

Cooley

# Filling the Gap! State Enforcement and Regulation Priorities

Michelle Rogers

Kate Goodman

Adam Fleisher

May 22, 2025

attorney advertisement

Copyright © Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304. The content of this packet is an introduction to Cooley LLP's capabilities and is not intended, by itself, to provide legal advice or create an attorney-client relationship. Prior results do not guarantee future outcome.

# Agenda

- Regulatory Landscape Overview
- State-Level Themes
- Filling the Enforcement Vacuum
- Q&A

# Regulatory Landscape Overview

Cooley

# Shifts in Regulator Priorities

## CFPB continues rollback of supervision and enforcement

- Priorities memo details focus on “tangible harms to consumers” and a reduction in “supervisory events”
- Shift away from nonbinding policymaking with withdrawal of almost **70** guidance documents
- Rescinded and issued new interpretive rule scaling back the scope of state enforcement permitted under the CFPB

## States are stepping in to fill this void

- Aligning with CFPB’s January 2025 publication on state-level consumer protection priorities
- Proposing legislation and regulations to expand UDAP authority, eliminate “junk fees”, and address other consumer protection issues
- Creating new offices to address data privacy
- Launching new tools for consumer complaints (i.e., a centralized consumer protection hotline, website, email)
- Hiring former CFPB staff
- Filing litigation, including in cases where CFPB has stepped away

# Emerging Trends

- Federal regulators are shifting their focus
  - Depositories rather than fintechs and nonbanks
  - Cooperation and resolution through supervisory process rather than enforcement
  - Financial privacy and data security
  - Servicemember protections
  - Cryptocurrency and payments, but less expansive view of AML compliance obligations

# Emerging Trends

- State regulators are picking up the mantle with some overlap with Feds
  - Fair lending and AI
  - Recharacterization of emerging products to require state licensing
  - Enacting laws that reiterate or increase federal standards
    - California Financing Law prohibits violating federal servicemember protections and requires lenders to comply with Regulation Z
    - New York Licensed Lenders Law authorizes the Superintendent to take action for violations of the federal Truth In Lending Act
    - Illinois Residential Mortgage Lending Act mandates verification of ability to repay
    - Nevada Installment Loan Law limits APR, prohibits certain conduct, and requires disclosures with respect to extending credit to servicemembers
- All states have laws prohibiting unfair and deceptive acts and practices, and a handful prohibit “abusive” practices

# State-Level Themes

Cooley

# Expanding Authority

- In the absence of federal clarity, states are taking steps to address perceived gaps in state law
- Amendments to state licensing laws and regulations to expand the scope of products and services that require a license
  - Maryland Mortgage Lending Law was amended in 2023 to define “mortgage loan” as including “a loan in which funds are advanced through a shared appreciation agreement.”
  - Connecticut Small Loan Law defines “small loan” to include “the purchase of, or an advance of money on, a borrower’s future potential source of money, including but not limited to, future pay, salary, pension income or a tax refund.”
  - California DFPI issued regulations requiring registration of “education financing providers.”
- Expanding consumer protection laws to address practices previously targeted by CFPB
  - Prohibiting “junk fees” (e.g., Minnesota Price Transparency Law)
  - Stringent consumer data and privacy laws (e.g., California Financial Information Privacy Act, Maryland Online Data Privacy Act, and many others)
  - Adding prohibitions against “abusive” practices (e.g., proposed New York FAIR Business Practices Act)

# Artificial Intelligence

- The use of AI is not new, but is now attracting more attention, especially at the state level
- Under the prior administration, the CFPB issued guidance regarding the use of AI in credit decisions
- States are picking up where the CFPB left off and are increasingly seeking to regulate AI in consumer financial products and services
  - Colorado enacted the Anti-Discrimination in AI Law aimed at “algorithmic discrimination in consequential decisions,” including in housing, financial, and lending services.
  - California has proposed regulations to regulate “automated decision-making technology”
  - Illinois legislature has introduced the “Preventing Algorithmic Discrimination Act”
- Expect to see state regulators to review in exams companies’ use of AI in underwriting, servicing, and customer service
  - Even if AI-specific legislation or regulations are pending, certain practices may still fall within state UDAP laws

# Bank Partnership Models

- Expect federal regulators to shift focus away from fintech partnerships with banks after issuing a joint statement under the prior administration highlighting potential risks
- States approaches vary, but all aimed at increasing oversight over bank partnerships
  - Opting out of Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA)
    - DIDMCA allows state-chartered banks to export home state interest rate, but permitted states to adopt laws opting out
    - Colorado opt out legislation is being challenged in the Tenth Circuit, but a number of states are considering similar legislation
  - Issuing interpretive guidance that existing lending laws require a license to broker loans to banks
    - Ohio issued guidance that Small Loan Act applies to nonbank entities that are compensated for arranging or brokering bank loans
  - Enacting legislation that expands the definition of “lender” to encompass parties that arrange for and purchase interests in loans
    - Illinois Predatory Loan Act defines lender to include any person that arranges a loan or buys an interest in a loan
    - Minnesota Consumer Loan Law defines lender to include a person who acquires predominant economic interest in a loan

# Challenges of State Payments Regulation

## Scope of potentially covered activity expanding through legislation and interpretation

- More states enacting amendments to include virtual currencies, focus on “custody” and “control” as well as kiosk activities
- States including and exempting different business models such as payroll processing, payment processing, gaming/fantasy sports, rewards and loyalty programs
- Exemptions remain inconsistent and vary by jurisdiction

## Evolving landscape means new compliance considerations and strategies

- Rely on exemption (typically agent of a payee)
- Partner with another regulated financial institution (bank or licensed money transmitter) that provides the payments services
- Change legal framework and funds flow for transactions

## Challenges of state licensing regime make alternatives potentially more appealing

- Heavy focus on adoption and implementation of CSBS Model Act – countering preemption arguments

# Filling the Enforcement Vacuum

Cooley

# Expect Aggressive Enforcement

- Larger scale investigations with significantly higher penalties sought across all industries
- In 2025 alone, CSBS has announced multistate settlements with penalties totaling over \$100 million paid to regulators in all 50 states, D.C. and Puerto Rico
  - Money transmitter paid \$80 million penalty to 48 states for alleged violations of Bank Secrecy Act and Anti-money Laundering Laws
  - Mortgage servicer paid \$20 million penalty to 50 states, D.C. and Puerto Rico for alleged cybersecurity violations
- Regulators are pushing the bounds of their authority in terms of the laws they are seeking to enforce and the materials they are requesting in exams, including privileged information
  - 12 U.S.C. 1828(x) provides that submission of privileged information to the CFPB and banking agencies “shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information . . .”
  - Most states do not have equivalent laws so production of privileged materials in the exam context may constitute a waiver of the privilege

# More Focus on Fraud, Money Laundering

- Increasing focus on regulation of virtual currency activities under existing and new laws
  - Enhanced scrutiny of virtual currency licensing applications with focus on management, information security, and money laundering/fraud controls
  - Virtual currency “kiosk” licensing requirements, accompanied by extensive disclosure requirements and transaction restrictions
- State banking department/attorney general scrutiny of fraud and anti-money laundering compliance
  - Two large crypto platforms sued by Iowa attorney general
  - Large licensed money transmitter agreed to settlements with almost all state financial regulatory agencies, and with New York Department of Financial Services
- Enforcement of unlicensed activity still sporadic, opportunistic

# Financial Services Forecast: Five in Five Series

*Register using the link in  
the chat.*

**Session 5 – May 29, 2025**

## **The 119th Congress: Investigative and Legislative Priorities**

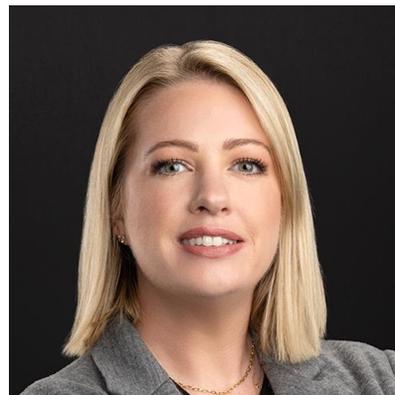
Join us for our final session, where we will provide a comprehensive analysis of the critical priorities shaping the 2025 congressional calendar and their potential impact on the financial services sector, and will share practical strategies for navigating the political risks associated with congressional investigations.

# Questions?

For questions, comments, or additional information, please contact the team.



**Michelle L. Rogers**  
Partner  
mrogers@cooley.com  
+1 202 776 2227



**Kate Goodman**  
Partner  
kgoodman@cooley.com  
+1 312 881 6685



**Adam Fleisher**  
Partner  
afleisher@cooley.com  
+1 202 776 2027