Insights: Publications

5 Key Takeaways | Consumer Finance Law Regulatory Developments

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Kilpatrick Partner **Ross Speier** recently presented a CLE on key regulatory developments impacting consumer financial services and lending. His 5 Key Takeaways include:

1. CFPB Released its Strategic Plan for Fiscal Years 2026-2030: The Plan outlines the Consumer Financial Protection Bureau's core roadmap for the next four years, and signals a continued shift toward deregulation, strict statutory interpretation, and a narrower definition of consumer harm. Three primary goals outlined:

- Addressing Pressing Threats and Tangible Harm: focuses on fraud and scams with "identifiable victims and measurable financial damages," and prioritizes returning money to harmed consumers rather than collecting fines.
- Reducing Unwarranted Regulatory Burdens: focuses on a deregulatory agenda including rolling-back overly burdensome regulations; relying on open notice-and-comment rulemaking rather than guidance documents; and eliminating the use of "reputational risk" in bank examinations.
- Strengthening Governance and Culture: targets internal accountability, efficiency, and optimization. Objectives include articulating expected outcomes for agency programs, leveraging digital-first technologies, and realigning the organization to streamline functions and optimize resources.

2. Elimination of Disparate-Impact Liability Under the Equal Credit Opportunity Act: The CFPB issued a final rule narrowing the enforcement scope of the ECOA by eliminating the “disparate-impact” standard of liability, which previously allowed regulators to hold creditors accountable for facially neutral lending practices that resulted in discriminatory outcomes, such as higher denial rates or pricing for protected groups, without requiring proof of discriminatory intent. However, while lenders are now largely insulated from federal disparate-impact claims, they must ensure their underwriting criteria are facially neutral and not used as proxies designed to discriminate. Moreover, while the rule curtails federal enforcement, private plaintiffs and states may continue to pursue disparate-impact claims.

3. CFPB Statement on Ability to Repay and Immigration Status: The CFPB issued a policy statement outlining how immigration status should factor into ability-to-repay determinations under the Truth in Lending Act. Specifically, lenders must account for known future changes in a borrower's repayment ability at or before loan consummation, which now expressly includes any impact the borrower's immigration status might have on their ability to repay. For example, creditors may be obligated to consider a loan applicant's immigration status if their application indicates they are not lawfully present or authorized to work in the US, since the risk of removal may directly disrupt their US income stream. Lenders should update their policies to detail how they evaluate expected income and immigration-related disruptions.

4. OCC Issues Rule Preempting State Limitations on Interchange Fees: The OCC issued an Interim Final Rule, effective as of June 30, 2026, clarifying that national banks have the authority to impose non-interest charges and fees, expressly including interchange fees from credit and debit card operations, and that state law restrictions on such fees are therefore preempted. The rule was prompted by an Illinois district court decision claiming that the OCC regulation granting national banks authority to impose fees did not apply to fees charged by a third-party company rather than directly by the bank. The OCC's rule rejects that interpretation, specifying that national bank fee-charging authority applies whether the bank charges fees directly or indirectly through payment networks, interchanges, or other intermediaries, and regardless of whether fee revenue comes from an entity with which the bank has no direct relationship.

5. State Laws Regulating Automated Decision-Making Technology: Recent state legislation is aimed at regulating "automated decision-making technology" (ADMT) used in making certain decisions about consumers, including credit underwriting decisions. For example, the California Consumer Privacy Act will now apply to businesses' use of ADMT, which is defined as "any technology that processes personal information and uses computation to replace human decision-making." The rules apply to decisions resulting in the provision or denial of financial or lending services; housing; education; employment; or healthcare services. Companies using ADMT for such decisions must provide certain disclosures and information regarding the ADMT process to consumers, and grant them the ability to opt-out of ADMT usage. Colorado recently enacted similar legislation, and other states are likely to follow suit.

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