HUSCH BLACKWELL

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: OCTOBER 1, 2025

Alternative Commercial Finance Monthly | September 2025

Services

Alternative Commercial Finance

Consumer Financial Services

Industry

Financial Services & Capital Markets

Professionals

CHRISTOPHER K. FRIEDMAN
NASHVILLE: 615.949.2252
CHRIS.FRIEDMAN@HUSCHBLACKWELL.COM

ALEXANDRA MCFALL
NASHVILLE: 615.949.2240
ALEX.MCFALL@HUSCHBLACKWELL.COM

SHELBY LOMAX
NASHVILLE: 615.949.2240
SHELBY.LOMAX@HUSCHBLACKWELL.COM

While ostensibly a regulator dedicated to the protection of consumers, if the last several years tell us anything, the Consumer Financial Protection Bureau (CFPB) is not shy about expanding its reach into the business-purpose finance realm. As a consequence, we are constantly tracking broad trends at the bureau. This month, the CFPB has been quite active, having recently published its Unified Rulemaking Agenda. The agenda signals an ambitious regulatory year ahead, with twice as many initiatives as last fall—many of which suggest a coming period of welcome regulatory change focused on innovation and business-friendly regulation.

In addition to the CFPB, the Federal Deposit Insurance Corporation (FDIC) has removed the disparate impact theory from its Consumer Compliance Examination Manual—a development that may ease compliance burdens for alternative commercial finance lenders. After all, the Equal Credit Opportunity Act (ECOA) applies to commercial credit, and federal regulatory initiatives—such as the apparently-backburnered Dodd-Frank 1071 rule—derive much of their "bite" from the disparate impact theory of fair lending liability.

CFPB updates

CFPB releases its Unified Rulemaking Agenda

On September 4, 2025, the Office of Management and Budget published its semiannual Unified Agenda of Regulatory and Deregulatory Actions, which includes 24 items from the CFPB (double the items from last fall). The Unified Agenda outlines the regulatory initiatives that the CFPB has undertaken or plans to address during the period from June 2025 through May 2026. Of these, nine items are at the Pre-Rule stage, ten are at the Proposed Rule stage, and five have reached the Final Rule stage. We have included a few of the salient items below.

Pre-rule stage

Unfair, deceptive, or abusive acts and practices: The CFPB has indicated that they are considering whether rulemaking or other activities may help clarify the statutory language with respect to unfair, deceptive, or abusive acts and practices under Section 1031 of the Dodd-Frank Act. Recall that under the previous administration, the CFPB took the position that discrimination was an "unfair" practice under the CFPB's UDAAP authority. This position resulted in widespread uncertainty and questions in the consumer and alternative commercial lending markets. For instance, is discrimination under UDAAP limited by protected classes? Which products and industries are covered by UDAAP discrimination (presumably anything under the bureau's jurisdiction?). We could anticipate the CFPB clarifying its position related to UDAAP discrimination, among other helpful clarifications.

Large participants: The CFPB is considering whether to propose a rule to amend the definition of "larger participants" for automobile financing, debt collection, consumer reporting, and remittances markets.

Proposed rule stage

Reconsideration of small business lending data collection: The CFPB plans to issue a proposed rule to "reconsider" certain aspects of the May 2023 final rule implementing Section 1071 of the Dodd-Frank Act, which requires financial institutions to collect and report data on small business lending. Of course, this is likely the most salient and anticipated piece of news coming out of the CFPB for SME finance companies. The 1071 data collection regime will substantially increase compliance, litigation, and regulatory risk for small business finance companies. Of course, Section 1071 is statutory—so it's not going away unless Congress decides to act. However, we can hope that a revised rule reduces the compliance burden on the industry.

Personal financial data rights reconsideration: Dodd-Frank Section 1033 also potentially affects SME finance companies and fintechs operating in the alternative commercial finance space. Colloquially known as the "open banking" rule, Section 1033 would grant consumers the right to access their financial data and authorize third parties to access that data on their behalf. An open banking regime could be a boon for fintechs seeking to utilize data points such as deposit account records in order to underwrite consumer and commercial finance products. The CFPB is planning to

issue a proposed rule to "reconsider the November 2024 final rule." Like Dodd-Frank Section 1071, the 1033 rule is statutory and will likely remain on the books.

Rescission of nonbank covered persons registry: As we reported previously here, the CFPB proposed rescinding the Registry of Nonbank Covered Persons Subject to Certain Agency and Orders Rule, which requires nonbank companies to report to the CFPB if a government agency or court has issued a final public order against them.

Clarification of equal credit opportunity act (ECOA) standards: The CFPB is considering whether rulemaking or other actions would facilitate compliance with ECOA by clarifying the obligations imposed by the statute.

Final rule stage

Remittance transfers under the Electronic Fund Transfer Act (Regulation E): In September 2024, the CFPB issued a proposal for a narrowly tailored amendment to certain remittance transfer disclosure requirements and certain accompanying model forms, to ensure that consumers sending a remittance transfer have information about the types of inquiries that may be most efficient to direct to the CFPB and the state agency that licenses or charters their remittance transfer provider.

Rescission of state official notification rules: The CFPB has issued a direct final rule rescinding the CFPB's procedures by which a state official must notify the CFPB when the official takes an action to enforce the Consumer Financial Protection Act.

Implications for alternative commercial finance companies

The CFPB's latest Unified Rulemaking Agenda signals a period of significant regulatory activity that will directly and indirectly impact SME lenders and alternative commercial finance providers. While some of the most high-profile initiatives—such as the reconsideration of Section 1071's small business lending data collection requirements and Section 1033's open banking framework—are statutory and unlikely to disappear, the bureau's apparent willingness to revisit and potentially streamline these rules offers a measure of hope for a more balanced compliance landscape.

For SME lenders and alternative finance companies, the following implications are key:

Potential compliance relief: The CFPB's willingness to reconsider aspects of both the 1071 and 1033 rules suggests an openness to industry feedback and a possible reduction in compliance

burdens. This is especially critical for smaller lenders and fintechs, who may lack the resources of larger banks to manage extensive data collection and reporting obligations.

Greater regulatory clarity: The bureau's focus on clarifying UDAAP (Unfair, Deceptive, or Abusive Acts and Practices) and ECOA (Equal Credit Opportunity Act) standards should help reduce regulatory uncertainty. Clearer definitions and boundaries can empower alternative finance companies to innovate and serve their markets without inadvertently running afoul of ambiguous rules.

Fair lending and disparate impact: The FDIC's removal of the disparate impact theory from its examination manual, paired with potential CFPB clarifications, may ease some of the fair lending compliance risks that have long concerned commercial lenders. However, vigilance remains necessary, as the regulatory landscape continues to evolve.

Opportunities in open banking: The ongoing development of open banking rules under Section 1033 could unlock new opportunities for fintechs and alternative lenders to leverage consumer-permissioned data for underwriting and product innovation. Companies that invest in secure, consumer-friendly data access solutions stand to benefit as these rules take shape.

Continued need for proactive compliance: Despite some positive signals, the sheer volume of new and evolving rulemakings means that alternative commercial finance companies must remain proactive in their compliance and risk management efforts. Early engagement with new rules, robust internal controls, and ongoing dialogue with regulators and industry groups will be essential.

CFPB final rule restores confidentiality in supervisory designation proceedings

On September 25, 2025, the CFPB issued a final rule that restores confidentiality in supervisory designation proceedings. As originally enacted in 2013, the Procedures for Supervisory Designation Proceedings provided that information regarding supervisory designation proceedings was treated as confidential and was not publicly disclosed. However, pursuant to recent amendments made in 2022 and 2024, the bureau issued a series of rules that enabled the director to publicly release the director's final decisions and orders designating respondents for supervision. Now, the CFPB has walked back those amendments, finding that confidentiality is ultimately in the best interests of both the supervisory process and the entities involved.

The CFPB's decision comes after receiving and considering public comments, with business and banking associations voicing strong concerns about the reputational harm and competitive

disadvantage that could result from public disclosure of contested supervisory designations. They argued that the risk of public orders could pressure entities into consenting to supervision even when they have valid defenses, undermining fairness and the supervisory relationship. Consumer advocates, in contrast, favored transparency, arguing that public decisions help the market and consumers understand the bureau's actions. Ultimately, the CFPB concluded that the risk of reputational harm and the potential for unmerited supervisory designations outweighed the benefits of public disclosure, especially given the limited number of contested proceedings and published orders to date.

For alternative commercial finance lenders, the CFPB's restoration of confidentiality in supervisory designation proceedings offers important protections and peace of mind. By ensuring that contested supervisory designations remain private, lenders no longer face the risk of the reputational harm or competitive disadvantage that stems from the public disclosure of ongoing proceedings. Additionally, this change supports a more balanced relationship between lenders and the regulators, allowing lenders to assert valid defenses without feeling pressured or obligated to consent to supervision.

FDIC updates

FDIC removes disparate impact theory from compliance exam manual

Just before Labor Day, the FDIC updated the fair lending and unfair, deceptive act or practices (UDAP) chapters of its Consumer Compliance Examination Manual to remove all references to the disparate impact theory—effective August 29, 2025. Previously, the manual explained that disparate impact occurs when a neutral policy disproportionately affects protected groups under the Equal Credit Opportunity Act (ECOA) or the Fair Housing Act (FHA), even if applied equally. This guidance, along with related explanations, has now been eliminated.

Despite the rollback of the disparate impact theory under the FDIC's Consumer Compliance Examination Manual, disparate impact remains a recognized legal theory under the FHA and under many state laws. Thus, lenders should remain vigilant in monitoring their practices for potential disparate impact, as state and private actions are likely to continue. For a full discussion of this change, please refer to our colleagues' legal update here.

Additionally, there has been some speculation that the CFPB's anticipated clarification of ECOA standards, as noted in the Unified Agenda, could similarly remove the disparate impact theory from their guidance to conform with Executive Order 14281 (which directs federal agencies to reduce and eliminate the use of disparate impact theory in all contexts). However, this has not been confirmed.

The FDIC's removal of the disparate impact theory is a welcome change for the alternative commercial industry. Under the disparate impact theory, a policy or practice may be considered

discriminatory if it has a disproportionately adverse effect on members of a protected group, even if there is no intent to discriminate. This can require lenders to invest in very complicated and burdensome compliance measures. The removal of this theory, at least for purposes of FDIC guidance, allows lenders to focus on intent-based compliance, offering greater flexibility in underwriting without the constant concern of inadvertently triggering regulatory scrutiny.

Nevertheless, as noted above, while the FDIC's shift may ease certain regulatory burdens, it does not provide immunity from disparate impact claims brought under other statutes, such as the FHA or state laws. As a result, it is crucial for lenders to maintain robust compliance programs and to continue to comply with all applicable federal and state anti-discrimination laws.

Critical insights from Husch Blackwell

Other consumer finance insights

Wisconsin Court of Appeals Affirms Primacy of UCC Safe-Harbor Pre- and Post-Sale Notices After Repossession

Wisconsin Supreme Court to Hear NBA Preemption Case

FDIC Removes Disparate Impact Theory from Compliance Exam Manual

Financial services insights

Classifying Subrogation Claims under State Insurance Liquidation Laws

What Filers Should Know as the EDGAR Next Deadline Approaches

Labor and employment insights

Colorado Supreme Court Rules Shorter Statute of Limitations Period Applies to Colorado Wage Claims

Senate Confirms Aronowitz to Lead Employee Benefits Security Administration

FTC Abandons 2024 Non-Compete Rule, Signals Priority in Non-Compete Enforcement Actions

International trade insights

Container Accident Highlights the Importance of Cargo Risk Management

Healthcare law insights

Effective Date for New Massachusetts Hospital Stroke Services Regulations Draws Near

Missouri Joins States Expanding Health Plan Options Beyond Traditional Insurance

Energy and natural resources insights

OBBBA Renewable Energy Provisions: Frequently Asked Questions

MISO to Adjust Settlement Statements for the 2025/26 Planning Resource Action

Contact us

If you have any questions about the alternative consumer finance industry, please contact Christopher Friedman, Alex McFall, Shelby Lomax, Grant Tucek, Jakob Seidler, Luis Hidalgo, or your Husch Blackwell attorney.