

Federal Enforcement in 2023: A Year in Review

OLA Legal Issues Conference

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Tuesday, February 13, 2023

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Agenda

- **Flowing Downhill: Bank Regulator Expectations of Fintech/BaaS Program Management**
- **Forever War: the Attack on “Junk Fees” Continues**
- **Alternative Financing: Regulatory Attempts to Reign In Alternative Products**
- **Payday and Small Dollar Lending**
- **Ability to Repay as a “UDAAP”**
- **Fair Lending Developments: Focus on AI**
- **Marketing, Origination and Disclosures: Lessons from Recent FTC Enforcement**
- **Forward Looking Thoughts**
- **Q&A**

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Flowing Downhill: Bank Regulator Expectations of Fintech/BaaS Program Management

- Blue Ridge (OCC) (8/22)
- OCC establishes the Office of Financial Technology (3/23)
- CRB (FDIC) (3/23)
- Interagency Guidance on Third-Party Relationships: Risk Management (FFIEC) (6/23)
- Federal Reserve Board creates Novel Activities Supervision Program (8/23)
- Metropolitan Commercial Bank (Fed) (10/23)
- B2 Bank (OCC) (11/23)
- First Fed Bank (FDIC) (11/23)

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Forever War: the Attack on “Junk Fees” Continues

- Initiative to Save Americans Billions in Junk Fees (CFPB) (1/22)
- Broad New Actions to Protect Consumers From Billions in Junk Fees (Biden Administration) (11/23)
- Rule to “Rein in Excessive Credit Card Late Fees” (CFPB) (2/23)
- “Exams Return \$140 Million to Consumers Hit by Illegal Junk Fees in Banking, Auto Loans, and Remittances” (CFPB Supervisory Highlights) (11/23)
- “Guidance to Halt Large Banks from Charging Illegal Junk Fees for Basic Customer Service” (CFPB) (11/23)
- “Rule to Close Bank Overdraft Loophole that Costs Americans Billions Each Year in Junk Fees” (CFPB) (1/24)
- OneMain Financial (CFPB) (5/23)
- Bank of America (CFPB) (7/23)

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Alternative Financing: Regulatory Attempts to Reign In Alternative Products

- Prehired (CFPB) (7/13)
- Snap Finance (CFPB) (7/19)
- Tempoe (CFPB) (9/11)

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Payday and Small Dollar Lending

- Supervisory Highlights on Junk Fees (CFPB) (3/23)
- Summer Supervisory Highlights (CFPB) (7/23)
- TMX Finance (CFPB) (2/23)
- Carnes (CFPB) (4/23)
- Enova International (11/23)
- Don't Forget: Payday Rule and Pending Enforcement

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Ability to Repay as a “UDAAP”

“[T]he Bureau believes that the harms identified by the 2017 rule still exist, and will ***use the authority provided by Congress to address these harms, including through vigorous market monitoring, supervision, enforcement,*** and, if appropriate, rulemaking.

The Bureau continues to believe that ***ability to repay is an important underwriting standard.*** To the extent small dollar lenders’ business models continue to ***rely on consumers’ inability to repay, those practices cause harm that must be addressed by the CFPB.***” (Dave Uejio) (3/21)

- Credit Acceptance Corporation (1/23)
- Heights Finance (8/23)
- Don’t Forget Again: Payday Rule and Other Pending Enforcement

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Fair Lending Developments: Focus on AI

- Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems (DOJ, CFPB, FTC EEOC) (4/23)
- Fair Lending Report of the Consumer Financial Protection Bureau (6/23)
- CFPB Circular 2023-03, Adverse Action Notification Requirements and the Proper Use of the CFPB’s Sample Forms Provided in Regulation B (CFPB) (9/23)
- Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (White House) (10/23)
- Citi (CFPB) (11/23)
- FloatMe (FTC) (1/24)

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Marketing, Origination and Disclosures: Lessons from Recent FTC Enforcement

- Bridgelt (FTC) (11/14)
- Amazon (FTC) (11/17)
- Credit Karma (FTC) (12/5)

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**Forward looking
thoughts:
Anticipated
Regulatory
Priorities in 2024
and Beyond**

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Questions?

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