

HUDSON COOK

STATE OF THE INSTALLMENT AND SMALL DOLLAR LENDING INDUSTRY FOR 2025 – LEGAL AND REGULATORY CONSIDERATIONS

H. Blake Sims, Hudson Cook, LLP
Justin B. Hosie, Hudson Cook, LLP

M Z I H T H T R

1

Disclaimer

This presentation is provided for informational purposes only. The presentation is not intended to be an exhaustive review of all laws on any subject. We have made every effort to ensure that the information in this presentation is complete and accurate with respect to the topic(s) addressed. Hudson Cook, LLP and the individual presenter(s) are not responsible for any errors in or omissions from the information provided.

Nothing in this presentation should be construed as legal advice from Hudson Cook, LLP or the individual presenter, nor is the presentation a substitute for legal counsel on any matter. Legal advice must be tailored to specific facts and circumstances. No attendee of this presentation should act or refrain from acting solely on the basis of any information included in this presentation. Attendees should seek appropriate legal or other professional advice on legal matters specific to their business.

The views and opinions in this presentation are those of the presenter and do not necessarily represent official policy or position of Hudson Cook, LLP or of its clients.

2

Regime Change

What does it mean and what doesn't it mean?

- ✦ The CFPB
 - Acting Director(s) Bessent / Vought
 - ◆ Scope of directions so far
 - ◆ Examinations
 - ◆ Rules past their effective date but before their compliance date
 - ◆ Other issues
 - ◆ Project 2025 - Free market leadership vs populist leadership
 - ◆ Lessons from Mulvaney / Kraninger CFPB
 - ◆ Impact on state activity
 - Industries
 - ◆ Installment
 - ◆ EWA
 - ◆ BNPL
 - ◆ Others
- ✦ The FTC – Andrew Ferguson at the helm along with Melissa Holyoak as Republican Commissioners. Slaughter and Bedoya as Democratic Commissioners. Currently one vacancy.
- ✦ Disruption – Be Ready!

3

The Small Dollar Rule

What's going to happen with the Payday Rule in 2025?

- ✦ The Requirements
- ✦ The Case
- ✦ Compliance status
 - Bessent/Vought Directives
 - ◆ Effective Date: January 16, 2018 and Compliance Date: March 30, 2025
 - ◆ Case law: Compliance dates and effective dates are not the same under Section 705 of the APA: *Becerra v. United States Dep't of Interior*, 276 F. Supp. 3d 953, 964 (N.D. Cal. 2017) and several other cases.
 - ◆ What's next?
 - Consider state AG enforcement if the Compliance Date is not addressed via notice/public comment
- ✦ If the rule is suspended: Opportunity to study, amend, and revoke?
- ✦ If the rule moves forward:
 - Opportunity to develop regulatory momentum reasonably
 - Opportunity to address numerous gray areas reasonably
 - ◆ Bank / CSO Models
 - ◆ Debiting in 2 days
 - ◆ Affiliated entities
 - ◆ Payments after the compliance date on loans before the compliance date
 - ◆ Regular debit date – payment schedules and actual practices
 - ◆ And more . . .

4

Installment Loans

What happens at the state and federal level for installment lending?

- ◆ Chopra CFPB
 - World Finance Order
 - Larger Participant Rule
- ◆ The New CFPB and Installment Lenders
 - Bessent/Vought memo and examinations
 - Cases involving installment lenders
- ◆ State legislative changes
 - 36% push
 - State referendum activity
- ◆ State AG enforcement of Dodd-Frank Act

5

Earned Wage Access / Early Wage Advance

A lot has changed over the last 4 years . . .

- ◆ The CFPB
 - Early Cordray pronouncements on EWA
 - EWA under Mulvaney Kraninger
 - EWA under Chopra
 - ◆ Issues with prior analysis
 - ◆ Missing piece in the Chopra analysis
 - Where will the CFPB go from here?
- ◆ The FTC's activities so far
- ◆ Evolving consumer advocate perspectives and state legislation
- ◆ State AGs and EWA

6

Buy Now Pay Later

Will it become a bigger disruptor?

- ◆ Early approaches
- ◆ Chopra's CFPB
- ◆ BNPL under state law
- ◆ 2025 and after

7

FCC 1-to-1 TCPA Consent Rule

Does this apply to your actual practices?

- ◆ Effective date (was) - January 27, 2025
- ◆ The scope and various practices for lead generators and lenders
- ◆ FCC action and 11th Circuit decision
- ◆ What next? Dead for now, but what about existing requirements and issues?

8

Other Considerations

A brave new world

✦ Opportunities in 2025 and beyond:

- Sandbox and innovation programs
- Emerging AI opportunities
- Chance to evaluate and reinforce compliance management systems before next federal administration change
- Emerging balance verification tools may reduce NSF risks; get compliance right
- Regular use of same day ACH and other emerging payment methods
- What to do about pending CIDs and/or examinations?

✦ Emerging risks

- The States
 - ♦ State data / privacy laws gaining traction, will GLBA exemptions continue?
 - ♦ State DIDMCA opt-outs, rate cap legislation, other advocacy efforts – see Chopra roadmap
 - ♦ State AGs enforcing the DFA
- Federal
 - ♦ MLA and SCRA enforcement under the prior Trump administration
 - ♦ Populism vs free market?

Other Considerations

A brave new world

✦ Potential 2025 Disruptors – Are you Ready?

- Artificial Intelligence – Evolution of usage (Generative v. Machine Learning)
- Gamification – Properly engaging with a younger consumer
- Account balance verification services – Tool of necessity can now be a compliance and “better business” tool
- Subscription services – Doing it right
- Multi-Product Business – Meeting more customer needs
- Peer-to-Peer lending – Don’t call it a comeback ...
- Crypto lending – “Most Crypto-Friendly President ever”
- Small business lending and MCA

Questions



11

CONTACT INFORMATION



Ozxyrs Mtxrj

**HUDSON
COOK**

>986 Gwfir twj Qs1Xyj 756

Ttqj | fm1YS 8<8;8

☎ 9789>53<;9

✉ mtxj@mziht3tr



M3Gfppj Xnr x

**HUDSON
COOK**

>986 Gwfir twj Qs1Xyj 756

Ttqj | fm1YS 8<8;8

☎ 9789>53<;8

✉ gxar@E mziht3tr

12