

## Shifting the Focus: Growing Risks of Class Action Litigation in Lieu of CFPB (Non)-Enforcement

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- Regulation E (Reg E) establishes the basic rights, liabilities, and responsibilities of consumers who use electronic funds transfers (EFTs) and remittance transfer services, and of the financial institutions or others that offer these services.
- Since the start of the Trump administration, much of the CFPB's ongoing rulemaking and enforcement activity has been put on pause. But state agencies, nonprofits, and individual plaintiffs appear to be stepping in to fill the gaps left by the CFPB.
- Where regulatory agencies may be less active as a result of the new administration, there is an increased risk of civil class action suits targeted at the same alleged violations.

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Since 2010, the CFPB has been the primary enforcer of the federal consumer protection laws, recovering over \$20 billion for American consumers.<sup>[i]</sup> But under the new Trump administration, the Bureau's investigative and regulatory-enforcement capabilities have been scaled back.<sup>[ii]</sup> As discussed in prior editions of the *Reg E Reader*, state governments and nonprofit entities have rushed to fill this perceived gap in the Bureau's enforcement agenda.<sup>[iii]</sup>

But that void is also being filled by private litigants. Since the new administration kicked off on January 20, 2025, federal courts have seen a flurry of private, consumer-led class actions asserting violations of the Electronic Fund Transfer Act and Reg E, which explicitly provide a private cause of action for civil liability. 15 U.S.C. § 1693m. Class action complaints have already been filed in Massachusetts,<sup>[iv]</sup> California,<sup>[v]</sup> Kansas,<sup>[vi]</sup> Virginia,<sup>[vii]</sup> and Mississippi,<sup>[viii]</sup> blending federal consumer protection claims with common-law tort and contract claims, in addition to parallel claims under state unfair-competition and deceptive-trade-practices statutes.

These filings could be the first signs of a larger shift in consumer action. Last month, the Senate Committee on Banking, Housing, and Urban Affairs minority staff released a report showing that the average daily volume of consumer complaints processed by the Bureau dropped by 80%.<sup>[ix]</sup> On average, nearly 8,000 consumers per day file complaints with the CFPB. Without the CFPB to address their concerns, they are likely to turn to plaintiffs' lawyers with their claims, often sounding in financial fraud or discrimination.<sup>[x]</sup> This approach can be contrasted with

that of prior years, when plaintiffs’ lawyers often piggybacked on issues that were brought by the government and turned them into litigation opportunities.<sup>[xi]</sup>

The resulting consumer class action suits pose different risks from those of an agency enforcement action. Recently filed class actions have sought state-law punitive and special damages, pre- and post-judgment interest, class-specific statutory damages, and treble damages under 15 U.S.C. § 1693f(e). Especially if the class size is large, consumer class actions can result in much-steeped financial liabilities, which can be further compounded by the extended class action litigation process, increased negative publicity, and unpredictable final outcomes subject to the decisions of idiosyncratic judges and juries.

So even as the Bureau’s enforcement actions ebb, financial institutions should continue to closely monitor their compliance with Reg E, or else they run the risk of costly, protracted class action litigation. Financial institutions should also consider taking proactive risk-mitigation steps with the assistance of experienced class action counsel, like building binding arbitration clauses and class action waivers into standard consumer-facing financial contracts.

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[i] Consumer Fin. Prot. Bureau, [The CFPB](#) (last updated Dec. 3, 2024).

[ii] E.g., Evan Weinberger, [Trump Plans to End CFPB Despite Reviving Work, Official Says, Bloomberg Law](#) (Mar. 11, 2025); Wyatt Grantham-Phillips, [The CFPB Drops Its Enforcement Lawsuits Against Capital One, Rocket Homes and More](#), AP News (Feb. 27, 2025, 6:16 p.m.).

[iii] See Caitlin M.R. Mandel, Christina E. Zaldivar & Arman Aboutorabi, [Reg E’s Continued Importance During the CFPB Halt](#), Reg E Reader (Feb. 25, 2025) (state government); Caitlin M.R. Mandel & Christina E. Zaldivar, [Mississippi Judge Allows Reg E’s Newest Defenders to Pick Up Where CFPB Left Off](#), Reg E Reader (Mar. 12, 2025) (nonprofit intervenors).

[iv] [Distefano v. Bank of Am., N.A.](#), No. 25-cv-10272 (D. Mass. Feb. 4, 2025).

[v] [Muse v. Vive Fin. LLC](#), No. 25-cv-01259 (C.D. Cal. Feb. 13, 2025).

[vi] [Villalobos v. Credit Union of Am.](#), No. 6:25-cv-1029 (D. Kan. Feb. 19, 2025).

[vii] [Ray v. Atl. Union Bank](#), No. 25-cv-132 (E.D. Va. Feb. 19, 2025); [Goolsby v. Bank of Am., N.A.](#), No. 25-cv-00009 (W.D. Va. Mar. 7, 2025).

[viii] [Reed v. Cmty. Bank of Miss.](#), No. 25-cv-135 (S.D. Miss. Feb. 24, 2025); [Albright v. Bankplus](#), No. 25-CV-35 (N.D. Miss. Mar. 10, 2025).

[ix] See Melina Druga, [CFPB Processing 80 Percent Fewer Complaints Since Feb. 13](#), Fin. Regul. News (Mar. 3, 2025).

[x] Minority Staff of S. Comm. on Banking, Housing, & Urban Affairs, [Left in Limbo: How President Trump’s Efforts to Dismantle the Consumer Financial Protection Bureau Force Consumers to Face Corporate Greed Alone](#) (Feb. 2025) (prepared for Sen. Elizabeth Warren).

[xi] See, e.g., [Ballard v. Bank of Am., N.A.](#), No. 23-cv-422, ECF No. 1, at 3 (W.D.N.C. July 13, 2023) (structuring claim to follow CFPB consent order related to “this exact conduct”); [Penuela v. Wells Fargo Bank, N.A.](#), No. 24-cv-02098, ECF No. 14, at 4 (N.D. Cal. Apr. 26, 2024) (fixating on CFPB consent decree regarding “one of the very claims alleged here”); [Egahi v. Worldremit Corp.](#), No. 24-cv-03728, ECF No. 1, at 3–9 (D. Md. Dec. 23, 2024) (bringing allegations based on prior CFPB consent order).

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