

## **Alert** | Financial Services Litigation



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### **CFPB Plans Personal Lender Oversight, Funds Access Rules**

The Consumer Financial Protection Bureau (CFPB) said it plans to pursue rulemaking aimed at increasing the availability of deposited funds at banks and bringing larger non-bank personal lenders under the agency’s supervision. The intention for rulemaking responds to a 2022 petition for rulemaking and a 2023 request submitted by a Brookings Institution fellow. After the CFPB released its plan, President Donald Trump’s executive order, titled “Regulatory Freeze Pending Review,” directs federal agencies to stop all rulemaking activity pending within the agency and to consider all rules already published as paused for 60 days.

#### **Regulation CC**

The proposed rulemaking may be complex, as it would impact Regulation CC, which is under the purview of the CFPB and the Federal Reserve. Regulation CC implements the Expedited Funds Availability Act, a 1987 law that governs the holds banks place on incoming deposits prior to making the funds fully available for consumer use. Under Regulation CC, the Federal Reserve and CFPB are required to set holding periods and reduce those periods to “as short a time as possible” based on payment and check processing speeds.

No regulations impacting Regulation CC have been issued since President Reagan signed the Expedited Funds Availability Act in 1987. The CFPB has stated that the comments received in response to the

petition for rulemaking support a rule that would examine reducing hold times. When contemplating rulemaking, the CFPB would need to take into account fraud considerations for clearing checks.

### Supervision of Larger Non-Banks in the Personal Loan Market

The petition for rulemaking proposed that the CFPB begin a rulemaking to define “larger participants” in the non-bank personal loan market, which would subject larger non-banks to the CFPB’s supervisory authority. “The CFPB has supervisory authority over both nonbanks and very large banks in most segments of consumer lending – including mortgages, auto finance, and private education loans – but not the entirety of the personal loan market, where the CFPB generally only has supervisory authority over large banks and nonbank payday lenders.” While banks provide a substantial portion of personal loans in the form of credit cards, there is a large portion of non-banks that make up the personal loan market. There are approximately 85 million accounts and over \$125 billion in outstanding balances, which the CFPB noted warrants proposed rulemaking. The CFPB already supervises certain non-bank participants in the payday loan market (e.g., traditional payday loans or online or app-based payday loans that are sometimes marketed as “earned wage” products).

The CFPB has not provided a timeframe for its proposed rulemaking.

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