 3, 2023
 - ▷ 5th Circuit Decision
 - ▷ Effect on Existing Actions/Implications on Future Actions



CFPB: An Agency Gone Awry

- ▶ Section 1071 Dodd Frank – Small Business Data Collection –Enjoined, US Senate votes to rescind
- ▶ Examination Guide Changes on Fair Lending – Beyond its power; Appealed to 5th Circuit
- ▶ Illinois case: CFPB v. Townstone Financial – redlining case dismissed-CFPB exceeded its authority
- ▶ Auto Loans: CFPB v. Credit Acceptance Corp. – challenge to auto practices that are widespread in the industry (S.D. N.Y.)
- ▶ Challenges to Rent to Own: CFPB v. Snap Finance LLC (D. Utah)
- ▶ CFPB Rebuked by 11th Circuit: CFPB v. Brown
- ▶ It's Cathcy: FDIC sued by Minnesota Bankers on NSF Guidance



Recurring Themes

- ▶ Arbitration: North Carolina Supreme Court – Change of terms valid: *Canteen et al. v. Charlotte Metro Credit Union* Case # 10A23 and *Mascasero v. ENT C.U. (Colo.) (electronic transactions)*
- ▶ Arbitration: US Supreme Court: Coinbase decision: Case stayed while arbitration being appealed
- ▶ Arbitration: Avoiding class actions – *Fama v. OppFi* (W.D. Wash) (high rate lender)
- ▶ Arbitration: Consumer Groups Petition CFPB for Rulemaking
- ▶ Overdrafts: From large to small institutions: B of A - \$8.8 million settlement – violation of policies; NBT Bank - \$4.25 million settlement; Redstone Fed. C.U. (Alabama) – \$3.7 million settlement, Empower F.C.U. (N.D. N.Y.) - \$5.2 million settlement, Desert Fin. C. U. (Arizona -\$6 million settlement).



CFPB on the Offense

- ▶ October Guidance on Immigration Status
- ▶ October Guidance on Junk Fees
- ▶ October Guidance on Open Banking
- ▶ October Guidance on Fees for Providing Customer Information
- ▶ Artificial Intelligence: Fair Lending and Adverse Action Requirements
- ▶ Interagency: Third Party Risk Management
- ▶ Credit Card Fee Limits - \$8 late fee – possible court challenge
- ▶ Elimination of creditor use of medical data
- ▶ Recent Enforcement Actions: Add ons/cancellation
 - Credit Reporting
 - Debt Accounts without Authorization
 - Fair Lending



CFPB Regulatory Agenda

- ▶ Overdraft fees as Finance Charges under Reg. Z
- ▶ Revisions to Fair Credit Reporting Act
- ▶ NSF Fees
- ▶ FIRREA – Quality Control on automatic valuation models
- ▶ Consumer Data
- ▶ PACE (property assessed clean energy financing) – ability to repay
- ▶ Larger participants – payments
- ▶ Non banks – registration (“bad boy” list) and terms
- ▶ Consumer Group Petitions - Arbitration



Consumer Law Decisions

- ▶ HUD – disparate impact: where politics and regulation meet
- ▶ Fair Debt Collection Practices Act: Standing – Choice v. Kohn Law Firm – 7th Circuit
- ▶ Fair Credit Reporting Act: reasonable investigation of disputes – *Saluki v. Credit One Bank, N.A.* (2nd Circuit); Standing and Damages – Santos v. Experian (11/6/23 – 11th Circuit)
- ▶ Data Breaches – Marriott – class action waiver effectiveness
- ▶ GAP Refunds
- ▶ State Privacy Laws



Update on New Products and Innovation

- ▶ Buy Now Pay Later (BNPL) – Regulations Coming?
- ▶ Income Sharing Agreements – Is it credit? - CFPB/AG Suit
- ▶ Tips and Donations – disguised interest?
- ▶ Earned Wage Access – the new cash advance
 - > Nevada and Missouri – it is not credit
 - > CFPB - it is credit

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

© 2023 Chapman and Cutler LLP