

CFPB Shaken Up While Courts Address Consumer Fraud Obligations Under EFTA and Convenience Fees

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The new administration continues to shake up the financial services regulatory environment. The CFPB's new acting director indicated over the weekend that the agency will not take its next draw of funding from the Federal Reserve, noting the CFPB's current balance as being more than sufficient. Its acting director has separately told staff to "stand down" from doing work, which has prompted lawsuits by staff. In the short term, the CFPB has already moved to stay multiple pending actions that were filed under the prior administration. Whether the CFPB will resume pursuit of the Rohit Chopra agenda remains to be seen. Notably, in the final two weeks under Chopra's lead, the CFPB, perhaps seeing the writing on the wall in terms of the Bureau's funding and direction or even its existence, issued a report calling for the states to pursue initiatives of the agency. See [Strengthening State-Level Consumer Protections, CFPB](#) (Jan. 14, 2025).

Some state attorneys general have not needed CFPB prompting. Attorney Letitia James, the AG in New York, is currently pursuing an enforcement action seeking to apply the Electronic Fund Transfer Act (EFTA) to consumer wire transfers. It has generally been accepted that wire transfers are governed by Article 4 of the UCC and are exempt from the EFTA. In its suit, the New York AG nonetheless alleges that consumer wire transfers, which are becoming more prevalent, are subject to the EFTA and therefore banks and credit unions should be liable for fraudulent wire transfers. The defendant in that case filed a motion to dismiss, but the US District Court for the Southern District of New York denied it. In a 62-page order, the Court concluded it would be incompatible with the text and history of the EFTA to find that it did not apply to consumer-initiated wire transfers.

In another recent case, *Booze v. Ocwen*, the 11th Circuit held that it is a violation of the Fair Debt Collection Practices Act (FDCPA) to collect fees for loan payments (so called "convenience fees") unless they are expressly provided for in the loan documents. The defendant in that case had contracted with a third party to process payments by phone or online and was charging customers for the privilege of making payments via the intermediary. The *Booze* decision follows an earlier decision out of the Fourth Circuit, *Alexander v. Carrington Mortgage*, and a CFPB advisory opinion issued in 2022. Even if the CFPB is not around to enforce its advisory opinion, banks and credit unions that

charge convenience fees should be wary of doing so because there are now two federal circuit courts of appeal that have found they violate the FDCPA.

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