

## CFPB and SEC Developments in Trump's Second Term

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The 2024 presidential election triggered a flurry of action in the banking sphere as agencies raced to fulfill their agendas before a second Trump term. From rulemakings issued by the Consumer Financial Protection Bureau (CFPB) to shifting priorities within the U.S. Securities and Exchange Commission (SEC), much remains uncertain as Trump prepares to install new leadership. See below the topics we are paying closest attention to in the coming months and stay tuned for more detailed analyses.

### CFPB

**CFPB continues to amend Regulation E to broaden its scope.** The CFPB has been actively working to amend Regulation E, including as it relates to opt-in and overdraft protections, and to cover virtual currencies. To help our clients stay abreast of the latest Regulation E developments, we are pleased to introduce the [Reg E Reader](#), a blog featuring insights from Winston's multidisciplinary Financial Services Group on legal and enforcement developments relating to all things Regulation E.

**CFPB's finalized rule allowing for supervision of large nonbank companies that offer digital consumer payment applications.** The CFPB finalized a rule in November 2024 establishing federal oversight of digital payment apps to protect personal data, reduce fraud, and curb illegal "debanking" (e.g., consumers' loss of app access without notice). <sup>[1]</sup> Relatedly, in December 2024, the CFPB filed a complaint against the operator of Zelle and three of its owner banks, alleging that the defendants failed to establish effective anti-fraud measures or otherwise comply with consumer financial protection laws. <sup>[2]</sup>

**CFPB's finalized rule removing medical bills from credit reports.** This month, the CFPB finalized a rule prohibiting lenders from including medical bills on credit reports and using medical information in their lending decisions. <sup>[3]</sup> Two trade groups promptly moved for a preliminary injunction, arguing their members would suffer irreparable harm in the form of "unrecoverable compliance costs" if the rule is not enjoined. <sup>[4]</sup> The rule takes effect in March, rendering this lawsuit one to watch for lenders. <sup>[5]</sup>

**CFPB's recent efforts to activate Section 1033 of the Consumer Financial Protection Act.** In October 2024, the CFPB finalized the Personal Financial Data Rights Rule to limit the use of personal financial data and facilitate the transfer of individuals' personal financial data to other providers upon request. <sup>[6]</sup> The rule activates Section 1033 of

the Consumer Financial Protection Act, a dormant legal authority requiring covered entities to make information concerning a consumer financial product or service available upon request.<sup>[7]</sup>

**CFPB’s finalized rule governing overdraft fees and the lawsuit launched by trade groups to challenge it.** The CFPB’s rule governing overdraft fees, finalized in December 2024, provides three options for covered banks and credit unions: cap overdraft fees at \$5; charge a fee that covers no more than costs or losses; or continue to offer profit-generating overdraft loans that comply with established lending laws.<sup>[8]</sup> Trade associations have sued the CFPB to challenge the rule, claiming that the agency exceeded its statutory authority.<sup>[9]</sup>

**CFPB’s proposed rule to ban contract clauses that “limit fundamental freedoms.”** This month, the CFPB proposed a rule to prohibit companies from using contract clauses that “limit fundamental freedoms, including waivers of substantive legal rights and fine print that suppresses speech.”<sup>[10]</sup> The rule would codify the Federal Trade Commission’s Credit Practices Rule to apply to entities subject to the Consumer Financial Protection Act and would forbid covered entities from including terms and conditions in consumer contracts that waive substantive rights, allow the entity to unilaterally amend material terms, or restrain a consumer’s free expression.<sup>[11]</sup>

## SEC

**Focus on fraud enforcement, clear investor harm.** Paul Atkins—Trump’s pick to replace Gary Gensler as chair of the SEC—has spoken about his skepticism of issuer penalties. As a result, regulated entities can expect more focus on clear investor harm, with an emphasis individual bad actors.

**Regulation Best Interest focus for broker-dealers.** The SEC’s 2025 Fiscal Year Priorities focus on broker-dealer practices in areas like conflict identification and disclosures, consumer recommendations, elimination and mitigation, and investment profiles.<sup>[12]</sup> It is unclear the extent to which an Atkins-led SEC will follow the priorities list, but examining broker-dealer practices related to Regulation Best Interest aligns with Atkins’s support of protecting retail investors.<sup>[13]</sup>

**End to off-channel communications sweeps.** Gensler’s SEC brought a series of cases involving text messages and other off-channel communications,<sup>[14]</sup> but recently announced a move away from these cases. Additionally, current Republican SEC Commissioners and Republican advocacy groups have criticized these cases as imposing excessive penalties without “an achievable path to compliance.”<sup>[15]</sup> Thus, under Atkins, the SEC is unlikely to institute more sweeps with large penalties for off-channel communications, unless there is related investor harm. However, regulated entities should still be aware that requests for off-channel communications may remain as part of many investigative requests.

**Shift away from Biden administration’s policies and elimination of reporting rules.** An Atkins-led SEC will likely eliminate or severely dilute the climate disclosure rule. The rule, finalized in March 2024, was immediately challenged by numerous states and industry groups in lawsuits.<sup>[16]</sup> Atkins has voiced strong opposition to the rule, signaling that the climate disclosure rule is unlikely to survive regardless of the lawsuits’ outcomes.<sup>[17]</sup> Atkins is also unlikely to attempt reviving the buyback disclosure rule vacated in 2023.<sup>[18]</sup>

**Increased enforcement under the Foreign Corrupt Practice Act.** Along with individual accountability, an Atkins-led SEC will likely emphasize sanctions and export controls under the Foreign Corrupt Practice Act.<sup>[19]</sup> Marco Rubio, Trump’s pick for Secretary of State, highlighted the Trump administration’s likely focus on Chinese investment and influence during his confirmation hearing—signaling at least one area of major scrutiny.<sup>[20]</sup>

## What Next?

Keep updated on Regulation E and other financial services-focused developments by visiting Winston & Strawn’s [Insights & News](#) page. And reach out to our team, or your favorite Winston attorney, for more information.

If you’d like to hear more about what to expect from the CFPB and SEC, February 13, 2025, for a brief webinar. [Learn more and register.](#)

- [1] [CFPB Article \(November 21, 2024\)](#): CFPB Finalizes Rule on Federal Oversight of Popular Digital Payment Apps to Protect Personal Data, Reduce Fraud, and Stop Illegal “Debanking.”
- [2] [Zelle Complaint](#): Early Warning Services, LLC; Bank of America, N.A.; JPMorgan Chase, N.A.; and Wells Fargo, N.A.
- [3] [CFPB Article \(January 7, 2025\)](#): CFPB Finalizes Rule to Remove Medical Bills from Credit Reports.
- [4] [Motion for Preliminary Injunction](#): *Cornerstone Credit Union League & Consumer Data Industry Ass’n v. CFPB & Rohit Chopra*.
- [5] [CFPB Article \(January 7, 2025\)](#): Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V).
- [6] [CFPB Article \(October 22, 2024\)](#): CFPB Finalizes Personal Financial Data Rights Rule to Boost Competition, Protect Privacy, and Give Families More Choice in Financial Services.
- [7] *Id.*; [CFPB Article \(Undated\)](#): Required Rulemaking on Personal Financial Data Rights.
- [8] [CFPB Article \(December 12, 2024\)](#): CFPB Closes Overdraft Loophole to Save Americans Billions in Fees.
- [9] [Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction](#): *Mississippi Bankers Ass’n, et al. v. CFPB*.
- [10] [CFPB Article \(January 13, 2025\)](#): CFPB Proposes Rule to Ban Contract Clauses that Strip Away Fundamental Freedoms.
- [11] [Federal Register \(January 14, 2025\)](#): Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services (Regulation AA).
- [12] [SEC](#): Fiscal Year 2025 Examination Priorities.
- [13] [Law360 \(December 17, 2024\)](#): Changes to Expect from SEC Under Trump Nominee.
- [14] [SEC Press Release \(September 24, 2024\)](#): Eleven Firms to Pay More Than \$88 Million Combined to Settle SEC’s Charges for Widespread Recordkeeping Failures.
- [15] [SEC \(September 24, 2024\)](#): A Catalyst: Statement on Qatalyst Partners LP.
- [16] [SEC](#): Order Issuing Stay in the Matter of Enhancement and Standardization of Climate-Related Disclosures for Investors.
- [17] [Law360 \(January 9, 2025\)](#): Impact of Successful Challenges to SEC’s Rulemaking Ability.
- [18] [Law360 \(January 1, 2025\)](#): Trump’s Regulatory Agenda Looms over Compliance in 2025
- [19] *Id.*
- [20] [Senate Foreign Relations Committee \(January 15, 2025\)](#): Highlights from Marco Rubio’s Confirmation Hearing. 7 Min Read

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## Related Topics

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