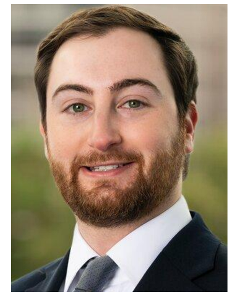
Where Things Stand At The CFPB As Funding Dries Up

By **Joel Herberman, Leah Dempsey and Zach Pfister** (December 8, 2025)



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As the regulatory agenda at the Consumer Financial Protection Bureau continues to heat up, it has undertaken a series of rapid and varied actions that carry significant implications for regulated entities and warrant careful monitoring and engagement.

In recent weeks, the CFPB advanced a series of deregulatory actions on Regulation B, the small business lending rule, nonbank registries and Federal Credit Reporting Act preemption. At the same time, the bureau has declined to request funding from the Federal Reserve for nearly the entire year and is on a pace to run out of funding after the new year.

This approach could threaten current and future planned rulemaking efforts as outlined by the agency.[1]

With acting Director Russell Vought's term near its expiration this month, the Trump administration nominated Stuart Levenbach to serve as CFPB director on Nov. 18.[2]

Under the Federal Vacancies Reform Act, the submission of a nominee to the Senate will allow Vought to remain in his position for an additional 210 days.

A CFPB spokesperson characterized the Levenbach nomination as a technical, procedural step to extend Vought's tenure as acting director.[3] The CFPB is also reportedly seeking to transfer its remaining enforcement cases and lawsuits to the U.S. Department of Justice.[4]

Recent Bureau Actions

On Nov. 13, the CFPB issued a notice of proposed rulemaking containing revisions to Regulation B, Subpart B, implementing changes to the Equal Credit Opportunity Act, or ECOA, required by Section 1071 of the Dodd-Frank Act.[5]

The CFPB's 2023 Section 1071 final rule mandated that financial institutions gather and report specific demographic data about their small business customers for inclusion in a public database.[6]

However, implementation of the rule has been stalled due to ongoing litigation and compliance delays from the current CFPB. In 2024, the U.S. House of Representatives and U.S. Senate also advanced a Congressional Review Act resolution to nullify the rule, which was vetoed by former President Joe Biden.[7]

The CFPB's new proposed rule would narrow the reporting requirements under Section 1071 of the Dodd-Frank Act to focus on "core, widely used lending products most likely to be foundational to small businesses' formation and operation."[8]

The proposal would exclude merchant cash advances, Farm Credit System loans and small-dollar loans from covered credit transactions. It would also raise the threshold to be considered a covered financial institution from 100 to 1,000 covered credit transactions each year over a two-year period.

The proposed rule would also raise the threshold to be considered a small business from $1 million to $5 million in gross annual revenue. In addition, the rule would narrow the data collection to data points specifically identified in Section 1071.

The second proposed rule would amend provisions in Regulation B pertaining to disparate impact, discrimination of prospective applicants, and special purpose credit programs.[9]

The proposal would clarify that ECOA does not authorize disparate impact claims, highlighting that the U.S. Supreme Court has not determined whether disparate impact claims are available under all antidiscrimination laws.

The proposed rule would also make the standard for discouragement of applicants for discriminatory reasons less stringent, arguing that current rules are overly restrictive in preventing the discouragement of applications.

The CFPB's proposed rule would alter provisions in Regulation B regarding special purpose credit programs, specifically prohibiting for-profit organizations from offering those programs on the basis of race, color, national origin or sex. Comments on both proposed rules are due Dec. 15.

Nonbank Registry Rules

The CFPB issued a rescission[10] of its 2024 rule establishing a registry of nonbank companies that have entered into consent agreements or that have otherwise been found by the CFPB to be in violation of laws under their jurisdiction.[11]

In the rescission, the CFPB argued that the final rule poses a significant regulatory burden and is unnecessary since Congress has already empowered multiple other federal and state agencies to enforce consumer financial laws. The rule was made effective on Oct. 29.

The CFPB also withdrew[12] a separate proposed but never finalized rule,[13] which would have required most nonbanks to register in a database and provide information about their use of certain terms and conditions in form contracts.

In the CFPB's withdrawal notice, it argues that the costs associated with maintaining the registration system do not justify the benefits of the database. Furthermore, the bureau said the 2023 proposed rule would have imposed a significant regulatory burden on nonbank entities.

FCRA Preemption Rule

On Oct. 28, the CFPB issued an interpretive rule clarifying that the FCRA generally preempts state laws related to credit reporting.[14]

This rule has meaningful implications, as numerous states have enacted laws regarding what information can be included in credit reports, with many of the laws related to medical debt reporting. Earlier this year, a federal court vacated the Biden-era CFPB rule that restricted medical debt reporting on credit reports.

However, 15 states, including Colorado, New York, Delaware, California and Maine, have enacted laws prohibiting the reporting of consumer medical debt to credit bureaus.

CFPB Funding

While the CFPB continues to advance its deregulatory agenda, the future of the agency remains uncertain. Vought has publicly stated that he wants to roll back and eventually shut down the CFPB.

The CFPB provided notice of a legal opinion in the case of National Treasury Employees Union v. CFPB that argues any funding outside Fed profits or direct congressional appropriations is unlawful.[15]

The opinion leans heavily on an Office of Legal Counsel finding that "the Federal Reserve currently lacks combined earnings from which the CFPB can draw" and asserts that the bureau may operate only so long as it has existing balances, which it estimates will last through Dec. 31.

Under this theory, any future attempt to draw funds from the Fed while it lacks combined earnings, or to rely on any other funding source, would violate the law. This is a sharp break from how the CFPB operated under administrations of both parties, when it routinely drew on Fed earnings to fund its activities.

Parties in a variety of lawsuits against the bureau have raised the combined earnings issue in pleadings, but to date no court has yet ruled on the argument or endorsed the bureau's current interpretation.

Significant legal questions remain, and stakeholders are closely watching proceedings in the National Treasury Employees Union suit in the U.S. District Court for the District of Columbia, where the issue has been raised.

Nonetheless, coupled with the absence of any congressional appropriation, the bureau's new position places it on a path to exhaust its resources early next year. We expect substantial developments in both the courts and Congress in the coming weeks related to this.

Next Steps

Amid the funding uncertainty, the CFPB continues to pursue an extensive rulemaking docket, as outlined in its spring Unified Agenda.[16] This includes a planned rulemaking to define unfair, deceptive, or abusive acts and practices, a rewrite of certain mortgage rules, and a reconsideration of its open banking rule that drew nearly 14,000 comment letters from stakeholders.[17]

The compressed timeline for recent actions underscores a rush to lock in policy before the money runs out. Both ECOA-related proposals carry the shortest possible time frame permitted under the Administrative Procedure Act of 30 days, arguably to attempt to finalize rules as quickly as possible.[18]

If CFPB leadership does not draw funds from the Fed, this may tee up an opportunity for Congress to revisit and debate the CFPB's current funding process. In its recent court filing, the bureau acknowledged that it may receive funding through the congressional appropriations process.

Congressional Republicans have, for years, advocated for legislation that would place the CFPB under congressional appropriations, among other reforms.

While Democrats have generally opposed such changes, the current state of play may alter the political calculations. In November, Rep. Jim Himes, D-Conn., stated that he "is wide open" to considering options to change the bureau's governance structure, adding that "I just care that it's there and it's leaning forward on protecting consumers."

As stated above, the Trump administration on Nov. 18 nominated Levenbach to serve as CFPB director.[19] A CFPB spokesperson characterized the nomination as a technical, procedural step to extend Vought's tenure as acting director without requiring Senate confirmation, a move that effectively extends the current leadership structure at the CFPB until June 2026, providing Vought and CFPB leadership additional time to advance their priorities.

Regardless of the bureau's current leadership, enforcement posture, or whether litigation and enforcement matters are shifted to the DOJ, all existing CFPB regulations will remain in effect.

State attorneys general retain authority to enforce many consumer financial protection laws, and numerous statutes provide for private rights of action, ensuring that compliance risk will persist even if federal enforcement activity moderates.

We expect a number of developments in this area over the next few weeks and months.

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Disclosure: The authors' firm has advocated on behalf of clients regarding the policies discussed in this article, however the views expressed here are the authors' own, and the authors have not been retained to advocate these positions.

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[1] https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3170&csrf_token=2150269A00E87C561881E21193417858A5C214B06A0E7052F410E81F87115D7D8D5E78F612BDE3A0D33E6CCA96CE3990D140.

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[3] https://www.politico.com/news/2025/11/19/trump-cfpb-nomination-levenbach-vought-

00659032.

[4] https://www.reuters.com/world/us-consumer-watchdog-seeks-transfer-cases-doj-citing-funding-sources-say-2025-11-20/.

[5] https://www.federalregister.gov/documents/2025/11/13/2025-19865/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b.

[6] https://www.federalregister.gov/documents/2023/05/31/2023-07230/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b.

[7] https://www.congress.gov/bill/118th-congress/senate-joint-resolution/32/text.

[8] https://www.federalregister.gov/documents/2025/11/13/2025-19865/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b.

[9] https://www.federalregister.gov/documents/2025/11/13/2025-19864/equal-credit-opportunity-act-regulation-b.

[10] https://www.federalregister.gov/documents/2025/10/29/2025-19689/registry-of-nonbank-covered-persons-subject-to-certain-agency-and-court-orders-rescission.

[11] https://www.federalregister.gov/documents/2024/07/08/2024-12689/registry-of-nonbank-covered-persons-subject-to-certain-agency-and-court-orders.

[12] https://www.federalregister.gov/documents/2025/10/29/2025-19690/registry-of-supervised-nonbanks-that-use-form-contracts-to-impose-terms-and-conditions-that-seek-to.

[13] https://www.federalregister.gov/documents/2023/02/01/2023-00704/registry-of-supervised-nonbanks-that-use-form-contracts-to-impose-terms-and-conditions-that-seek-to.

[14] https://www.federalregister.gov/documents/2025/10/28/2025-19671/fair-credit-reporting-act-preemption-of-state-laws.

[15] https://storage.courtlistener.com/recap/gov.uscourts.cadc.41898/gov.uscourts.cadc.41898.01208794293.0.pdf.

[16] https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3170&csrf_token=2150269A00E87C561881E21193417858A5C214B06A0E7052F410E81F87115D7D8D5E78F612BDE3A0D33E6CCA96CE3990D140.

[17] https://www.federalregister.gov/documents/2025/08/22/2025-16139/personal-financial-data-rights-reconsideration.

[18] https://www.bhfs.com/wp-content/uploads/2025/11/CFPB-Unified-Agenda-Table-11.17.25.pdf.

[19] https://www.congress.gov/nomination/119th-congress/652.