

The Regulation of Marketplace Lending

Recent Regulatory
Developments

October 2026 Update

CHAPMAN
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THE REGULATION OF MARKETPLACE LENDING:

Recent Regulatory Developments

October 2026

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APPENDIX A: ABOUT CHAPMAN

Preface

Chapman and Cutler LLP has been publishing “The Regulation of Marketplace Lending” for some 15 years. We try to present the evolution of the marketplace lending industry and the legal and regulatory issues associated with participants in this space.

At each iteration, we highlight and summarize the developments since the last publication. This update covers happenings since November 2025. This year, we begin by providing a short background of the evolution of the marketplace lending industry. Of particular note, we then summarize true lender developments and state opt-out legislation and litigation challenges. We explore the current surge in applications by fintechs to become banks. We also cover developments at the federal level, including happenings at the Consumer Financial Protection Bureau (“CFPB”), state laws and actions affecting the industry, and notably Buy Now Pay Later legislation that has been front and center this past year. Events tracked in prior years are also updated, including significant litigation.

This year, we again dedicate a section to emerging issues related to digital assets because of their increasing use and development and the impact they may have on marketplace lending as we know it. A special thanks to my partners Elizabeth Boison and Judy Chen for the authorship of the section on digital assets.

Where possible, we are providing links to the cited materials for those interested in further review, and for this we are appreciative of the efforts of Sarah Andeen and our Research Services Department. We also acknowledge that this publication would not be possible without the efforts of others involved in this process, including our proofreader Leah Mayes and our Marketing Department, particularly Claire Clark.

You will see footnotes that refer you to further discussion of the issues in our complete publication. You will have to wait until the full version of our publication becomes available in late November. It may be accessed through our website: www.chapman.com.

Questions or comments on this document may be sent to Marc Franson at franson@chapman.com.

We hope that you find this material helpful and that you will seek out the more expansive publication in late November.

Recent Developments in Marketplace Lending Regulation

I. INTRODUCTION

In order to provide some background on the current issues facing the marketplace lending industry, we thought it would be helpful to provide a brief definition and a short summary of the historical development of this space in order to see how some of the hot-button issues of 2026 came into being.

A. Marketplace Lending: A Definition, and Its History and Evolution

There is no one definition of marketplace lending but it is composed of three primary elements: (1) the use of online platforms (2) to connect borrowers with lenders (3) through the use of financial technology. The use of online platforms separates the marketplace industry from traditional banking models typically involving face-to-face interactions often in a brick-and-mortar setting such as a bank branch and often paper based. Marketplace participants seek to connect individual consumers or businesses with lending products and services offered by lenders in order to consummate loan transactions. Most online lending platforms employ specialized or sophisticated technological tools such as underwriting and pricing models that allow automation to speed up the application, approval, and funding process. As a result, marketplace lending is almost entirely online, which allows a faster and more efficient user experience that is attractive to borrowers who are often frustrated with the complexity and slowness of more traditional lending options.

Marketplace lending had its beginnings around the time of the recession of 2008. Not only did banks tighten their credit standards, but many ceased making smaller loans to consumers and small businesses, as they were not profitable. With fewer financing options available, this opened the door for new market entrants—primarily nonbanks—and new products. While many of the products served a need, they also allowed for some high-rate products to proliferate, such as payday loans for consumers and merchant cash advances for businesses.

1. *In the Beginning ... Peer-to-Peer Loans.*

In its simplest and purest form, a peer-to-peer loan would be a loan from Person A to Person B. But making a business out of this requires many loans. Initially, two of the original consumer marketplace lenders—Lending Club and Prosper Marketplace—created a user-friendly, Internet-based platform that allowed investors having capital to deploy to be matched with consumers seeking credit. The platforms would then sell pass-through notes representing fractional interests in loans to investors. Initially, the investors were retail investors, but later this category was broadened to include institutional investors. The notes representing both the borrower loans and the platform notes were executed electronically. The platform serviced the loans. However, soon after inception, the Securities and Exchange Commission determined that the platform notes were investment contracts and subject to regulation as securities under the Securities Act of 1933. This required the platforms to register the securities, which was both complex and costly. As a result, marketplace lending evolved into a different form.

2. *The Bank Partnership Model*

For nonbanks to engage in direct lending in the consumer market, lending licenses are required in virtually every state.¹ These licenses are sometimes difficult to obtain and require adherence to state-by-state rate and fee limitations, disclosure requirements, and a myriad of compliance responsibilities that become complex in a multi-state lending business. Yet some marketplace lenders operate under a state licensing regime.

Other nonbanks take a different approach by “partnering” with a traditional bank and acting as service providers to the bank to originate loans. Insured depository institutions under federal law may export nationwide the rates and fees of the states in which the financial institution is located and preempt the laws of other states even if those states would not allow loans to be made at those rates. For example, Utah does not have a usury limitation so banks in Utah are often used for marketplace programs, as Utah allows maximum flexibility with respect to rates and fees.

As a result, the service provider typically will set up an online portal or website to market and originate loans for the insured bank, which then makes and funds the loan. The service provider sometimes takes the origination fee of the loan for the services it provides. This is sometimes called the “originate to sell” model as most of the loans made by the bank are sold soon after funding. This is in contrast to loans originated to hold by the funding bank, although some marketplace programs exist where the bank holds the entire loan or a portion of the loan marketed by the service provider.² In some cases, the service provider also purchases the loan or an interest in the loan. In other cases, the service provider will also service the loans and obtain a servicing fee for performing this service. Whether or not the service provider purchases the loan (or interests in the loan), some or many of the loans are eventually securitized or sold to institutional investors, funds, and even banks who shunned making these types of loans, which resulted in the germination of the marketplace lending industry.

In this model, the sponsor/funding bank and the fintech service provider will typically enter into a program agreement that addresses the responsibilities and rights of each party to the lending program. If the service provider purchases the loans or an interest in the loans, it will enter into a purchase agreement with the bank for that purchase.³ Often there will also be a servicing agreement outlining the servicing responsibilities to be performed on behalf of the originating bank. In this model, the fintech still must obtain some state licenses to market/broker the loans to the bank, to purchase the loans, and to service/collect the loans it does not own. In a securitization or sale transaction, the fintech usually retains the right to service the loans, although there is often a backup servicer employed to take over servicing in the event of default or difficulty of the original servicer.

This conventional bank partnership model has generated some controversy and resulted in significant litigation and state legislation often directed at higher-rate lending programs. In 2015, a court decision from the Second Circuit in New York wreaked havoc upon the marketplace lending industry by ruling that an assignee of a

¹ In a smaller number of states including California, licenses are also required to engage in direct lending to commercial borrowers. Of recent vintage, some states are enacting laws requiring loan disclosures to be made to commercial borrowers.

² Loan participations are commonplace where the funding bank retains the loan itself but sells an economic interest in a portion of the loan to a third party—often the service provider. Participation structures have been common in commercial lending for decades.

³ If the arrangement is a loan participation, the parties will enter into a participation agreement where the bank sells an economic interest in the collections made on the loans.

bank loan was not entitled to charge the rates and fees of the originating bank.⁴ Eventually, federal banking regulators promulgated regulations that the rates and fees of the originating bank are enforceable by an assignee purchaser of the loan if the rates were valid when the loans were made.

Other litigation has challenged whether the funding bank is the “true lender” of the loan or not.⁵ The theory is that where a service provider markets the loan, purchases the loan, and services the loan, the service provider, not the bank, should be considered the true lender of the loan. Under that theory, the result would be that state-by-state rate and fee limitations as well as licensing requirements would apply to the fintech service provider. Some cases look to the party that holds the “predominant economic interest” in the loan. Decisions have gone both ways and often depend on the specific factual circumstances involved. For example, a recent decision now on appeal in California found the bank to be the true lender of loans where the bank funded the loans, had extensive oversight and control of the program, and approved consumer-facing materials.⁶

As an alternate path, a few states have enacted legislation aimed at marketplace lending participants. These laws treat the fintech service provider as the lender if it acquires a predominant economic interest in the loans or if the totality of circumstances evidences an intent to evade the state’s usury regime. These laws require licensing and/or usury limitations for marketplace programs, which have prompted some programs to avoid doing business in these states.

While national banks may export rates and fees nationwide without limitation, the ability of state banks is limited by a federal law that allows individual states to “opt out” of federal preemption. Recently, Colorado and Oregon passed legislation to opt out of this federal preemption. Both laws are being challenged in court and the meaning and the effect of opting out are still unknown but may be decided as a part of this litigation.⁷

3. *One More Stage in the Evolution: Fintechs Becoming Banks*

Given some of the state legislation described above and a perceived notion that the current banking regulators will be more lenient in welcoming new entrants into the banking system, some of the original disruptors of traditional banking models either have purchased banks or have applied to become banks.

For example, Block’s Square obtained a Utah industrial bank charter in 2020. Lending Club purchased Radius Bank in 2021 and SoFi acquired Golden Pacific Bank in 2022. Upstart received conditional approval for its bank application in July 2026, and Revolut received conditional approval to become a national bank in September 2026. Numerous fintechs have applied for a new charter, including Affirm, Klarna, Avant, and PayPal. Two high-rate lenders, Opportunity Financial and Enova, filed applications to acquire banks. In September 2026 Enova withdrew its applications. In September 2026 Chime announced plans to acquire Stride Bank.

While becoming a bank may relieve fintechs of their arrangements with sponsor banks, allow for lower-cost funding through deposits, and avoid state anti-evasion laws, there are also burdens that come with being a full-service regulated financial institution. Capital requirements are paramount. Financial stability in the

⁴ The *Madden v. Midland Funding* case and the resulting federal regulations enacted to address this decision are discussed extensively in this publication. See *infra* REGULATORY ISSUES Section III(D).

⁵ The true lender line of cases gathered attention after a West Virginia decision against CashCall, a high-rate lender.

⁶ Again, the true lender theory and line of cases are discussed at length *infra*. See REGULATORY ISSUES Section VI. This particular California case is discussed in detail below.

⁷ The litigation in both of these states is discussed below.

banking system is of ongoing importance to regulators. Being a bank also exposes an entity to additional and new regulations such as compliance with the Community Reinvestment Act and will result in more direct regulatory oversight and cost. As the regulatory environment changes, changes can also fall on the regulated institution.

With some fintechs becoming banks and likely leaving their sponsor banks, opportunities will open up for new entrants to enter into sponsor bank relationships in the marketplace lending space.

Given this backdrop, we now explore some of the recent legal and regulatory developments in the marketplace lending industry.

II. TRUE LENDER LITIGATION: SIGNIFICANT CALIFORNIA DECISION ON APPEAL

For participants in the marketplace lending industry using the bank partnership model, the threat of true lender litigation has always been present.⁸ The true lender issue remains important in the structuring and operation of marketplace programs. As stated above, the theory is that where an online fintech platform acts as a service provider on behalf of a bank—to market, service, and sometimes purchase a loan (or purchase a large proportional interest in the economics of the loan), often soon after the loan is made—the fintech should be treated as the true lender of the loan rather than the bank that made and funded the original loan. If treated as the true lender, the fintech would be subject to state usury limitations rather than being able to utilize the bank's exportable interest rate under principles of federal preemption.⁹ If the bank is the true lender, then the bank's ability to export the rates and fees of the state in which it is located under applicable federal law and regulation preempts conflicting state law, including usury limits.

True lender challenges to the bank partnership model often allege that the fintech service provider also holds the “predominant economic interest” in the loan or, looking at the “totality of the circumstances,” that the fintech should be viewed as the lender rather than the bank.¹⁰ Interestingly, there have been few substantive case decisions on the true lender theory—until now. One reason for this is that most online loan agreements contain an arbitration provision requiring the parties to arbitrate any dispute. Courts have been generally favorable in upholding arbitration provisions, which results in individual actions rather than class action litigation.¹¹

In a long-standing and closely watched case in California, a court issued a decision thoughtfully analyzing true lender issues that is now on appeal.¹² Anticipating an enforcement action from the California Department of Financial Protection and Innovation (the “DFPI”) in 2022, Opportunity Financial, LLC (“OppFi”) filed a declaratory judgment action against the DFPI seeking validation of the bank partnership model where OppFi acts as the service provider for loans made by a Utah bank at rates significantly higher than the rates allowed

⁸ Several of the more relevant true lender litigation decisions are discussed in REGULATORY ISSUES Section VI of this publication.

⁹ Usury and federal preemption are discussed later in this book in REGULATORY ISSUES Section III.

¹⁰ Neither of these terms has a precise legal definition, leaving it up to courts or regulators to fashion true lender claims. This of course raises uncertainty and potentially subjects marketplace platforms and participants to risk that is difficult to mitigate.

¹¹ Often, a plaintiff will file a complaint in state court seeking class certification. Defendants then remove the case to federal court (either as diversity of citizenship or a federal question being presented as to preemption of state usury laws) and then move to compel arbitration. Generally, the court grants the motion to compel arbitration. This is exactly what happened in *Dieffenbach v. Upgrade, Inc.*, No. 4:23-cv-0427-MWB (M.D. Pa. Apr. 29, 2025).

¹² *Opportunity Fin., LLC v. Hewlett*, No. 22-ST-CV-08163 (Cal. Super. Ct. May 19, 2026).

under California’s usury laws. Over the last four years, the case took various twists and turns.¹³ Of import was the state’s request for an injunction to prohibit the loan program from making additional loans to California residents. The court denied the DFPI’s request on the basis that it doubted whether the state could succeed on the merits of its claims. After discovery, the case was scheduled to go to trial when OppFi filed a motion for summary judgment on September 25, 2025, claiming the Utah bank was the lawful lender and exempt from usury limitations under California law. The state responded that OppFi was evading the state’s interest rate restrictions through a “sham” arrangement with the Utah bank.

After argument on the motion, the court filed a “Tentative Decision” on February 24, 2026, finding that the Utah bank, and not OppFi, was the true lender on the loans made to California residents. The DFPI filed objections to the proposed decision on April 10, 2026. The court issued its “Statement of Decision” on May 19, 2026. The court ruled, as in the Tentative Decision, that the Utah bank and not the fintech was the true lender on the loans.¹⁴

After describing the positions and arguments of both parties in detail, the court ruled on only one question: whether the bank was merely a dummy lender as posited by the DFPI. The court began its analysis by stating that California precedent dictates that usury must be present at the inception of the loan and subsequent events do not render a legal contract usurious. The court cited the California Constitution for the proposition that persons authorized under statute (like banks and licensed finance lenders) are exempt from usury and any successor in interest to any exempt loan is also exempt. The opinion states: “The Constitution does not require successors in interest to be independently exempt from usury restrictions.”¹⁵

The court then analyzed several factors evidencing that the bank was the true lender on the loans:

- First, the bank controls the application process and approves the loans at its office in Utah and funds the loans from Utah as the named lender on the loan documents. The court stated that the bank “is the ultimate decision maker with respect to underwriting criteria and loan terms, including interest rate.” In addition, OppFi cannot change the underwriting criteria on its own for the loans.
- Second, the court looked at funding of the loans and found that OppFi does not provide funds to the bank to fund the loans and did not provide the bank with the initial capital used to fund loans. Rather, the loans are funded with bank funds from accounts controlled by the bank, funds in which OppFi has no possessory or beneficial interest.
- Third, the court concluded that the bank is exposed to substantial risk under the program and receives benefits from the program. It has risk until it sells a 95% interest in the loans to OppFi. The bank retains title to the loans and a 5% economic interest in the loans. The bank also receives fees based on the volume of loans made, which is a further economic interest the bank has in the program as a whole.

¹³ A fuller summary of significant events in this case can be found in REGULATORY ISSUES Section VI(I).

¹⁴ For the most part, the court ruled against the objections filed by the state.

¹⁵ In fact, the court in bold language states: “No authority is cited for the proposition that the assignee of an exempt lender becomes thereby a usurer unable to collect any interest.” (quoting *Strike v. Trans-West Disc. Corp.*, 92 Cal. App. 3d 735, 745 (1979)).

- Fourth, the court found that the bank controls the marketing process for the loans, reviewing and approving the content of consumer-facing and marketing materials, with the bank having to agree to any changes to those materials.
- Fifth, the court relied on facts presented that the bank conducts various reviews and audits of OppFi, the loans, and the program. These include weekly calls, board reporting, approval of changes to policies and procedures, and review of borrower complaints. The bank also monitors credit models, approves any vendors used by OppFi in connection with the program, and controls servicing of the loans.

Under California precedent, the court concluded that OppFi had sufficiently demonstrated that there is no issue of fact to be decided by the judge and that the bank was not a dummy lender nor was its relationship with OppFi a mere sham. The court then addressed and dismissed arguments presented by the DFPI. The court deferred to federal law concerning preemption and rate exportation, noting that the state cannot overcome federal law that allows a Utah bank to charge interest as allowed under Utah law (which is unlimited). The court reaffirmed the principle that bank loans permissible at the time they are made do not render them usurious when sold, assigned, or otherwise transferred.¹⁶

The DFPI went to great lengths to try to show that somehow OppFi was funding the loans by keeping funds in a collateral account, among other things. The court rejected this argument, stating: “While creative, the Commissioner has not proffered any direct evidence ... that OppFi’s money was ever used to fund [bank] loans” given that “the collateral account was almost always insufficient—by millions—to cover [the bank’s] funding obligations.” The court found that, absent speculation, there was no evidence linking the collateral account to funding of the loan.

The DFPI also argued that because OppFi owned the intellectual property related to the credit-scoring model, it was the true lender. The court rejected this argument, noting that many banks use FICO scores as part of their underwriting process and that the banks do not own the software models that generate those scores. The court stated: “Put simply, the banks’ use of FICO does not make Fair Isaac Corp. the lender.” OppFi owning the intellectual property it uses to provide services to the bank does not displace the fact that the bank approves the credit criteria.

The court granted OppFi’s motion for summary judgment, ruling “that the Commissioner cannot establish that OppFi is the true lender” of the loans. On July 21, 2026, the DFPI filed a Notice of Appeal with the California Second Appellate District Court of Appeals.

The good news for industry participants is that many bank partnership programs are structured somewhat similarly and share many of the same attributes that the court in the OppFi case found to substantiate that the bank was the true lender. These include funding the loans with bank funds, controlling the underwriting criteria, retaining an ownership interest in the loans, and having substantial oversight and control of the loan program.¹⁷ The bad news is that this is a trial court decision on appeal, so continued uncertainty remains. But

¹⁶ This is consistent with the federal regulations promulgated by the OCC and FDIC discussed in REGULATORY ISSUES Section III(F).

¹⁷ We note that the OppFi program may work in somewhat of a different way from some other programs. The court in several places states that the bank made the final determination on loan approval. The bank used its technology (which it calls a filter) to make sure the loans matched the criteria for approval. This gave the bank a veto right over loans approved by the service provider and, in the OppFi situation, the bank in fact denied a few loans approved under the bank’s underwriting criteria by OppFi. In many programs, the bank gives its underwriting criteria to the service provider to determine who meets or does not meet the criteria and the bank relies on the service provider to perform that function without additional review. Whether or not this factor is significant in light of

the reasoned decision provides a roadmap for other courts to follow in analyzing the facts and circumstances surrounding true lender issues.

The appeal is of significance to all bank partnership programs, given that if the original decision is ultimately reversed, all bank partnership programs will be painted with the same brush and will need to adhere to any usury limitations arising under state law. It would also serve as fodder to bring suits in other jurisdictions on similar theories.

III. DIDMCA OPT-OUT LITIGATION: COLORADO AND OREGON

National banks have always had the authority under federal law to charge interest rates and export them nationwide, preempting state law.¹⁸ State banks for many years did not have the same ability. During a period of high interest rates in the 1980s the cost of funds for state banks exceeded the rates they could lend money out for, putting state banks at a competitive disadvantage to national banks. Congress put state banks on an equal footing with national banks by passing the Depository Institutions Deregulation and Monetary Control Act (“DIDMCA”).¹⁹ This law allowed state-chartered banks to charge interest rates of the state in which they are located nationwide, like national banks, preempting conflicting state law. But DIDMCA enacted one caveat: it gave states the right to “opt out” of this federal preemption for loans “made in that state.”²⁰ Several states (including Colorado) opted out of DIDMCA preemption, but most of those (including Colorado) opted back in, leaving only Iowa and Puerto Rico as opt-out jurisdictions for decades.

A. The Colorado Litigation

However, in 2023 the Colorado legislature passed legislation opting out of DIDMCA preemption, which was to become effective July 1, 2024.²¹ Three trade associations challenged the law. The battle lines are fairly clear. The state interprets the DIDMCA language of loans “made in this state” as meaning the law of the state of the borrower applies to the loan including the rates that may be charged, regardless of where the bank is located.²² The view of the trade associations is that the loan is made in a state where certain functions are performed, based upon long-standing Federal Deposit Insurance Corporation (“FDIC”) guidance.²³ That guidance would generally result in a loan being made where the bank is located.

What a DIDMCA opt-out means and what are the consequences of that opt-out remain uncertain in light of litigation surrounding this issue. Simplistically, is a loan made in a state where the borrower resides or where the bank is located for purposes of making the loan?

other factors is unknown although the court also relies on evidence that it is common for banks to rely on third parties for a variety of activities, including servicing.

¹⁸ 12 U.S.C. § 85.

¹⁹ Federal Deposit Insurance Act § 27, 12 U.S.C. § 1831d.

²⁰ Interestingly, the opt-out provision was never codified in federal regulations.

²¹ H.B. 23-1229, 74th Gen. Assemb., 1st Reg. Sess. (Colo. 2023) (codified at Colo. Rev. Stat. § 5-13-106). The Colorado opt-out is discussed later in REGULATORY ISSUES Section III(B).

²² The state made clear that its intent was aimed at marketplace lending programs as to loans made to Colorado residents by out-of-state banks that allowed the banks to charge Colorado residents rates in excess of those allowed by Colorado law.

²³ The nonministerial functions are where the credit decision occurs, from where the credit decision is communicated to the customers, and from where the loan proceeds are disbursed.

In June 2024, a federal district court sided with the trade associations and enjoined the Colorado law from going into effect. In July 2024, Colorado appealed the decision to the Tenth Circuit Court of Appeals.²⁴ On November 10, 2025, a panel of the Tenth Circuit reversed the district court and remanded the case back to the lower tribunal. The decision of the panel found that loans made in the opt-out state encompass both the state where the bank is located and the state where the borrower resides, thus including loans made to borrowers residing in Colorado by an out-of-state bank.²⁵ The dissent noted that, under this ruling, a loan could be deemed to have been made in multiple states, creating uncertainty as to what rate applied to the loan. However, the injunction was never lifted so it remains in effect.

The trade associations filed a petition for rehearing by the entire Tenth Circuit Court of Appeals. Colorado objected to the rehearing request. On April 2, 2026, the petition for rehearing was granted and the prior appellate panel order vacated.²⁶ The court directed the parties to submit briefs on specific questions related to the statutory wording of “loans made in such State.” The court also encouraged amici briefs. Several briefs including by federal banking regulators were filed supporting the challenge to the Colorado law.²⁷ Conversely, consumer groups and others filed briefs supporting the Colorado opt-out.²⁸

In response to the questions submitted, the trade associations posited that a state may opt out of DIDMCA only as to loans made by banks located in the opt-out state, but not banks located in other states. They argue that any other conclusion would impair the parity that DIDMCA created. The original plaintiffs also claim that the panel erroneously interpreted loans made in a state as being executed in that state, reiterating that the activities the bank performs create the lending transaction. They cite the district court’s observation that only banks make loans; borrowers do not make loans—they receive loans.²⁹

Colorado, on the other hand, claims that both a bank and a borrower are necessary to effect a loan transaction and so where the borrower is located and receives funds is relevant. Colorado also asserts that the use of

²⁴ Several amicus briefs were filed with the Court of Appeals. Banking groups favored the district court interpretation while consumer groups favored the state’s position. Initially, the FDIC filed a brief supporting Colorado despite having taken contrary positions in prior litigation. With the change of federal administrations, the FDIC withdrew its brief.

²⁵ If this interpretation were to be followed by other states, it would create a complex patchwork of rates to comply with and destroy the parity that DIDMCA wanted to create with national banks that would not be subject to such rules.

²⁶ Of note, the Tenth Circuit rarely grants rehearings *en banc*.

²⁷ Several amici briefs were filed. The OCC, the FDIC, and 20 state attorneys general filed briefs in support of the trade associations, arguing that the panel holding would fundamentally alter the parity between state and national banks that DIDMCA enacted. This would inhibit state banks from offering interstate lending programs, which would diminish the amount of credit available for borrowing and undermine the dual banking system. The FDIC argued that nothing in the statute evidences a Congressional intent for one state to be able to regulate banks chartered in other states. The FDIC recognized the danger of other states opting out, which would reduce lending across state lines. The state officials made similar arguments, noting that to allow Colorado to regulate their banks undermines their ability to regulate their own banks. Banking trade associations, the U.S. Chamber of Commerce, and some academics also filed supporting briefs.

²⁸ Notably, former FDIC Chairman Martin Gruenberg and former CFPB Director Richard Cordray filed a brief largely challenging the change in position of the FDIC in the litigation. They advanced the theory that in a two-party loan transaction, the borrower cannot be ignored. They also argued that the statutory words dealing with where a bank is located and where a loan is made require different interpretation. Eleven states and the District of Columbia also filed a supportive brief on behalf of the state. The state attorneys general argued that to uphold the plaintiffs would deprive them of the opportunity to protect their constituents from predatory lending where the predator is based in another state. The Center for Responsible Lending and the National Consumer Law Center also filed a brief supporting Colorado. The consumer groups emphasized DIDMCA’s intent to preserve state control over lending activities. They also argued that a loan is not made until the borrower receives the funds, so a loan is made where the borrower receives the loan proceeds. Bell Policy Center and former Iowa Attorney General Thomas Miller also filed briefs.

²⁹ The brief reviews other federal legislation where Congressional intent was based on the location of the lender, not the borrower.

different words in the statute must be interpreted differently. The state argues that states' rights are preserved by its law, which is congruent with the DIDMCA opt-out, and that it is not operationally difficult for banks to comply with differing state laws as they do in many contexts.

The Tenth Circuit heard oral arguments on August 18, 2026, and as of the writing of this update, a decision has not been rendered. However, how this circuit court interprets DIDMCA may not only affect marketplace lending programs in Colorado, but it may also inform the Oregon litigation discussed immediately below and will likely determine how other states might approach enacting opt-outs of DIDMCA.

B. The Oregon Litigation

A similar scenario to that in Colorado is playing out in Oregon. The Oregon legislature passed House Bill 4116, which was signed into law and became effective on June 5, 2026. This legislation creates an opt-out of DIDMCA for loans above the state's 36% usury limit for consumer loans up to \$50,000.³⁰ Arguably, this law is even broader than Colorado's because it covers any resident that either negotiates or enters into a loan in Oregon or makes payments on a loan from an account held at a financial institution in Oregon.

On June 15, 2026, three trade associations filed a Complaint for Declaratory and Injunctive Relief in federal court in Oregon challenging the opt-out law.³¹ The two primary theories of the plaintiffs are that the law is preempted by federal law and constitutes a violation of the Commerce Clause of the United States Constitution with respect to loans made by out-of-state banks to Oregon residents.³² On July 9, 2026, the plaintiffs filed a motion for a preliminary injunction to block enforcement of the law. The plaintiffs believe that an injunction is warranted as they are likely to succeed on the merits of the case, namely that the Oregon law is preempted by federal law. The plaintiffs also claim that they are being irreparably harmed by the law because it adversely affects their operations in Oregon and the state would not be responsible for compensating them for their damages due to the legal doctrine of sovereign immunity.³³ The motion draws the distinction between national banks who would be allowed to make loans in excess of the state usury limit and state banks that would be prohibited from doing so, putting state banks at a competitive disadvantage which conflicts with the parity that DIDMCA created between those types of institutions.

Fairly rapidly, the court set a briefing schedule on the motion for preliminary injunction which ended on September 8, 2026. Several briefs were filed supporting the challenge to the Oregon law, including by the FDIC, the Office of the Comptroller of the Currency ("OCC"), 15 states, and several bank trade association groups.³⁴

³⁰ The state banking regulator, the Division of Financial Regulation, claimed that the law was aimed at lending programs of out-of-state banks that were charging high rates to Oregon-based customers, far in excess of the state rate cap.

³¹ *Nat'l Ass'n of Indus. Bankers v. O'Day*, No. 6:26-cv-01201 (D. Or. filed June 15, 2026). The other association plaintiffs are the Online Lenders Alliance and the American Financial Services Association. The defendant is Sean O'Day in his official capacity as Director of the Oregon Department of Consumer and Business Services.

³² In essence, the action does not seek to invalidate the opt-out itself, but rather wants the opt-out only to apply to Oregon-chartered banks and not to out-of-state banks.

³³ Probability of success on the merits and irreparable harm are two required elements that must be shown in order to obtain an injunction. The Colorado litigation discussed above found these present in the case of the Colorado law and the motion relies on the Colorado decision to make these points.

³⁴ The arguments made in these briefs are not unsurprisingly similar to the briefs filed in the Colorado litigation discussed above. The FDIC indicated that it administers DIDMCA and that the Oregon legislation conflicts with that statute's intention of providing parity of state banks with national banks. The FDIC also cites long-standing precedent issued by the agency at the time DIDMCA was enacted or soon thereafter which concluded that the opt-out state may not apply its usury laws to banks located in other states if the borrower lives in the opt-out state; the FDIC also cites its guidance that a loan is made where the bank performs various functions,

The Center for Responsible Lending and the National Consumer Law Center filed a brief supporting the state law.³⁵

As of the writing of this update, no decision has been issued on the motion for a preliminary injunction.

Like the Colorado litigation, this case is also being closely watched by participants in the marketplace lending space not only due to its potential effects on interstate lending programs but also as to whether other states may seek to enact opt-out laws or not.³⁶

C. Proposed Federal Legislation

In February 2026, legislation was introduced in Congress to address the issue of DIDMCA opt-outs.³⁷ The bill would only allow states to opt out of federal preemption for state-chartered banks for loans made by banks chartered by the opt-out state. This would free out-of-state banks from any usury restrictions imposed by the opt-out state. This would keep other states from adopting opt-outs purportedly affecting loans made by out-of-state banks to residents of the opt-out state. The sponsors state that the legislation would restore the exportation authority given to state banks while preserving a state's ability to regulate its own institutions, thereby strengthening the dual banking system and the parity between state and national banks. On September 14, 2026, 12 banking industry trade groups wrote a letter of support for the legislation to the House Financial Services Committee. The Conference of State Bank Supervisors also supports the bill as it preserves state authority over its own institutions.³⁸

The House Financial Services Committee advanced the legislation on September 16, 2026. Whether this legislation will be passed by the House and sent to the Senate is uncertain given the 2026 midterm elections and a shortened legislative window until a new Congress is installed.

not where the borrower resides. The OCC brief defends the notions of federal preemption and exportation along with DIDMCA's intent to put state and national banks on a level playing field. The OCC argues that since the language in DIDMCA mirrors the language as to national banks, it should be interpreted according to prior decisions that look to the location of the bank as being the state in which the loan is made. The brief filed by the 15 states argues that the Oregon law would create significant disparity in the dual banking system as we know it. The states also indicate that laws like this make their job of regulating their own banks more difficult and, in fact, intrude on their ability to regulate their own institutions. In the trade association brief, 51 state banking associations participated, indicating not only across-the-board support of the challenge, but also the importance of the issue to the entire banking system. The brief even suggests that the Oregon law threatens many interstate lending programs. Of note, the brief suggests that if other states pass similar laws, lenders would flock to the national bank charter, further undermining the dual banking system.

³⁵ As in the Colorado litigation, the consumer advocates argue that DIDMCA gives states the right to enforce their interest rate protections to their residents, regardless of where the lender is located. The groups argue that over 31,000 loans have been made to Oregon consumers exceeding the Oregon rate caps, totaling \$61 million, claiming many of these are "rent a bank" schemes relying on DIDMCA rate exportation provisions. The brief also describes why the law is necessary, highlighting an Oregon 2026 enforcement action against a vehicle lending program by a Utah bank where rates exceeded the 36% usury cap and required a fintech to refund some \$900,000 to Oregon borrowers.

³⁶ For example, on August 26, 2026, a New York state senator introduced a DIDMCA opt-out bill. S. 10688, 2025-2026 Leg. Sess. (N.Y. 2026). Rhode Island considered opt-out legislation in the last legislative session, but it did not move forward. There is some speculation that states may hesitate to enact such laws for fear of becoming embroiled in litigation and are waiting to see where the dust settles before acting. However, the wait time may be significant. It is likely that the Tenth Circuit decision—regardless of the outcome—will be heard by the Supreme Court. Similarly, the Oregon decision may be appealed to the Ninth Circuit Court of Appeals. If the two circuits come to differing conclusions, the circuit split would make the issue ripe for Supreme Court determination. In the interim, continued uncertainty and likely litigation would be the order of the day.

³⁷ American Lending Fairness Act of 2026, H.R. 7866, 119th Cong. (2026) (introduced by Rep. Warren Davidson of Ohio). Interestingly, of the seven co-sponsors of the legislation in the House of Representatives, four are Democrats.

³⁸ Letter from Conference of State Bank Supervisors (Sept. 2, 2026), <https://www.csbs.org/node/583531>.

IV. NEW REGULATION FOR INNOVATIVE PRODUCTS

A. Buy Now Pay Later

The adage that regulation follows innovation is coming true particularly with respect to Buy Now Pay Later (“BNPL”) products. Typically, a BNPL program allows consumers to purchase a good and pay for it in installments, often without an interest charge and payable within a short period of time. If four or fewer installments are involved, the product is not subject to the disclosure requirements of the federal Truth in Lending Act. BNPL products are becoming increasingly popular and, given the CFPB stated in May 2026 that oversight at the federal level for BNPL is not a priority, states have started to move in to fill the gap. Significantly, the state action treats BNPL as traditional loans rather than new payment options that might not be subject to existing law.

New York BNPL Law. In 2025, New York passed legislation³⁹ targeting BNPL products and imposing both state licensing and disclosure and operational requirements. The law applies to entities that either offer BNPL products through a platform or provide them to natural persons; thus, it would apply to marketplace programs including those with arrangements with banks. It broadly covers any natural person, which could include business purpose products offered to individuals. The law clearly treats these products as loans.

The law requires BNPL providers to be either licensed or authorized. Unlike state licensing laws that exempt banks, the New York law applies to some banks.⁴⁰ State banks are not exempt but must obtain an authorization from the Department of Financial Services to offer BNPL loans, although they do not have to be licensed. Interest and fee charges may not exceed the state usury rate of 16% and late fees are limited.⁴¹ Disclosure of significant terms is required and the law imposes Truth-in-Lending-type requirements for disputing transactions. BNPL loans made by unlicensed persons are void as to interest and charges.

On July 15, 2026, the state issued a proposed rule to implement the law.⁴² A final rule could change some aspects of the proposed rule. As to late fees, the rule requires at least seven days’ prior notice of the date when a payment is due and requires periodic statements to be provided after the end of each billing cycle. The rule will also require BNPL providers to have a “reasonably accessible interface” for consumers to make payments and defines certain information that must be accessible on the interface.

Illinois Law Regulating BNPL. The Illinois legislature enacted a BNPL regulation statute that was signed into law and became effective on June 25, 2026.⁴³ The law applies to credit tied to the purchase of goods or services that either is repayable in four or fewer installments or has a term up to 120 days and applies whether or not interest is charged. As in New York, the law treats this type of financing as a loan. The law imposes a broad licensing requirement that not only covers the maker of the BNPL loan but also extends to purchasers of BNPL

³⁹ S. 3008, 2025-2026 Leg. Sess. (N.Y. 2025) (implementing the New York Buy-Now-Pay-Later Act, N.Y. Banking Law art. 14-B).

⁴⁰ The law would not apply to national banks or federal thrifts.

⁴¹ Interestingly, usury will be determined under state law while disclosures (including APR) will be based upon Regulation Z definitions, which could result in a disparity between the two numbers.

⁴² The public comment period has closed, and a final rule is expected that would take effect 180 days after publication. Entities subject to licensing must apply for a license within 45 days after the effective date but existing BNPL participants can operate while the regulator is considering their applications.

⁴³ Buy Now Pay Later Loan Consumer Protection Act, Ill. Pub. Act 104-475.

loans or those who facilitate, arrange, or service the BNPL loans.⁴⁴ As a result, marketplace lending and bank partnership programs would be covered, as would be sales of the loans, including sales to securitized vehicles. While most regulated financial institutions are exempt from the licensing requirement, the law also contains broad “anti-evasion” language that would make a service provider to an exempt entity be deemed the true lender of the product, aimed at bank-fintech relationships.⁴⁵

Oregon Licensing for BNPL. Although there is no statute on the books in Oregon related to BNPL, Oregon has proposed guidance on BNPL that requires providers to obtain a state license before offering BNPL products in the state.⁴⁶ The license would be required not only of lenders but also of agents, brokers, and facilitators of BNPL products, which the state has determined constitute loan products.⁴⁷ The proposed guidance also suggests that servicing on BNPL loans would also require licensing as would any person who processes applications, transmits payments, or materially assists in making the loans as provided in the Oregon consumer finance statute.

The proposed bulletin is of import because it rejects positions used to justify BNPL as not being a loan. For example, many BNPL programs do not charge interest on the product because the provider is compensated by the selling merchant by providing a discount to the provider for purchasing the sale.⁴⁸ Oregon states that this type of arrangement does not rise to an exemption under its laws, finding that the merchant discount is consideration to the lender, thereby supporting the characterization of the product as a loan.⁴⁹ The state also dismissed the notion that the BNPL product is not a loan because it is nonrecourse to the customer since usually there is collateral in nonrecourse loans that is not present in the BNPL context.

B. Earned Wage Access (“EWA”) Developments

Another popular and innovative product is EWA. It provides a way for wage earners to access their earned funds prior to their next payday. These products are of recent vintage and generally fall into one of two categories: employer sponsored or direct arrangements with the employee. As explained below, federal notions on EWA have shifted and there has been an attempt to enact federal legislation. As these programs have become more popular, they are also catching the attention of state lawmakers who have enacted laws affecting EWA programs. Twelve states have enacted laws or regulations pertaining to EWA and four other states have

⁴⁴ Compliance is required by January 1, 2028, unless a later date is set by the Division of Financial Institutions unit of the Illinois Department of Financial and Professional Regulation.

⁴⁵ The anti-evasion language is similar to the Illinois statute on predatory lending. It reaches a person that holds the predominant economic interest in the loan or acts as a service provider with a right to purchase all or part of the BNPL product. There is also a “totality of the circumstances” test if the situation results in evading the statutory regime. Finally, a true lender could be found if the entity makes direct loans in other states but uses an exempt entity in Illinois. However, since arrangers of loans are required to be licensed under the BNPL law, the addition of the anti-evasion language may have little practical effect.

⁴⁶ Or. Dep’t of Consumer & Bus. Servs., Div. of Fin. Regul., Bulletin No. DFR 2026-X. The public comment period expired in July 2026, and the final guidance is forthcoming.

⁴⁷ One of two licenses would be applicable. For loans of \$50,000 or less with payment due in 60 days or less or payable on demand, a payday lender license would be required. Loans (including lines of credit) with payments extending beyond 60 days would require licensing under the Consumer Finance Act.

⁴⁸ For example, a \$100 purchase from a merchant would be purchased by the BNPL provider for \$94. The BNPL provider would collect the entire \$100 from the consumer and earn the \$6 merchant discount, while the consumer would not be charged anything additional for the ability to pay over time under most BNPL no-interest programs.

⁴⁹ Critics of the law argue that the agency is going too far in imposing new regulatory requirements on BNPL and that it is better left to the legislature to do so.

attorney general opinions on the subject.⁵⁰ All but 3 of those 16 states have answered one of the central questions around EWA—whether the EWA product is a loan—in the negative.⁵¹ These laws often contain provisions related to licensing or registration, disclosures, limitations on fees, and the ability to access funds with a no-cost option. Many EWA programs utilize the concept of tipping the EWA provider for the service and most legislation to date requires that tips be voluntary and fully disclosed. Where there is no state statute, there has been litigation. Given that many states have not acted yet in this arena and the states that have acted have come to differing and sometimes conflicting conclusions and requirements, a patchwork of laws is emerging, creating compliance complexities for EWA providers.

December 2025 CFPB Advisory Opinion. The CFPB has shifted positions on EWA based primarily on the administration that is in office. In December 2020 during the first Trump administration, the CFPB issued an advisory opinion to the effect that certain no-cost, employer-sponsored EWA plans were not credit for purposes of the federal Truth in Lending Act (“TILA”) and its implementing Regulation Z.⁵² Under the Biden administration in July 2024, the CFPB issued an interpretive rule to the contrary: that EWA is credit for purposes of TILA, subjecting EWA to its disclosure requirements. It also found expedited transfer fees and tips associated with EWA programs to be finance charges. Days before the second Trump administration took office, the CFPB rescinded the 2020 advisory opinion.

In May 2025, the CFPB withdrew its January 2025 rescission, essentially putting back in place the 2020 opinion. In December 2025, the CFPB issued a new advisory opinion relative to EWA finding that certain EWA programs are not credit products for purposes of TILA and Regulation Z.⁵³ The key aspect of the most recent advisory opinion is that to be exempt from the federal scheme, repayment of the EWA must be by payroll deduction. In addition to this requirement, the amount provided to the employee may not exceed the amount of wages accrued; the funds must be nonrecourse⁵⁴ and there is no credit evaluation of the employee. If all of these requirements are met there is no credit involved; rather, the employees merely have earlier access to their pay.⁵⁵ This recent advisory opinion does not require that the EWA program be employer sponsored, but instead only requires that repayment be by payroll deduction. Thus, programs not offered by an employer are covered provided that repayment is through payroll deduction.

The advisory opinion also provides that expedited payment fees and tips for qualifying EWA programs are not finance charges since the product is not considered to be a credit. While this guidance may provide clarity for some EWA programs, it is not binding on states or courts and adds uncertainty relative to programs that differ from the requirements outlined to be exempt from being considered credit.

⁵⁰ These state laws are summarized in this publication at REGULATORY ISSUES Section X(B).

⁵¹ California, Connecticut, and Maryland treat EWA as a loan. Arkansas considers EWA to be a financial product but does not require licensing and does not allow interest or fees, which largely moots the question of whether there is a loan involved.

⁵² In addition, the advances could only be for wages accrued to date, nonrecourse, and repaid through payroll deduction, and did not consider the employee’s individual credit.

⁵³ See 90 Fed. Reg. 60069 (Dec. 23, 2025).

⁵⁴ The provider may not seek repayment other than through the payroll deduction process. The provider may not refer any nonpayment obligation to a third-party debt collector or to a credit reporting agency. These facts must be disclosed to the employee.

⁵⁵ The CFPB reasoned that where these requirements are met the employee/consumer does not defer or get a right to defer repayment of a debt, which is crucial to the determination of credit under TILA.

Colorado Earned Wage Access Challenge. An EWA program is being challenged by the Colorado Attorney General.⁵⁶ This particular program is not employer sponsored but is an advance directly to the consumer and relies on the consumer tipping the provider for the service being provided. Rather than payroll deduction, the consumer allows the provider access to a bank account to initiate electronic debits for repayment. The state alleges that these facts make the product a loan. It bases this decision on the expectation of repayment given the ability to debit the employee's bank account. The defendant disagrees and its customer agreements state that the arrangement is not a loan, that any tips are not mandatory and so are not interest, and that the obligation is nonrecourse—there is no legal obligation to pay. The state counters that the operation of the product, not the language of its agreement, requires that the court treat the substance and not the form of the transaction as a loan. The state contends that expedited payment fees are finance charges. The complaint also indicates that the provider makes it difficult not to provide a tip, evidenced by a large percentage of customers tipping the EWA provider.⁵⁷ The litigation is in its early stages as of this writing.

1. *Proposed Federal EWA Legislation*

EWA provisions are included as part of broader federal legislation being proposed concerning the CFPB.⁵⁸ Significantly, the proposal states that an EWA program complying with the law would not be treated for purposes of federal law as a credit or loan. Therefore, the provider would not be deemed to be a creditor, and any fees or tips would not be considered to be finance charges.

In order not to be considered credit, a program must contain various features. If the consumer is charged a fee to access their wages, the provider would also have to offer a no-cost option to receive the same amount. The statute would also require providers to give certain disclosures and provide a dispute resolution process.

The EWA provision would also preempt state law so that states could not treat EWA programs complying with the federal statute as loans or credit. Although this legislation was reported out of the House Financial Services Committee favorably on June 30, 2026, given the mid-term elections and limited time before a new Congress is seated, it is unlikely that this proposal will be enacted into law this Congress.

V. REGULATORY DEVELOPMENTS

While things at the CFPB remain in a state of flux, the federal banking regulators have issued proposed rules that reconfigure some areas of importance to marketplace lenders, most notably an overhaul to third-party risk management guidance. With supervisory and enforcement activity at the CFPB at low levels, some states have countered this trend by engaging in increased enforcement activities. Some of these are discussed below.

⁵⁶ *Weiser v. Activehours, Inc.*, No. 2026CV033099 (Colo. Dist. Ct. Denver Cnty. Aug. 27, 2026).

⁵⁷ The state is alleging that the company's website was designed in a manner to make consumers more likely than not to engage in tipping and that various features made it easier to pay something that would otherwise be optional. This is being referred to as a "dark-pattern" technique. The theory is that designing something deceptively or manipulating user interfaces can cause consumers to do something they did not intend to do. In essence, the allegations claim an organized attempt to unduly influence consumer behavior through the technology being utilized. This could become a recurring theme given that many products are marketed and provided through websites or mobile technology.

⁵⁸ Consumer Financial Protection Accountability and Reform Act of 2026, H.R. 10184, 119th Cong. § 304 (2026). This incorporates provisions otherwise contained in the Earned Wage Access Consumer Protection Act, H.R. 9330.

A. Interagency Actions Affecting Marketplace Lending

1. *Proposed Third-Party Risk Management Guidance*

On September 11, 2026, the federal banking agencies proposed interagency guidance on third-party risk management which would rescind and replace the interagency guidance that had been issued in 2023.⁵⁹ After the 2023 guidance was issued, the federal banking agencies entered into several consent orders with banks that had relationships with fintechs.⁶⁰ After the change in federal administrations, the current CFPB saw the 2023 guidance as process driven, resulting in a checklist approach to the issue while failing to address risk to the institution. The new proposal purports to be principles driven and aimed at material third-party relationships and material risk to the institution.

In its rationale, the CFPB indicated that the 2023 issuance was focused on activities and not the risk of harm. For example, the 2023 directive contained a broad definition of a third party even if there was no contractual relationship with the third party. It thus swooped subcontractors into the mix. The 2026 proposal, however, indicates that using subcontractors alone does not necessarily create a third-party relationship.

The CFPB also thought that the 2023 promulgation discouraged innovation and fintech relationships with banks. Conversely, the CFPB indicated that the 2026 proposition recognizes that a relationship with a fintech does not always lead to increased risk and, in fact, that these sources of innovation can enhance access to financial services.

Of significance is the notion presented in the 2026 release that noncompliance will not result in enforcement or supervisory action. Rather, the banking regulators will give deference to each institution's actions if reasonably made, potentially limiting regulatory action in this arena.

The "life-cycle" model that was front and center in the 2023 dissemination has been de-emphasized and replaced by risk considerations, namely the allocation of resources to relationships and matters that present higher risk of potential harm.⁶¹ In the new design, institutions would first identify and assess risk. Risk would be managed in relationship to the significance of the risk presented, and the regulators recognize that institutions are free to make informed decisions about the amount of risk they are willing to accept in any given third-party relationship but will need to employ practices to address and manage that risk.⁶² In other words, the larger the risk or the more complex or larger the relationship, the greater attention and oversight that would need to be given to the third-party relationship. In larger organizations, the regulators suggest that affiliates

⁵⁹ For the first time, the NCUA joined in the guidance from the OCC, FDIC, and Federal Reserve. That guidance is discussed at REGULATORY ISSUES Section IV(B). After the public comment period expires on November 16, 2026, the guidance will be finalized.

⁶⁰ The consent orders are discussed in REGULATORY ISSUES Section IV(C).

⁶¹ The life-cycle model centered on planning, due diligence and selection of vendors, contract negotiation and provisions for protection of the institution, monitoring of vendor relationships, and remediation or termination of vendors. This was viewed as being a one-size-fits-all model, which is not realistic relative to risk; it was deemed too rigid and applied to more situations than was needed. However, the new recommendations retain the life-cycle criteria for higher-risk relationships.

⁶² For example, the 2023 missive contained lists of contractual considerations and factors for monitoring a vendor. These would be replaced by principles with no expected terms or audits for any given relationship but rather adjusted as the circumstances warrant relative to risk. Thus, there will be no one right way as to any given situation.

share assessments and reviews of third parties where appropriate to mitigate risk and avoid duplication of effort in a complex organization.⁶³

Anti-money Laundering Changes. The risk management proposal is consistent with a prior proposed rule related to anti-money laundering. On April 7, 2026, the Financial Crimes Enforcement Network (“FinCEN”) issued a proposed rule to modernize the regulation and supervision of anti-money laundering (“AML”) and counterterrorism financing. The proposal reflects the Trump administration’s emphasis on risk- and results-based programs rather than a process, check-the-box approach. Sponsor banks and money services businesses are examples of financial institutions that are subject to these regulations, and they may delegate compliance-related functions to nonbank service providers as long as they properly oversee the third-party service provider. Since financial institutions must comply with these regulations, they often perform the compliance-related functions of AML programs. The rule recognizes that the financial institution is in the best position to identify AML risks and to prioritize them on a risk-based basis. The rule would recognize that FinCEN is the primary regulator of the AML regulations and that banking regulators would need to inform FinCEN before taking any action with respect to a financial institution on AML matters.⁶⁴ Only significant or systemic failures would lead to supervisory or enforcement consequences. The public comment period has closed, but the final rule has not been issued as of the date of this writing.

Reputational Risk. President Trump signed Executive Order 14331, “Guaranteeing Fair Banking for All Americans,” in August 2025 to prohibit financial institutions from using “reputational risk” as a pretext to deny or restrict banking services based on political affiliations, religious beliefs, or lawful business activities. The FDIC, the OCC, and the National Credit Union Administration (“NCUA”) issued proposed rules to codify the removal of this factor from their respective supervisory programs, and the Federal Reserve similarly announced elimination of reputational risk from its examination procedures. The agencies have updated their materials to remove references to reputational risk.⁶⁵

B. The CFPB

The CFPB remains in a state of flux. Under law, interim director Russell Vought’s term expired on August 1, 2026, and Mark Paoletta became the acting director. President Trump has nominated Brian Johnson, a former Deputy Director of the CFPB, to head the agency.⁶⁶ Litigation over layoffs and termination of employment remains pending but is paused until the new agency head is installed. During the first year of the second Trump administration new guidance was issued, other guidance rescinded, and some rules either were reversed or would not be pursued.⁶⁷

⁶³ At the same time, the Federal Reserve issued a separate publication for traditional community banks with under \$30 billion in assets on third-party risk management, denoting guidance based on categories of service providers. This guide is consistent with and complementary to the proposed interagency proposal.

⁶⁴ The promulgation provides for four core pillars of AML compliance: internal policies, procedures, and risk assessment processes; program testing by an independent source; a designated compliance officer; and ongoing employee training.

⁶⁵ The agencies indicated in a June 2026 joint statement that supervisors could misuse reputation risk to encourage or pressure a bank to restrict access to financial services based on constitutionally protected beliefs, speech, or action. Accordingly, supervisory decisions would be based on material financial risks.

⁶⁶ At the time of writing this update, the nomination has been advanced to the full Senate and confirmation is expected. Johnson would return to the agency after a stint at Capital One as head of card compliance.

⁶⁷ A compilation of significant actions related to the marketplace lending industry is found in REGULATORY ISSUES Section I(B)(5).

1. Other Regulatory Pronouncements and Developments

CFPB Funding. Over the course of the last year, funding of the CFPB has been an issue of controversy. Despite the U.S. Supreme Court’s finding the funding structure of the CFPB to be constitutional,⁶⁸ early in 2026 then-Acting Director Vought said he would not ask for additional funding from the Federal Reserve, but would spend down reserves.⁶⁹ With reserves running low, Vought claimed he could not seek additional funds from the Federal Reserve because it had no profits to give to the agency.⁷⁰ Legal challenges to this position occurred in the District of Columbia, California, and Oregon. Vought ultimately backed down after the District of Columbia court ruled against the CFPB’s position, finding that the agency must seek Federal Reserve funding in order to remain operational.⁷¹ The two other courts also found against Vought, reasoning that the ploy was merely an attempt to shutter the agency. Appeals are pending.

In 2026, the focus of the CFPB changed from that of rescinding prior guidance and action to proposing and finalizing rules that change some of the direction of existing rules and follow the principles and priorities of the current administration. The emphasis as described below has been on amendments to Regulation B, a final rule on small business data collection under Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“*Dodd-Frank*”), and on fashioning a final rule on personal financial data rights under Section 1033 of Dodd-Frank.

CFPB Issues Regulation B Fair Lending Changes. In April 2026, the CFPB issued a final rule amending Regulation B which implements the Equal Credit Opportunity Act. The rule became effective on July 21, 2026. Notably, the final rule makes a significant change, stating that the regulation does not create liability for disparate impact, *i.e.*, some factor that disproportionately affects a protected class. This is sometimes called the effects test—the result of something not in and of itself discriminatory results in discrimination. Under this action, only disparate treatment would result in liability under Regulation B. The rule amended the regulation related to what constitutes discouragement of applicants, relaxing prior guidance in this area. The rule also eliminated special-purpose credit programs that would provide credit based on being in a protected class.

Soon after the rule was promulgated, several fair lending groups challenged the rule in D.C. federal district court.⁷² The complaint alleges that the CFPB’s action was arbitrary, violates the Administrative Procedure Act, and conflicts with the statutory language and purpose of the law. The complaint noted that this actually complicates compliance as some states have laws that provide liability for disparate impact.⁷³ Interestingly, the

⁶⁸ See *infra* REGULATORY ISSUES Section I(C).

⁶⁹ Critics of the administration viewed this as a ploy to run out of funds to operate the CFPB, resulting in its shutdown.

⁷⁰ The statute requires that funding of the CFPB come from the profits of the Federal Reserve. Vought’s argument was that the Federal Reserve had no such profits, so no funding could be obtained.

⁷¹ The California and Oregon cases came to the same conclusion that the CFPB would require requesting additional funds. The District of Columbia case is *Nat’l Treasury Emps. Union v. Vought*, No. 1:25-cv-00381 (D.D.C. filed Feb. 9, 2025). The California case is *Rise Econ. v. Vought*, No. 25-10481 (N.D. Cal. Mar. 13, 2026) (stating that the plan was “a transparent attempt to close down the agency”). The Oregon case filed by 22 states and the District of Columbia is *New York v. Vought*, No. 6:25-cv-02384-AA (D. Or. Sept. 25, 2026) (holding the action was a violation of federal law and violated the separation-of-powers provision of the U.S. Constitution). The District of Columbia and California cases are being appealed.

⁷² *Nat’l Fair Hous. All. v. Consumer Fin. Prot. Bureau*, No. 1:26-cv-01820 (D.D.C. filed May 27, 2026).

⁷³ In August 2026, Illinois enacted S.B. 3777, Ill. Pub. Act 107-0744 (eff. Jan. 1, 2027) (the Civil Rights Safeguards Act), which amends the Illinois Human Rights Act to codify liability for disparate-impact situations. Financial institutions that use criteria or methods that have the effect of discriminating on the basis of protected characteristics would be subject to liability.

plaintiffs did not seek to enjoin the regulation from going into effect. Both sides have filed motions for summary judgment and the court has entered a schedule that extends into 2027 for briefing on the motions.

CFPB Revises Dodd-Frank Section 1071 Rule (Small Business Data Collection and Reporting). On May 1, 2026, after over a decade of misses and litigation, the CFPB issued a final rule that became effective on June 30, 2026.⁷⁴ The final rule is significantly reduced from earlier versions. The compliance date has been pushed out until January 1, 2028, with the first reporting due on June 1, 2029. The coverage of the rule has been reduced so that it only covers lenders who made 1,000 or more business loans in each of the last two years (decreasing coverage from an earlier 100-loan threshold). The scope of the regulation has been similarly reduced as it covers only businesses with revenues of \$1 million or less (rather than earlier versions that would have encompassed a larger number of businesses at revenue levels of \$5 million or less). The number of data points that lenders need to report has also been reduced, easing the compliance burden from earlier versions of the rule. Merchant cash advances, agricultural loans, and loans of \$1,000 or less are now excluded from coverage of the rule.

CFPB Will Propose Personal Data Financial Rule (Section 1033 of Dodd-Frank). Section 1033 was enacted to provide consumers with legal rights related to the access and sharing of their financial information held by banks and other providers of financial products and services. The CFPB issued a final rule in late 2024 which was challenged by financial trade groups in court.⁷⁵ The court action prevented the rule from going into effect and paused the action while the CFPB was considering changes to that rule. In August 2026, the CFPB submitted the proposed rule (not publicly available) to the Office of Information and Regulatory Affairs (a division of the Office of Management and Budget), which reviews the proposal for congruence with administration views and is the next step toward publication and a public comment period. One of the issues to be addressed is which parties may have access to a consumer's financial information and whether fees may be charged to third parties accessing the data, given that the law states that no fees may be charged to the consumer for access. Banks want to retain access to consumer records while some fintechs want access to bank data. In fashioning the rule, the CFPB considered privacy and security concerns which it thought the prior rule presented; the CFPB has indicated that it will seek to balance competitive considerations and effects on innovation while not increasing compliance burdens on the holders of financial information.

CFPB Narrows Descriptions in Its Consumer Complaint Database. The CFPB provides a portal for consumers to make complaints, which is required by law. In the past, the agency published for public consumption descriptions of the complaints typically as provided by the complaining consumer. On August 14, 2026, the CFPB publicly announced that it will no longer publish the consumer narratives on the basis that they can be misleading and that, without verification, they could harm the entity that the complaint was being made against. While the database's purpose was to inform the CFPB about potential consumer harm and target supervision or enforcement activities, it was also used by various members of the public and consumer advocates and watchdogs. Since the portal logs only negative consumer reactions, the agency indicated that it is not representative of customer experience and could provide unsubstantiated, biased opinions that should not be relied upon by others and that could create reputational and actual risk to the companies named in the complaints.

⁷⁴ Some of the purpose and history of this rulemaking is found in REGULATORY ISSUES Section I(B)(5).

⁷⁵ See REGULATORY ISSUES Section I(B)(5).

FDIC Parity Rule. In September 2026, the FDIC issued a notice of proposed rulemaking that would provide parity to state-chartered banks operating from out of state into a host state so that host state laws apply only to the extent that they apply to national banks in that state.⁷⁶ Thus, if a host state's law does not apply to a national bank operating in that state, that law would similarly not apply to an out-of-state state bank conducting the same activity or performing the same service whether or not the out-of-state bank has a branch in the host state. After the closing of the comment period on November 23, 2026, the FDIC will likely soon thereafter promulgate the final rule.

OCC Issues Orders Affecting Banks Dealing with Fintechs. Despite the general trend toward deregulation, the OCC issued orders against one national bank and one federal savings association that have significant relationships with fintechs, suggesting that enforcement is neither dead nor sleeping and that actions will be brought where warranted.

In April 2026, the OCC issued a Consent Order against Community Federal Savings Bank of Woodhaven, New York. The regulator found the institution highly deficient in its Bank Secrecy Act/anti-money laundering ("BSA/AML") compliance program due to expansion into payment processing and fintech-related lines of business. In short, its business grew faster than its ability to monitor and control that growth. This added additional risk into the institution, which did not have adequate controls to assess and mitigate that risk. Deficiencies were noted in terms of suspicious activity reporting, inadequate staff, and weak internal and external monitoring and testing. The OCC ordered the appointment of a compliance committee, submission of an action plan, engagement of a third-party consultant, a complete overhaul of due diligence and internal control programs, a look back to identify unreported suspicious activity, implementation of a risk-based suspicious activity program, and hiring of appropriate staff for the BSA/AML function. Since smaller community banks like this one often expand into fintech-related businesses, institutions need to be able to make the necessary investments to have adequate systems in place to assess and deal with the additional risk that comes with new and nontraditional banking relationships.

In September 2026, the FDIC ordered Old Glory Bank, an online bank, to take corrective action related to its financial condition.⁷⁷ The FDIC found the bank to be significantly undercapitalized. The online bank works with fintechs and cryptocurrency-related companies by providing them with bank accounts tailored to digital assets and payment processors. The bank was hit with prohibitions on making executive bonuses and capital distributions. It may not accept or renew brokered deposits until it becomes adequately capitalized.⁷⁸

VI. FINTECHS SEEK BANK CHARTERS

In the last 18 months, the OCC has received some 40 applications for de novo bank charters, nearly as many as the 48 such applications in the previous 14 years! Over half of the applications are for limited-purpose trust bank charters primarily related to digital assets and cryptocurrency businesses.⁷⁹

⁷⁶ The genesis of this rulemaking derives from Illinois legislation that would require credit card issuers not to charge interchange fees on tax and tips. Although operationally unworkable, the law has been delayed and is subject to litigation. The court has excluded national banks from the law based on rulemaking of the OCC, so the intent of this rule is aimed at providing state banks the same exemption from the Illinois law that national banks have.

⁷⁷ In re Old Glory Bank, No. FDIC-26-00371PCAS (FDIC Sept. 25, 2026).

⁷⁸ In October 2026, the bank announced that it had raised additional capital so as to be adequately capitalized.

⁷⁹ These applications and charters are discussed in this chapter at Section IX, 2026 Digital Assets Update.

Other fintechs are seeking approval to become a regulated financial institution. There are many benefits of becoming a bank. Deposit taking can serve to lower the cost of funds in financing operations than traditional lending sources. Becoming a bank puts more control in the hands of the fintech, who no longer needs to work with another bank to provide products and services and can avoid payment of fees for being in that type of a business relationship. An insured depository institution also has access to the Federal Reserve payments systems and can benefit from federal preemption of state usury limitations and state licensing regimes, generally.⁸⁰ Being a bank, the fintech clearly becomes the true lender of a loan and avoids litigation and regulatory scrutiny on that subject. Conversely, bank charters come with some baggage, including high capital requirements, an increased compliance burden, being subject to direct examination and supervision by their primary regulator, and the need to meet the requirements of new laws such as the Community Reinvestment Act, which requires investment in low- and moderate-income communities.

Nonetheless, fintechs have taken advantage of the deregulatory environment and perceived favorable regulatory environment to enter into the banking system in a variety of ways.⁸¹ On May 19, 2026, President Trump issued an Executive Order directing bank regulators to review their rules and guidance for things that might impede bank partnerships or bank applications and to streamline the application process and rules for fintechs and digital asset firms.⁸² In response the FDIC issued a notice stating that it would give conditional approval to applications within 120 days.⁸³

Different fintechs have taken different approaches to becoming a regulated financial institution. Some are seeking full-service national bank charters that would allow them to offer both deposit and lending products. This would require approval from the FDIC for obtaining deposit insurance for deposit products. If the institution would be owned by another entity, that parent company would have to receive approval from the Federal Reserve to become a bank holding company, which limits the activities of the corporate family to those allowed for a bank holding company. In this category Upstart received conditional approval in July 2026 and Revolut received conditional approval in September 2026. In September 2026, Avant applied for a full-service de novo bank charter.

Another alternative is to seek a limited-purpose charter that allows the institution to engage in only limited activities for that type of charter. On September 25, 2026, the OCC conditionally approved the application of fintech Mission Lane to establish a limited-purpose credit card bank targeting primarily subprime borrowers. The operations of the bank are limited to those of issuing and servicing credit cards.⁸⁴

⁸⁰ Many fintechs have chosen the full-service national bank charter, as it provides broader rights of preemption that are not subject to any opt-out rights relative to state banks.

⁸¹ Interestingly, perhaps due to the prior litigation on the subject, no entity has applied for the special-purpose fintech charter proposed by the OCC and discussed in REGULATORY ISSUES Section I(A)(1).

⁸² [Exec. Order No. 14405, Integrating Financial Technology Innovation into Regulatory Frameworks \(May 19, 2026\).](#)

⁸³ The order also asked the Federal Reserve to consider giving nonbanks access to the Federal Reserve payment system. The day after the Executive Order was issued, the Federal Reserve proposed broader access to Federal Reserve accounts for nonbank participants. In a congruent rulemaking, in September 2026, the FDIC issued a notice of proposed rulemaking to modernize and reform its reviews of bank merger applications under the Bank Merger Act, emphasizing bringing greater speed and efficiency to the process and relying more on the risk profile of a merger rather than on a check-the-box approach.

⁸⁴ Limited-purpose credit card banks, once largely popular, were allowed under the Competitive Equality Banking Act of 1987, [12 U.S.C. § 1841\(c\)\(2\)\(F\)](#). Under this law, the parent company is not considered to be a bank holding company. A conditional approval is not final approval and the conditions spelled out in the conditional approval letter must be met before the bank can open and do business. One of the conditions related to Mission Lane is attaining capital of \$35 million.

Other fintechs have chosen to buy existing banks. In September 2026, Chime announced its intention to purchase a sponsor bank, Stride Bank, N.A. Also in September 2026, TabaPay announced its intent to acquire Transact Bank, N.A. Earlier, fintech Enova International announced its acquisition of Grasshopper Bank, N.A. and Opportunity Financial announced its acquisition of BNC National Bank and its parent holding company. The Enova and Opportunity Financial applications received negative comments from consumer groups and some legislators because they engage in high-rate lending programs. In September 2026, Enova withdrew its application to acquire Grasshopper Bank.

Other fintechs have applied to become industrial banks based in Utah.⁸⁵ These applications also require FDIC approval. Industrial banks may not take demand deposits and, for this reason, any holding company is not a bank holding company under federal law.⁸⁶ Klarna, PayPal, and Affirm have applications pending for an industrial bank charter. In July 2026 two other fintechs applied to become Utah-chartered industrial banks with FDIC insurance. Albert filed its application on July 20, 2026. Flexible Finance, Inc., a fintech that provides for rent payments, also applied for the Utah industrial bank charter in July 2026. In October 2026, fintech Upgrade Inc. announced it was seeking a Nevada industrial bank charter.

In addition to fintechs becoming banks, some banks are acquiring fintechs. In May 2026, Barclays PLC, a foreign financial holding company, acquired the Marlette Funding/Best Egg platform which became a subsidiary of Barclays Bank Delaware, a Delaware state-chartered bank. On September 28, 2026, Valley National Bancorp announced that it was acquiring digital banking platform Bluevine to increase its small business and deposit-generating capabilities.

Whether fintechs obtaining bank charters are a flash in the pan due to the current regulatory environment remains unknown but, as regulated entities, they will become subject to ongoing federal oversight no matter what political party is in office. In the short term, fintech entrants into the banking ecosystem may affect existing sponsor banks, change the nature of competition among players in the space, and provide room for new entrants into the market.⁸⁷ It is also uncertain whether banks will continue to acquire fintechs to bolster certain market niches and modernize their systems and infrastructure without timely and costly internal development.

VII. STATE DEVELOPMENTS

Due in part to the diminished supervisory and enforcement posture at the federal level, some states have engaged in increased efforts aimed at consumer protection in the financial services arena.

California. California has strengthened its consumer protection infrastructure. On July 1, 2026, the state launched the Business and Consumer Services Agency, a new cabinet-level agency that consolidates several consumer protection boards and departments, including the Department of Financial Protection and Innovation, under one umbrella agency. Former CFPB Director Rohit Chopra heads the new agency. He has indicated that enforcement would be a central priority and called upon consumers to submit tips about businesses engaged in harmful and corrupt practices. California also passed legislation to clarify that

⁸⁵ The industrial bank charter is discussed in REGULATORY ISSUES Section I(A)(2).

⁸⁶ As a result, some commercial companies have received industrial bank charters (sometimes referred to as industrial loan companies) for their finance-related operations. Due to favorable usury laws, Utah is the state of choice for these entities.

⁸⁷ If fintechs now working with sponsor banks become their own bank, presumably at some time, their lending operations will be moved from those banks to the newly chartered fintech bank. The sponsor banks will be looking to fill the gaps left by those entities and may seek new fintech relationships, opening the door for new entrants into the bank partnership model.

prohibitions on unfair, deceptive, or abusive acts or practices apply to all licensed entities, including finance lenders, allowing enforcement actions against them.⁸⁸

New Jersey. New Jersey's governor signed Executive Order 19 directing state agencies to identify and analyze the impact of junk fees on consumers. The New Jersey attorney general published an Enforcement Statement explaining how junk fees may violate the New Jersey Consumer Fraud Act.⁸⁹

New York. New York passed legislation to incorporate prohibitions on abusive and unfair practices into New York law and expanded the enforcement capabilities of state and private litigants.⁹⁰ New York is also considering legislation that would require disclosure of "junk fees."⁹¹ Although this would not apply to financial institutions that comply with applicable law, it is not known how nonbanks would be viewed if this legislation is enacted.⁹²

Illinois. The Illinois regulator, the Department of Financial and Professional Regulation, launched its own online complaint portal to allow Illinois consumers to file complaints related to financial products and services. In part, this action was premised on both deregulation at the federal level and an increasing number of consumer complaints. The state indicated that this simplified online process would assist in protecting consumers in the state.

Multi-state Enforcement Actions. Several states may also band together to bring enforcement actions against lenders. Thirteen states sued an online and brick-and-mortar lender in a joint enforcement action, alleging that the lender targeted and misled vulnerable consumers with add-on products sold in connection with installment loans made by the lender.⁹³ The lender denies the allegations and the case is proceeding in federal court in New York. Significantly, coordinated actions like this represent the pooling of state resources across jurisdictions that aggregates what otherwise might be individual actions. These multi-state proceedings present heightened complexity compared to actions of a single regulator, requiring attention to varying state laws, procedural requirements, and settlement dynamics.

A. State Licensing Changes

Some fintechs are subject to state licensing as brokers and marketers of loans, as assignees of loans, or as servicers of marketplace loans.⁹⁴ Since the last update of this publication, some additional state laws have been enacted that potentially affect participants in marketplace lending programs.

⁸⁸ Cal. Fin. Code § 90002 (enacted by S.B. 825).

⁸⁹ N.J. Exec. Order No. 19 (June 15, 2026); Off. of the Att'y Gen., N.J. Dep't of L. & Pub. Safety, Junk Fees Enforcement Statement (June 15, 2026).

⁹⁰ Fostering Affordability and Integrity Through Reasonable (FAIR) Business Practices Act, S. 8416, 2025-2026 Leg. Sess. (N.Y.) (eff. Feb. 17, 2026).

⁹¹ Junk Fee Prevention Act, S. 363A, 2025-2026 Leg. Sess. (N.Y.).

⁹² The Federal Trade Commission ("FTC") has an Unfair and Deceptive Fees Rule also known as a junk fee rule. In July 2026, the FTC entered into a \$35 million settlement with an entity providing travel apps and charging hidden fees or engaging in misleading or untrue statements about pricing. Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief, *FTC v. Hopper (U.S.) Inc.*, No. 1:26-cv-13058 (D. Mass. filed Aug. 20, 2026).

⁹³ *New York v. One Main Holding, Inc.*, No. 1:26-cv-02117 (S.D.N.Y. filed Mar. 16, 2026).

⁹⁴ Licensing is described in more detail in REGULATORY ISSUES Section VI(N)–(O).

California. On September 30, 2026, California AB 2116 was signed into law. Most provisions go into effect on January 1, 2028. This law affects licensing related to a broad range of commercial financing transactions up to \$500,000, including financing leases, merchant cash advances, and accounts receivable financing and factoring, as well as conventional loans and lines of credit. The legislation would make the financing agreement unenforceable if the participants in the transaction are not licensed. Licensing is required by July 1, 2028. The law prohibits pre-default confessions of judgment and powers of attorney and also expands coverage of the law to brokers, which are defined broadly to include any person who refers a person for a commercial financing transaction, transmits applicant information, prepares loan documents, negotiates a transaction, advises, communicates loan approval, or charges a fee to the prospective borrower. This latter specification indicates that compensation is not necessary for the other factors involved in being a broker. The law does not appear to be limited to brokering to other California Financing Law licensees, so it is likely to affect commercial marketplace lending programs. It could also affect the eligibility criteria related to securitization of loans.

Illinois. Effective January 1, 2026, the Illinois Collection Agency Act was amended.⁹⁵ The amendments deleted an exception to licensing for persons engaged in collection related to a trade or business other than that of collection and also repealed an exception for “finance and lending institutions.” Further, it added a provision that licensing is required for anyone who engages in the business of buying debt. But this provision does not incorporate the defined term of a debt buyer. Prior to the amendments, the previous exemptions excluded marketplace participants from obtaining an Illinois collection license. However, the state regulator now takes the position that the buying of loans or participations in loans is the buying of debt that makes a purchaser of marketplace loans subject to licensing unless another exemption exists.⁹⁶ This is potentially a significant licensing change for marketplace participants, purchasers, servicers, and collectors. Whereas licensing may not have been previously required, these amendments may now require such licensing in Illinois.⁹⁷

Minnesota. House Bill 4188 became law on August 1, 2026, and requires that a regulated lender license be obtained for short-term lenders and arrangers of short-term loans and also for arrangers of small loans.⁹⁸ An arranger includes a person who markets, facilitates, generates leads for, underwrites, or collects the respective type of loan.

Nebraska. Effective July 18, 2026, Nebraska enacted Legislative Bill 711, which expands coverage of the Nebraska Installment Loan and Sales Act, the primary consumer finance law in the state. The legislation moved the coverage from loans up to \$25,000 to loans up to \$100,000 with an interest rate greater than 16%. Licensing is required for entities that originate, make, hold, service, or participate in consumer loans, including those made by financial institutions.

Vermont. Vermont enacted HB 648, the commercial financing disclosure law, on June 16, 2026, which covers sales-based financing and factoring transactions up to \$1 million. The law takes effect July 1, 2027. The law will require licensing of providers of these commercial financing transactions as well as those who solicit such financings on behalf of third parties. Like other commercial disclosure laws, disclosure of annual percentage

⁹⁵ S.B. 2457, Ill. Pub. Act 104-0149 (codified at 205 Ill. Comp. Stat. 720/2 et seq.).

⁹⁶ For example, there is a reciprocity exemption that no Illinois collection license is necessary if the entity has a collection license in another state that will honor Illinois entities coming into that state and not having to obtain that state’s license.

⁹⁷ It is unclear whether or not licensing would be required by securitization vehicles that purchase debt and under the regulator’s view would be subject to licensing if no exemption otherwise exists.

⁹⁸ A small loan is up to \$350. A short-term loan is up to \$1,300 where 25% or more is payable within 60 days.

rate and fees are required. Automatic debits for payment may not be obtained unless the lender has a first-priority security interest in the bank account of the business.

Wisconsin. Effective January 1, 2027, the Wisconsin consumer credit act registration requirements increased the scope of covered consumer credit transactions from \$25,000 to \$50,000.⁹⁹

Licensing continues to be an evolving and complex subject relevant to the marketplace lending industry and its participants.

VIII. OTHER LITIGATION DEVELOPMENTS

It is not intended that this publication depict litigation in the marketplace lending space to any significant degree. Instead, the intent is to provide updates on matters of significance or matters that we have been following in past editions. Nor do we intend to cover all fintech related matters—rather, only those impacting marketplace lending activities. A few of these follow.

CashCall Saga Coming to an End? Although a tribal lending case and not marketplace lending *per se*, for several years this publication has been following the case brought by the CFPB against high-rate tribal lender CashCall.¹⁰⁰ Ultimately the Ninth Circuit Court of Appeals entered judgment for \$167 million. CashCall filed a writ of certiorari with the United States Supreme Court which was denied. But the saga continued. CashCall and its owners had over \$144 million on deposit at an Indiana bank. The CFPB demanded to be paid from those accounts for the judgment and CashCall instructed the bank not to make payment. The bank filed an interpleader action, not wanting to be in the middle of a fight, and turned the money over to the court to handle. Meanwhile CashCall filed a motion to vacate the CFPB judgment on the theory that the CFPB backed out of a proposed settlement.¹⁰¹ The CFPB opposed the motion and the court sided with the CFPB, even stating that the motion was an ill-conceived tactic to avoid paying the judgment. In the interim, CashCall has filed for bankruptcy protection based on the judgments pending against it. Will it ever end?

Oregon Consent Order. On December 8, 2025, Oregon’s Department of Consumer and Business Services issued a consent order against two related companies for charging interest rates in excess of those allowed under Oregon law through a program with a Utah bank. Restitution in the amount of \$900,000 was granted to consumers and a \$600,000 civil penalty was suspended for three years.¹⁰² The state alleged that the fintech received interest above the amount allowed by state law even though the loans were made by an out-of-state FDIC-insured bank.

City Sues Fintech. On December 30, 2025, the City of Baltimore sued fintech Dave, Inc. in state court for violations of the city code prohibiting unfair and deceptive practices related to a cash advance overdraft product. The city claims that the product is in reality a loan and that its fees exceed applicable interest rate limitations. The city also claims that Dave, Inc. is unlicensed and engaged in deceptive advertising. Dave, Inc.

⁹⁹ Wis. Stat. §§ 426.201(1)(a), 421.202(6).

¹⁰⁰ The saga of this litigation can be found in REGULATORY ISSUES Section VI(J).

¹⁰¹ *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, No. CV 15-7522-JFW (RAOx) (C.D. Cal. Sept. 11, 2026).

¹⁰² *In re Wheels Fin. Grp., LLC*, No. CF-22-0040 (Dec. 8, 2025) (order to cease and desist, final order assessing civil penalty, and consent to entry of order).

removed the action to federal court.¹⁰³ On October 8, 2026, Dave, Inc. filed a motion to dismiss the action, stating that the city had exceeded its authority in bringing a suit, as its jurisdiction is limited to matters within the city of Baltimore, and that this had extraterritorial implications and was rule by state law. Further, Dave, Inc. asserts that the law is preempted. Dave, Inc. is subject to similar litigation with the United States.¹⁰⁴

Continued Fallout from Synapse. Recall that in 2024, middleware provider Synapse collapsed and filed bankruptcy. Synapse kept track of funds in multiple banks and it turned out that some \$80 million in customer funds were unaccounted for and accounting discrepancies between Synapse and the banks had occurred. The bankruptcy was dismissed in November 2025 as the bankruptcy estate was insolvent.¹⁰⁵ In March 2026, a class action was filed against Synapse, its officers, and the relevant banks, alleging mismanagement and misappropriation of customer funds.¹⁰⁶ These situations call to mind that there is inherent risk in using and relying on third- or fourth-party fintechs, particularly when consumer funds may be at risk. It also reminds marketplace participants to appropriately plan for downturns and to monitor fintechs to identify or deal with fintechs that are facing financial distress.

IX. 2026 DIGITAL ASSETS UPDATE

The current administration has, through a series of Executive Orders, instructed federal agencies to shift their approach to digital assets from “regulation by enforcement” toward a more articulated federal framework, while still emphasizing market integrity and illicit-finance controls. Under those Executive Orders, federal agencies’ posture has shifted toward guidance/rulemaking and joint alignment, whether in creating taxonomies of digital assets or in implementing federal legislation. These regulations and proposed legislation recognize that digital assets cover a wide range of technologies and encompass more than cryptocurrencies and broadly refer to any digital representation of value that is recorded on a distributed ledger.¹⁰⁷

Meanwhile, states have also recognized that digital assets are here to stay and, regardless of whether they are in favor of or against crypto, generally, are taking a multiplicity of approaches, ranging from separate licensing structures for digital asset-related products¹⁰⁸ to proposing legal frameworks for permitting products such as stablecoins.¹⁰⁹

¹⁰³ *Mayor & City Council of Baltimore v. Dave, Inc.*, Case No. 1:26-cv-00369 (D. Md. filed Jan. 29, 2026).

¹⁰⁴ *FTC v. Dave, Inc.*, No. 2:24-cv-09566 (C.D. Cal. filed Nov. 5, 2024).

¹⁰⁵ In 2026 a fintech providing business credit card services called Parker declared bankruptcy, leaving business card holders of Patriot Bank and Piedmont Bank unable to use their cards.

¹⁰⁶ *Felton v. Synapse Brokerage LLC*, No. 2:26-cv-02385 (C.D. Cal. filed Mar. 26, 2026); see also *Felton v. Evolve Bank & Tr.*, No. 2:25-cv-03284 (D. Colo. Oct. 17, 2026) (involving similar issues).

¹⁰⁷ *Exec. Order No. 14178, Strengthening American Leadership in Digital Financial Technology* (Jan. 23, 2025), at § 2(a); see also *Exec. Order No. 14233: Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile* (Mar. 6, 2025); *Exec. Order No. 14331, Guaranteeing Fair Banking for All Americans* (Aug. 7, 2025); and *Exec. Order No. 14405*, *supra* n.82 (directing bank regulators to streamline rules and application processes for fintechs and digital asset firms).

¹⁰⁸ Cal. Dep’t of Fin. Prot. & Innovation, PRO 02/23, Text of Final Rules (June 29, 2026), <https://dfpi.ca.gov/wp-content/uploads/2026/06/TEXT-OF-FINAL-RULES.pdf>. California’s Digital Financial Assets Law licensing framework is discussed further *infra* Section IX(F).

¹⁰⁹ N.Y. Dep’t of Fin. Servs., Proposed N.Y. Comp. Codes R. & Regs. tit. 23, pt. 202, Authorized Payment Stablecoin Issuers (July 22, 2026), <https://www.dfs.ny.gov/system/files/documents/2026/07/rp-fs-23nycrr-202-notice.pdf>. New York’s proposed framework and other state stablecoin regimes are discussed further *infra* Section IX(E).

A. Digital Assets' Relevance to Marketplace Lending

Digital assets' role in marketplace lending is manifesting as a source of capital and a mechanism for payment and servicing, as well as clearing and settlement. While there seems to be little demand for marketplace loans denominated in digital assets, there are nascent systems for using digital assets as collateral for a fiat-denominated loan, as a source of capital as stablecoin holders contribute value into lending systems such as vaults, and as a vehicle for servicing and settlement as smart contracts mature into recognized arbiters of interest payment distribution, collection, and default management.

1. Digital Assets as Collateral

It may be years before firm guidance exists regarding the use of digital assets in lending, or confirmation that blockchain and smart contract technology can be used to adequately describe assets intended as collateral for purposes of the Uniform Commercial Code ("UCC"). Even more complex issues are raised by the emergence of decentralized finance ("DeFi") protocols that seek to entirely remove intermediaries and sponsors that fill regulated roles in commercial activity. It follows that, for the foreseeable future, certain aspects of blockchain systems will likely remain subject to some (or a great) degree of legal uncertainty. Among the more salient issues are those regarding applicability of state statutes governing property law and title. Given the differences in state adoption of various sections of the UCC, lenders could be left with uncertainty around questions such as whether they have clear ownership rights when they receive a stablecoin. Without a uniform body of law regarding free and clear ownership by a stablecoin holder, the rights to collateral could be disputed.

State law on using "digital assets" as collateral varies depending on whether a state has adopted the 2022 amendments to the UCC, especially new UCC Article 12 (and related Article 9 changes). The core practical shift is that, for certain digital assets, "control" can be a perfection method that can also drive priority—not just a UCC-1 filing. Under the 2022 UCC amendments, a key bucket is the "controllable electronic record," the Article 12 concept intended to capture many transferable digital assets. Regardless of whether a state has adopted Article 12, "control" over a digital asset can be a commercially meaningful alternative. Control can be demonstrated through custody arrangements, wallet structures, and control agreements, and the ability for a lender to take control over collateral as a pledge or in the event of default depends on such arrangements and agreements.

2. Digital Assets as a Source of Lending Capital: Vaults

As stablecoin usage increases due to stablecoins' status as regulated, cross-border, and interoperable mechanisms for payment and storage of value,¹¹⁰ stablecoin holders have begun to pursue financing and yield opportunities for this asset class. While it is specifically prohibited for a U.S. "payment stablecoin" issuer to pass along to holders yield that it may earn on assets such as U.S. Treasuries, several models are in development that would permit holders to pledge their stablecoins as capital to support lending operations, potentially including consumer and marketplace loans. Such arrangements are sometimes known as vaults. A "vault" is a smart contract deployed to a blockchain that does two things: (i) hold digital assets deposited by users, and (ii) deploy those assets to other smart contracts according to a defined strategy. Vaults facilitate asset deployment by using smart contracts to allocate user assets to various yield-generating activities, including

¹¹⁰ See *infra* Section IX(C) (discussing stablecoins).

staking and lending.¹¹¹ A holder can “lock up” a certain number of stablecoins in a vault arrangement in exchange for receipt tokens. In a lending arrangement, the value associated with the stablecoins is then loaned out to borrowers, be they commercial, consumer, U.S., or international, through a traditional finance borrowing arrangement or a decentralized or DeFi lending protocol.¹¹²

Whether the receipt tokens issued in a vault lending arrangement are securities depends on a yet-unsettled and fact-dependent analysis. For instance, if the receipt tokens represent pro rata interests in a pooled lending arrangement in which users invest money with a reasonable expectation of profits to be derived from the vault deployer’s and curator’s entrepreneurial or managerial efforts, such facts may fulfill the common enterprise factor of the *Howey* test or cause the receipt tokens to resemble notes under the *Reves* test. On the other hand, vault arrangements could give rise to opportunities for stablecoin holders to participate selectively in loans or tranches of loans, with the smart contract managing servicing and distribution of fixed interest without the managerial efforts of others.¹¹³

Keep in Mind: The open access of most popular blockchain networks presents an issue for any party seeking to access a public blockchain for even the simplest of purposes. In most blockchain activity, standard transactions are bilateral in nature, simplifying the “know your counterparty” equation and risks. With DeFi, a prospective participant cannot easily ascertain the identity of the counterparties that also access the DeFi application. As government agencies, including the Office of Foreign Assets Control (“OFAC”), have begun to focus more on digital asset networks, financial institutions and all other users exploring DeFi must consider anti-money laundering, countering the financing of terrorism, and sanctions compliance risks.

3. *Digital Assets as a Vehicle for Servicing and Settlement*

Marketplace loans can be “tokenized” using smart contracts, and the rights of such tokens can be transferred and settled on the blockchain. This type of token can be referred to as a “real world asset,” or “RWA,” and is expected to receive the same legal and regulatory treatment as if it were not in tokenized form. In other words, a token that represents a single loan or its servicing rights may not be treated as a security, but a pool of such loans or rights may be, if considered a security even without tokenization.¹¹⁴ The tokenization process is

¹¹¹ [Hester M. Peirce, Comm’r, SEC, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* \(July 22, 2026\).](#)

¹¹² In a DeFi protocol, a developer establishes a series of smart contracts and decentralized applications (“DApps”) that create an ecosystem for defined activities that exist wholly or largely within the blockchain network. These systems are generally intended to be available to any party with access to the blockchain network, although some require the acquisition of a particular token or, more rarely, the whitelisting of access. These DeFi systems include projects that seek to remove intermediaries from digital asset trading platforms (decentralized exchanges, or “DEXs”), to provide investment exposure to baskets of digital assets (baskets or set tokens), and to generate yield based on over-collateralized loans (DeFi lending, or “yield farming”). A general premise often advanced for DeFi projects is that, following publication of the smart contracts and DApps, the developers of the project cede control to the network users, meaning that no administrator, issuer, or sponsor controls the system and has operational or regulatory responsibility for its activity. The accuracy and practicality of this premise are largely untested, on both a factual and legal basis. This presents a significant issue for both retail users and potential market entrants seeking to assess DeFi opportunities.

¹¹³ See Peirce, *supra* n.111 (stating that moving financial activities on chain does not exempt them from federal securities laws).

¹¹⁴ See Hester Peirce, Comm’r, SEC, *Enchanting, but Not Magical: A Statement on the Tokenization of Securities* (July 9, 2025) (“As powerful as blockchain technology is, it does not have magical abilities to transform the nature of the underlying asset. Tokenized securities are still securities. Accordingly, market participants must consider—and adhere to—the federal securities laws when transacting in these instruments.”).

attracting attention for its ability to facilitate the development of an active secondary trading market for marketplace loans.¹¹⁵

B. OCC Chartering Activity and Other Guidance

The OCC has granted more charters since January 2025 than in the previous fifteen years, and many of them have gone to digital-asset and fintech firms using the national trust bank structure. The OCC's own figures show that, of the 44 applications it has received since early 2025, it has granted 27, denied 2, and returned one.¹¹⁶ By comparison, from 2011 through 2024 the OCC received fewer than four charter applications a year on average. Fintechs and digital asset companies are seeking de novo charters mainly to come directly under federal supervision and benefit from preemption of state digital asset regulatory regimes, to own the regulated payments infrastructure behind their products instead of renting it, and to take advantage of an OCC that was openly encouraging new entrants.

Critical to these institutions' ability to retain their conditional charters will be their ability to withstand OCC examinations by clearly explaining their business models, demonstrating exam readiness through critical self-examination in preparation, guiding exam staff through their narrative, and establishing regulatory relations teams to speed and ensure responsiveness to examiner requests and findings. All of the de novo approvals so far are preliminary. The OCC will not grant final approval to open for business until every preopening requirement is met.

1. De Novo Bank Charters

Those seeking full bank charters appear to desire less dependence on partner banks, the ability to issue tokenized deposit products or real-world assets, or the restructuring of an existing business into a multi-line and more sophisticated institution.

2. National Trust Bank Charters

Simultaneous to the OCC's granting a flurry of national trust bank charters, it released finalized regulations clarifying and affirming the types of activities national trust banks may engage in (the "*National Trust Charter Rule*"). Clarifying that national trust banks may, but do not have to, conduct fiduciary activities, the OCC stated that it intended to "avoid any implication that national trust banks may not conduct any activities within the business of banking."¹¹⁷ Accordingly, national trust banks may engage in any activities that are part of trust company operations, such as custody, or activities related thereto. The clarified rule continues to demonstrate the OCC's willingness to adapt the national trust charter to accommodate digital assets and to provide increased regulatory certainty for innovation. The national trust bank charter will remain a strategic option for participants in the digital assets industry seeking to achieve uniform offerings through federal preemption and benefit from centralized supervision. In practice, the national trust charter lends itself to custody, settlement,

¹¹⁵ It would be necessary to consider whether any tokens representing financial interests in marketplace loans constitute "securities" subject to regulation under federal and state securities laws. Any such tokens offered to retail investors would likely be treated as securities (which in turn would likely make the offering impractical because of securities law registration requirements).

¹¹⁶ OFF. OF THE COMPTROLLER OF THE CURRENCY, *De Novo Chartering*, <https://www.occ.gov/topics/charters-and-licensing/de-novo-chartering/index-de-novo-chartering.html>.

¹¹⁷ National Bank Chartering, 91 Fed. Reg. 9977, 9980 (Mar. 2, 2026).

asset servicing, and fiduciary roles, making it well suited to institutions whose core activities center around holding and administering assets rather than traditional lending or deposit-taking.

However, not all are supportive of the OCC's clearing a pathway for digital asset participants in this manner. The Independent Community Bankers of America (the "ICBA") sued the OCC in the U.S. District Court for the District of Columbia to declare unlawful and set aside the National Trust Charter Rule and the related Interpretive Letter 1176¹¹⁸ on the basis that they exceeded authority under the National Bank Act and the Administrative Procedure Act.¹¹⁹ The ICBA objects to permitting risky crypto companies to enter into the banking system without the regulatory requirements of a traditional bank charter, arguing that this puts smaller community banks at a disadvantage, and cites concerns about deposit flight and fraud.¹²⁰

3. *Crypto-Asset-Related Guidance*

Beyond chartering, the OCC has continued to expand, through a series of interpretive letters, the crypto-asset activities permissible for national banks and federal savings associations.

Interpretive Letter 1186—Network Fees and Principal Holdings.¹²¹ In Interpretive Letter 1186 (November 2025), the OCC concluded that a national bank may pay blockchain network ("gas") fees incidental to otherwise permissible activities and may hold, as principal, the crypto-assets reasonably necessary to pay those fees, as well as crypto-assets needed to test permissible crypto-asset platforms.

Interpretive Letter 1188—Riskless Principal Transactions.¹²² In Interpretive Letter 1188 (December 2025), the OCC confirmed that a national bank may engage in "riskless principal" crypto-asset transactions, in which the bank, after receiving a customer order, buys a crypto-asset from one party and simultaneously sells it to the customer (or the reverse). The OCC viewed this activity as functionally equivalent to traditional bank brokerage, subject to appropriate management of counterparty, settlement, operational, and compliance risks.

Taken together, Interpretive Letters 1186 and 1188 further demonstrate the OCC's support for bringing digital assets into the regulated banking system. For digital asset firms weighing a national bank or national trust bank charter, the letters expand the services a chartered institution can offer directly, including executing customer trades and conducting on-chain operations that require holding native tokens. For marketplace lenders and their bank partners, the letters remove practical obstacles to using public blockchains for loan payment, servicing, and settlement, and to offering customers the ability to buy and sell crypto-assets alongside traditional products.

¹¹⁸ OCC Interpretive Letter No. 1176 (Jan. 11, 2021), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2021/int1176.pdf>.

¹¹⁹ Complaint, *Indep. Cmty. Bankers of Am. v. Off. of the Comptroller of the Currency*, <https://www.icba.org/documents/d/asset-library-45247/icba-v-occ-as-filed-complaint-c>.

¹²⁰ *Indep. Cmty. Bankers of Am., Flood of National Bank Trust Charter Applications Demands Policy Response from OCC*, <https://www.icba.org/w/flood-of-national-bank-trust-charter-applications-demands-policy-response-from-occ>.

¹²¹ OCC Interpretive Letter No. 1186 (2025), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1186.pdf>.

¹²² OCC Interpretive Letter No. 1188 (2025), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2025/int1188.pdf>.

C. Stablecoins

The development of stablecoins emerged alongside the growth of cryptocurrency markets. Before stablecoins existed, cryptocurrency traders faced a binary choice after executing a trade: retain the cryptocurrency (absorbing its price volatility) or convert back to traditional currency like dollars. Converting to fiat presented its own challenges, such as transaction delays, banking hour limitations, and the friction of moving between the continuous crypto ecosystem and traditional financial infrastructure. Stablecoins offered a third path, allowing market participants to capture gains in a dollar-referenced digital form without exiting the crypto environment entirely, thereby maintaining liquidity and flexibility for subsequent transactions.

Today, stablecoins, while expanding, still remain predominantly tied to cryptocurrency trading activity, with industry estimates suggesting the vast majority of crypto platform transactions involve stablecoin pairs.¹²³ The full realization of additional stablecoin use cases, including activity-based reward programs relevant to marketplace lending, has been dampened by Congress's failure to pass the CLARITY Act (defined and discussed below). Yet several additional applications have garnered attention. Domestic retail payments represent one potential growth area, as stablecoins could enable faster settlement than conventional payment rails, but whether such speed advantages outweigh the costs of adoption and infrastructure changes remains an open question. International remittances and cross-border transfers present another opportunity, given the well-documented expense and delay associated with traditional correspondent banking arrangements. For residents of countries experiencing currency instability, dollar-denominated stablecoins may also serve as an accessible store of value.

Stablecoins will continue to grow in significance to the marketplace lending sector in some or all of the following ways: (i) loan issuance and servicing in payment stablecoins, (ii) taking stablecoins as collateral and how to treat them during underwriting and ability-to-pay analyses, (iii) where lenders should custody stablecoins and the financial institutions' holding omnibus vs. segregated accounts for lenders or borrowers, and (iv) the potential need to compete with stablecoin lending offered via DeFi. Marketplace lenders that choose to issue loans or take repayment in payment stablecoins will need either to establish custody and safekeeping of those tokenized assets or to contract with a service provider (offering "stablecoins as a service") that will handle such custody arrangements and maintain either omnibus or segregated accounts to assist with loan servicing. Payment stablecoins, as defined under the GENIUS Act (defined below), may be valued by a broker-dealer at 98%, reflecting a 2% haircut on its proprietary position, when calculating its net capital.¹²⁴ While this is still slightly more punitive than the standard that applies to registered money market funds, it is a starting point for benchmarking whether stablecoins may be considered high-quality liquid assets for underwriting purposes. Even if banking regulators follow the Securities and Exchange Commission ("SEC") staff's valuation methodology for payment stablecoins, other questions remain, such as: how should other stablecoins be valued, assuming they are even susceptible to valuation, and how should stablecoins be valued

¹²³ See Marc Labonte & Paul Tierno, Cong. Rsch. Serv., R49351, *GENIUS Act (P.L. 119-27): Creating a Regulatory Framework for Stablecoins* (Sept. 17, 2026), <https://www.congress.gov/crs-product/R49351>.

¹²⁴ DIV. OF TRADING & MKTS., SEC, *Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology* (Feb. 19, 2026), <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology> (stating that SEC staff will not object if a broker-dealer treats a proprietary position in payment stablecoin as having a "ready market" under 17 C.F.R. § 240.15c3-1 and takes a haircut of 2% of the market value of the greater of the long or short proprietary position in payment stablecoin in calculating its net capital).

in the event their reserve assets become distressed? Rules forthcoming from the Treasury Department are expected to determine the answer to those and many other questions.

D. GENIUS Act Rulemaking

On July 18, 2025, the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act (the “GENIUS Act”) was signed into law, marking a pivotal moment for stablecoins and a significant legislative development for the U.S. digital assets industry.¹²⁵ The GENIUS Act creates a comprehensive dual-track regulatory framework for licensing and supervision of payment stablecoin issuers at either the federal or state level. The GENIUS Act defines a “payment stablecoin” as a digital asset (*i.e.*, any digital representation of value which is recorded on a cryptographically secured distributed ledger) that is, or is designed to be, used as a means of payment or settlement, and the issuer of which represents that such digital asset will maintain stable value and is obligated to convert, redeem, or repurchase for a fixed monetary value by its issuer. The definition expressly excludes bank deposits (including deposits recorded using distributed ledger technology), securities, and national currencies. Payment stablecoin issuers are not permitted to pay interest or yield solely for holding, use, or retention of payment stablecoins.

The GENIUS Act contains over 25 specific rulemaking directives, as well as a general requirement in Section 13(a) for the promulgation of rules within one year of the GENIUS Act’s enactment date (*i.e.*, by July 18, 2026).¹²⁶ The GENIUS Act’s effective date is the earlier of January 18, 2027 (18 months after enactment) or 120 days after the required regulations are published. Practically, given the missed rulemaking deadline of July 18, 2026, January 18, 2027 is now the operative compliance date. Under Section 20 of the GENIUS Act, an effective date earlier than January 18, 2027, was possible only if regulators finalized rules in time for the 120-day trigger to fall before the 18-month backstop. Any rules finalized after approximately September 20, 2026, would put the 120-day period past January 18, 2027, regardless. Issuers thus face a fixed licensing deadline without fixed requirements, a circumstance that has drawn criticism from industry practitioners who note the challenges of preparing for compliance against rules that remain in flux. In January 2027, the federal government is expected to begin accepting applications from prospective permitted payment stablecoin issuers to issue payment stablecoins.

1. OCC, FDIC, NCUA, and FRB Implementation Rules

As of this writing, the OCC, the FDIC, the NCUA, and the Board of Governors of the Federal Reserve System (“FRB”) have each issued proposed rules governing permitted payment stablecoin issuer (“PPSI”) licensing and substantive requirements, including reserve assets, capital, liquidity, custody, and deposit insurance for stablecoin reserves pursuant to Section 4(a) of the GENIUS Act.¹²⁷ The OCC’s notice of proposed rulemaking (the “OCC Implementation NPRM”) under the GENIUS Act was the first to establish a comprehensive regulatory

¹²⁵ Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, Pub. L. No. 119–27, 139 Stat. 419 (2025).

¹²⁶ See Chapman and Cutler LLP, *GENIUS Act Rulemaking and Reporting Tracker*, <https://www.chapman.com/publication-genius-act-rulemaking-tracker>.

¹²⁷ Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the Office of the Comptroller of the Currency (proposed Mar. 2, 2026) [hereinafter OCC Implementation NPRM]; GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions (proposed Apr. 10, 2026) [hereinafter FDIC Implementation NPRM]; Implementing the Guiding and Establishing National Innovation for U.S. Stablecoins Act for the Issuance of Stablecoins by Entities Subject to the Jurisdiction of the National Credit Union Administration (proposed May 18, 2026) [hereinafter NCUA Implementation NPRM]; Implementing the Federal Reserve Board’s Responsibilities Under the GENIUS Act (proposed Sept. 29, 2026).

framework for PPSIs.¹²⁸ Notable provisions address yield restrictions: the OCC Implementation NPRM creates a rebuttable presumption that a PPSI violates the statutory prohibition on paying interest or yield if the PPSI has a contract to pay yield to an affiliate or related third party and that party in turn contracts to pay yield to stablecoin holders. However, the OCC Implementation NPRM permits merchant discounts for stablecoin payments and profit-sharing in white-label arrangements with non-affiliate partners.

Regarding reserve assets, the OCC Implementation NPRM proposed two alternative approaches. Option A is principles-based, requiring PPSIs to maintain sufficiently diverse reserves to manage credit, liquidity, interest rate, and price risks, with a safe harbor for meeting specific quantitative thresholds (including a 10% daily liquidity requirement in deposits or Federal Reserve Bank funds, a 30% weekly liquidity requirement, concentration limits of no more than 40% at any single eligible institution, and a weighted average maturity cap of 20 days). Option B would impose these quantitative standards as mandatory requirements. PPSIs with more than \$25 billion in outstanding issuance must maintain insured deposits of at least 0.5% of reserves (up to a \$500 million cap), and all PPSIs must ensure that the fair value of reserves equals or exceeds outstanding issuance at all times.

The OCC Implementation NPRM establishes capital and operational requirements based on a PPSI's lifecycle, business model, and risk profile. During a three-year de novo period, PPSIs must maintain minimum capital of at least \$5 million. Ongoing capital requirements will be determined based on de novo period estimates, with the OCC considering variable components tied to outstanding issuance value, credit risk, and uninsured deposit levels. Additionally, PPSIs must maintain an operational backstop of liquid assets approximating 12 months of expenses. Failure to meet capital or backstop requirements for two consecutive quarters triggers mandatory liquidation of reserves and redemption of outstanding stablecoins, with a prohibition on new issuances. On redemption, the OCC Implementation NPRM generally requires a two-business-day timeframe, which may be extended, with permission from the OCC, to seven calendar days if a PPSI faces redemption demands exceeding 10% of outstanding issuance in a 24-hour period.

For custody and risk management, the OCC Implementation NPRM imposes requirements on safekeeping of "covered assets" (including reserves, stablecoins used as collateral, and private keys), requiring custodians to treat covered assets as belonging to the customer and protect them from the custodian's creditors. Consistent with statutory prohibitions, PPSIs may not pledge, rehypothecate, or reuse reserve assets (except in limited circumstances). The OCC Implementation NPRM also establishes comprehensive risk management standards covering internal controls, audit systems, third-party oversight, and a board-approved information security framework. Finally, on licensing, the OCC Implementation NPRM provides that the OCC will determine whether applications are "substantially complete" within 30 days, triggering a 120-day statutory decision clock under which inaction is deemed approval. The OCC is considering whether to prohibit a PPSI from issuing more than one brand of payment stablecoin due to concerns about reserve asset uncertainty and run risk.

While the OCC, NCUA, and FDIC proposals share a common foundation, several key variances exist across the proposed rules. On capital requirements, the agencies diverge primarily in their approach to enforcement. The OCC and NCUA would automatically halt new stablecoin issuances if a PPSI fails to meet minimum capital or backstop requirements at quarter-end and would mandate liquidation of reserves and redemption of outstanding stablecoins after two consecutive quarters of noncompliance. The FDIC, by contrast, would retain

¹²⁸ OCC Implementation NPRM, *supra* n.127.

discretion over whether to direct a PPSI to suspend or cease issuance and does not include an automatic liquidation trigger.

On capital requirements, the FRB deviates from the other prudential regulators in breaking out risk into financial/credit risk and operational risk, providing formulas for PPSI capital that declines as the PPSI grows.¹²⁹ For credit risk, the FRB would impose a 2% capital requirement on reserve assets held as uninsured deposit claims or undercollateralized reverse repurchase agreements, and would require PPSIs to look through to those exposures when they are held by eligible investment funds. For operational risk, the FRB proposes a simple, standardized calculation with two components: (i) a charge of between 1% and 2% of outstanding payment stablecoins (2.0% on the first \$20 billion outstanding, 1.5% on the next \$30 billion, and 1.0% above \$50 billion), reflecting the risks of issuing and redeeming payment stablecoins and managing reserve assets, and (ii) a charge equal to 25% of three-year non-reserve revenue, reflecting risks from activities not tied to outstanding issuance, such as stablecoin custody services and holding non-reserve assets. A loss scalar would then adjust the operational risk requirement upward or downward based on the PPSI's realized operational losses, rewarding PPSIs that manage operational risk prudently.

Reserve asset diversification requirements also differ among the agencies. The OCC and NCUA each propose either a principles-based framework with a safe harbor or a more prescriptive approach, with both options incorporating concentration tiers based on asset type and maturity. Both agencies would also cap a PPSI's exposure to any single eligible financial institution at 40% of its reserve assets. The FDIC's proposal is narrower, requiring only the 40% concentration limit without the broader diversification framework. The FRB takes a solely principles-based approach to diversification and concentration risk that differs from the other prudential banking regulators, without the 40% single-institution exposure standard, and instead highlights the risks associated with uninsured eligible deposit claims and reverse repurchase transactions against one or a small number of institutions. Under the FRB's proposed rule, a PPSI whose reserves fall below the one-to-one requirement would be subject to strict deadlines: it must notify the FRB within 24 hours and submit a remediation plan by 5:00 p.m. on the next business day. If the PPSI cannot credibly cure the shortfall, it must liquidate its reserves and redeem outstanding stablecoins on a pro rata basis, without charging stablecoin holders any fee.

Redemption policies are largely consistent across the proposals, though the treatment of stress scenarios varies. The OCC and NCUA would automatically extend the redemption timeline to seven days if a PPSI experiences redemption requests exceeding 10% of its outstanding issuance value within a 24-hour period. The FDIC takes a more flexible approach, allowing a PPSI that encounters a "significant" redemption event to request an extension, subject to the FDIC's discretionary approval. The FRB's proposed rule does not provide for an automatic extension of the redemption timeline, as the OCC and NCUA proposals do; instead, it gives the FRB discretion to grant an extension based on safety and soundness or public interest considerations, and provides a safe harbor for failure to timely redeem if the PPSI can demonstrate that additional time was needed for customer identification program ("CIP") or customer due diligence ("CDD") procedures or that the delay was outside of its control.

¹²⁹ Bd. of Governors of the Fed. Reserve Sys. Staff, Notice of proposed rulemaking to implement the GENIUS Act with respect to permitted payment stablecoin issuers and certain other entities that are subject to the Board's jurisdiction (Sept. 3, 2026), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20260924a1.pdf>.

To address the process for applications by, and the regulation and supervision of, federal qualified payment stablecoin issuers, each of the OCC, FDIC, NCUA, and FRB has issued detailed proposed rules, some as part of their general implementation proposals and others, as with the NCUA, FDIC, and FRB, as additional standalone rulemakings.¹³⁰

2. *Other Key Proposed Rules*

“Substantially Similar” State Regulatory Framework. On April 1, 2026, Treasury issued proposed rules under the GENIUS Act, establishing a federal framework for PPSIs and also allowing states to build their own frameworks as long as they are “substantially similar” to the federal one (the “*Treasury Substantially Similar NPRM*”).¹³¹ The Treasury Substantially Similar NPRM sets out broad principles for judging substantial similarity, addressing: (1) what counts as the federal framework, (2) how the Stablecoin Certification Review Committee (“SCRC”) should review state frameworks, and (3) where state laws may differ from the federal framework and from each other.

Under the GENIUS Act Section 4(a), an issuer may choose state regulation if it is not a subsidiary of an insured depository institution and has less than \$10 billion in outstanding stablecoins. An issuer approved under a compliant state framework can operate in other states without getting licensed there, allowing an issuer to conduct a nationwide business under one state’s regime instead of obtaining licensure in many states or seeking OCC approval. However, this preemption only covers stablecoin issuance activities. Host states keep their authority over other activities. But if a state issuer crosses \$10 billion, it must move to federal oversight or obtain a waiver to remain under state supervision.

Section 4(c) directs Treasury to develop the similarity principles. The Treasury Substantially Similar NPRM defines the federal framework to mean not only the GENIUS Act text, but also the OCC’s interpretations and regulations published in the Federal Register, Treasury rules on anti-money laundering and sanctions, and the FRB’s rules on the GENIUS Act’s anti-tying prohibitions.

The Treasury also issued an interim final rule setting out SCRC Review Procedures,¹³² complementing the Treasury Substantially Similar NPRM adopting interim procedural regulations and forms to facilitate the SCRC’s approvals or denials of state frameworks. As recognized in the Treasury Substantially Similar NPRM, states need sufficient time to review and to implement or update regulatory regimes to reflect changing regulations and interpretations. To address this concern, this interim final rule gives a two-year cure period until July 18, 2027, for changes to federal statutes, interpretations, regulations, or orders, or two years from the date of publication of the regulatory materials.

¹³⁰ OCC Implementation NPRM, *supra* n.127; FDIC Implementation NPRM, *supra* n.127; Investments in and Licensing of Permitted Payment Stablecoins Issuers (proposed Feb. 12, 2026) [hereinafter NCUA Licensing NPRM] (comment period closed Apr. 13, 2026); Approval Requirements for Issuance of Payment Stablecoins by Subsidiaries of FDIC-Supervised Insured Depository Institutions (proposed Dec. 19, 2025) [hereinafter FDIC Licensing NPRM]; Application Procedures for Board-Supervised Insured Depository Institutions Seeking Approval for a Subsidiary to Issue Payment Stablecoins (Sept. 24, 2026), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20260924a3.pdf>.

¹³¹ GENIUS Act Broad-Based Principles for Determining Whether a State-Level Regulatory Regime Is Substantially Similar to the Federal Regulatory Framework (proposed Apr. 3, 2026).

¹³² Forms and Procedures for Review of State Certifications by the Stablecoin Certification Review Committee (Sept. 30, 2026), <https://www.federalregister.gov/documents/2026/09/30/2026-19966/forms-and-procedures-for-review-of-state-certifications-by-the-stablecoin-certification-review>.

The SCRC will be chaired by the Treasury Secretary and will include the FRB and the FDIC. It approves a state framework if the framework “meets or exceeds” the Section 4(a) standards. Treasury reads this as narrower than what states must address before certifying. The committee reviews only Section 4(a), but a state must consider the entire federal framework before it certifies.

Under the GENIUS Act, there are “uniform requirements” and “state-calibrated requirements” to be evaluated in the assessment of “substantial similarity.” “Uniform requirements” must match the federal rules in all substantive respects, such as reserves and monthly reserve reporting, AML and sanctions rules, and the ban on paying interest or yield. Departing from these would generally rule out a finding of substantial similarity. “State-calibrated requirements” leave room for state discretion. They cover redemption timing, capital, liquidity, reserve diversification, risk management, and additional permitted activities. These requirements must be consistent with the GENIUS Act and produce outcomes at least as rigorous and protective as the federal framework.

Additional activities are limited to those incidental to the core activities of issuance and redemption, reserve management, and custody and safekeeping. State frameworks must also address: (1) transition to federal oversight, (2) licensing, (3) supervision and enforcement, (4) custody, and (5) insolvency. Treasury’s view is that states must regulate the full life cycle of an issuer, not just issuance. Any extra state requirements must not conflict with the GENIUS Act or other federal law. We discuss such state frameworks below under “States with Stablecoin Regimes.”

Foreign PPSI NPRM. On August 17, 2026, the Treasury Department released proposed regulations implementing Section 3 of the GENIUS Act, which restricts who may lawfully issue, offer, and sell payment stablecoins (“*Foreign PPSI NPRM*”).¹³³ The Foreign PPSI NPRM defines key statutory terms (“issue,” “issuer,” and “located in the United States”) that the GENIUS Act left undefined, clarifying both the scope of the prohibitions and the conditions for lawful stablecoin activity.

Under the proposed definitions, “issue” would mean the first transfer of a payment stablecoin by the issuer that results in another person having the right to use, transfer, or redeem it, whether transferred directly, through an intermediary, or by crediting an account. Reissuance could also constitute issuance. Stablecoins that have been minted but not yet transferred to a third party would fall outside the definition. An “issuer” would be a person obligated to redeem the stablecoin for a fixed monetary value and who represents (or creates a reasonable expectation) that the stablecoin will maintain stable value. Persons performing only technical functions or providing branding in white-label arrangements would not be issuers, though they could face criminal liability for knowingly participating in unlawful issuance.

A person would be deemed to issue a payment stablecoin “in the United States” if, at the time of issuance, either the issuer or the recipient is located in the United States. However, a safe harbor would apply where the issuer is not located in the United States, reasonably believes no recipient is located in the United States, has implemented policies and controls designed to prevent issuance to U.S. persons, and does not engage in advertising or solicitation targeting the United States. For offers and sales, the Foreign PPSI NPRM would codify the GENIUS Act’s prohibitions on digital asset service providers offering or selling stablecoins issued

¹³³ GENIUS Act Regulations on Payment Stablecoin Issuance, Offer, and Sale, 91 Fed. Reg. 53368 (Aug. 18, 2026).

by noncompliant entities. Directly soliciting U.S. persons or advertising stablecoins as available for purchase in the United States would constitute an “offer” subject to these restrictions.

The Foreign PPSI NPRM would define “located in the United States” differently for individuals and entities. An individual would be considered located in the United States if physically present there, unless the individual is a nonresident whose presence is merely temporary. An entity would be located in the United States if organized under U.S. law or if its principal place of business is in the United States.

Regarding foreign issuers, Treasury proposes that the prohibition on U.S. issuance would not apply to a foreign permitted stablecoin issuer (“FPSI”) that meets the criteria in Section 18(a) of the GENIUS Act. To qualify, an FPSI must be supervised by a foreign regulator with a regime deemed “comparable” to the U.S. framework, be registered with the OCC, hold reserves sufficient to meet U.S. customer liquidity demands at a U.S. financial institution (absent a reciprocal agreement), and be domiciled in a country not subject to comprehensive U.S. sanctions or designated as a primary money laundering concern.

3. *BSA/AML Rules to Be Administered by All Federal Functional Regulators and FinCEN*

Like the federal functional regulators, Treasury, via FinCEN and OFAC, is working to implement final rules for GENIUS-compliant stablecoins by the close of 2026. Based on Treasury’s proposed rules, however, the industry should expect (1) Bank Secrecy Act (“BSA”) and sanctions compliance programs to apply to U.S. and foreign-issued payment stablecoins and (2) modernization of BSA/AML compliance, more generally, to implement not only the GENIUS Act but also the Anti-Money Laundering Act of 2020.

Specific to payment stablecoins, proposed rules from FinCEN and OFAC recognize that enhancements in technology can lead regulators to expect more from the digital assets industry. In addition to standing requirements for CIP and transaction monitoring, they are proposing to require payment stablecoin issuers to have the ability to “block, freeze, and reject impermissible transactions,” including those on the secondary market. Such a capability requires that issuers and intermediaries employ blockchain tracing software as a part of their monitoring programs and implement the ability to comply with lawful orders by seizing, freezing, or burning stablecoins.

While secondary-market monitoring will require a PPSI to block and report asset transactions in potential violation of sanctions, a PPSI will not be required to have CIP or CDD information or file suspicious activity reports (“SARs”) on wallets or persons who transact with its payment stablecoins in secondary-market transactions.

BSA/AML Modernization. Treasury’s proposed rule on BSA/AML modernization, more generally, aims to evaluate anti-money laundering/countering the financing of terrorism (“AML/CFT”) programs based on whether they are risk-based, reasonably designed, and capable of producing meaningful outcomes for law enforcement and national security authorities—not on technical compliance for its own sake. It proposes to add detail to the two main elements of an “effective” AML/CFT program, namely that the program be (1) established in accordance with the rule’s establishment requirements under proposed § 208.63(c), and (2) maintained, meaning the established program is implemented “in all material respects” under proposed § 208.63(d).

The proposed rule also calls for increased coordination between FinCEN and the federal functional regulators by creating a mandatory consultation process requiring federal banking agencies to provide FinCEN with at least 30 days' written notice prior to initiating a significant AML/CFT supervisory action. The notice must be accompanied by the relevant AML/CFT information, including the relevant portions of the draft examination report or enforcement action, the relevant examination workpapers supporting the proposed action, and the relevant AML/CFT information submitted by the bank to the agency (except for privileged materials). FinCEN would have an opportunity to review the proposed action and provide input—including its view as to the effectiveness of the bank's AML/CFT program—before the action proceeds. The 30-day period may be shortened at the federal banking agency's sole discretion when necessary to remedy an unsafe or unsound practice or condition.

Taking a page from modern technology, however, FinCEN has been offering some regulatory relief from existing BSA/AML requirements. In various guidance pieces, FinCEN and the federal banking agencies are easing some of the technical burdens associated with CIP by (i) allowing banks to collect customers' complete Social Security numbers and taxpayer identification numbers from third parties; (ii) not requiring that an existing entity customer repeat the CDD process for each new account it opens under the same beneficial owner; (iii) accepting electronic driver's licenses in states that offer them and, going forward, similar "digital certificates" as non-documentary verifying information; and (iv) not requiring follow-up SARs where there is no new information within a 90-day period.

E. States with Stablecoin Regimes

Even though the Treasury Substantially Similar NPRM has not yet been finalized, several states passed laws during the 2026 legislative session that let their banking or securities regulator license and supervise stablecoin issuers in line with the GENIUS Act. Georgia, Florida, and Delaware wrote GENIUS-like requirements directly into state law. Alabama and Maryland set up a licensing framework and gave their regulator authority to adopt GENIUS-compliant rules. New York has proposed regulations that would align its existing stablecoin regime with the federal framework. Each of these regimes will need to be certified under the substantial similarity framework before issuers can rely on it, with the SCRC looking at whether uniform requirements are fully enforceable by the state regulator and whether state-calibrated requirements produce outcomes at least as rigorous and protective as the federal framework. The state-by-state summary below describes each framework as it currently stands.

Alabama: On April 9, 2026, Governor Ivey signed the Financial Innovation Market Expansion Act (House Bill 259) (the "*Market Expansion Act*"), which creates a stablecoin issuer license in Alabama.¹³⁴ The Market Expansion Act authorizes the Alabama Securities Commission ("ASC") to review applications and license applicants as Alabama-qualified payment stablecoin issuers. It also bars anyone from issuing payment stablecoins in the state without a license as a permitted issuer. The ASC describes the Market Expansion Act as consistent with the GENIUS Act, which lets states license and oversee issuers with up to \$10 billion in stablecoins. Licensed issuers must hold one-to-one reserves in high-quality liquid assets and provide monthly attestations from an independent certified public accountant. They must also comply with AML, sanctions, and cybersecurity requirements. The ASC will work with the OCC to draft and finalize the licensing regulations.

¹³⁴ H.B. 259, 2026 Leg., Reg. Sess. (Ala. 2026), <https://legiscan.com/AL/bill/HB259/2026>; Ala. Sec. Comm'n, *Stablecoin Legislation* (Apr. 2026), <https://asc.alabama.gov/wp-content/uploads/2026/04/Stablecoin-Legislation.pdf>.

Delaware: Senate Substitute No. 2 for Senate Bill 19, as amended by House Amendment No. 2, adds the “Delaware Payment Stablecoins Act” (the “*DE PS Act*”) and was signed into law on July 6, 2026.¹³⁵ Delaware legislators intend the framework to be consistent with the federal framework so that Delaware-chartered entities may qualify as state-qualified payment stablecoin issuers under the GENIUS Act. The *DE PS Act* provides for the licensing of payment stablecoin issuers meeting requirements set out under Section 3511. Digital asset service providers get a voluntary registration safe harbor rather than a mandatory license. The *DE PS Act* also covers reserves, redemption timing, capital, AML, custody, a pathway to convert from a federal to a state charter, and preemption. The *DE PS Act* took effect when signed, but its substantive provisions become operative after one year, or earlier if the State Bank Commissioner publishes notice that final implementing regulations have been adopted.¹³⁶ It was part of a three-bill package that also included the Delaware Money Transmission and Virtual Currency Modernization Act (SB 18).

Florida: On June 26, 2026, Florida enacted House Bill 175 and Senate Bill 1568, creating a framework for state-qualified payment stablecoin issuers that is substantially similar to the GENIUS Act, and the Florida Stablecoin Pilot Program.¹³⁷ State-qualified payment stablecoin issuers are a separate category of money services business, and trust companies can obtain a certificate of approval instead from the Office of Financial Regulation. The Office of Financial Regulation must certify to the SCRC that Florida’s regime is substantially similar to the federal one. Under the Florida Stablecoin Pilot Program, the Department of Financial Services may accept designated stablecoins as payment for government fees.¹³⁸

Georgia: On May 11, 2026, Georgia enacted the Georgia Payment Stablecoin Act (HB 1272).¹³⁹ The statute’s stated purpose is to implement Section 4(c) of the GENIUS Act and to make Georgia law “substantially similar” to the federal framework. The Department of Banking and Finance will license issuers, which must hold one-to-one reserves and publish their reserve composition monthly with certifications from the CEO and CFO. The law takes effect on the earlier of January 18, 2027, or 120 days after final federal implementing regulations are issued.

Maryland: On May 12, 2026, the governor signed the Maryland Stablecoin Act (SB662) into law as Chapter 513. It creates a framework for state issuers of payment stablecoins and for “payment stablecoin services institutions.” The Maryland Stablecoin Act names the Office of Financial Regulation as the state payment stablecoin regulator. The Commissioner of Financial Regulation can issue certificates to nondepository trust companies and credit union service organizations for three kinds of services: exchanging stablecoins for money, custody and safekeeping, and managing reserves for permitted issuers. Certificate holders may not make loans or accept deposits. The act takes effect January 1, 2027.

New York: On June 9, 2026, the New York Department of Financial Services (“*NYDFS*”) announced a proposed regulation that would align its existing stablecoin framework, based on its 2022 guidance, with the GENIUS

¹³⁵ Delaware Payment Stablecoins Act, ch. 35 (Del.), <https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocumentEngrossment?docTypeId=6&engrossmentId=37950>.

¹³⁶ S. Substitute No. 2 for S.B. 19, § 2.

¹³⁷ Fla. Stat. §§ 560.504, 658.997, 17.72.

¹³⁸ Fla. Stat. § 17.72.

¹³⁹ Ga. Code Ann. § 7-11-1 et seq.

Act and Treasury’s proposed certification requirements.¹⁴⁰ The proposal would add a new 23 NYCRR Part 202 governing “Authorized Payment Stablecoin Issuers.” On July 22, 2026, NYDFS formally published the proposal in the State Register. Part 202 would take effect when the GENIUS Act does. Issuers that NYDFS has already approved would have 12 months to come into compliance. Comments were due September 21, 2026. One comment letter asked NYDFS not to move forward until Treasury finalizes its substantial similarity criteria and the federal regulators harmonize their rules.

F. Progress Toward Federal Market Structure Legislation

Beyond payment stablecoins, another subject attracting Congressional attention is the structure of digital asset markets. The House passed the Digital Asset Market Clarity Act of 2025 (the “CLARITY Act”) on July 17, 2025, in an attempt to provide a clear and comprehensive classification for all digital assets, introducing digital commodities and digital asset securities. The Senate spent late 2025 through late summer 2026 reconciling its various drafts but ultimately failed to obtain a sufficient number of votes to bring the bill to a full vote before its fall 2026 recess.

Most relevant to marketplace lending, the CLARITY Act would have narrowed the GENIUS Act’s prohibition on yield payments to preserve substantial space for activity-based reward programs. This provision would have permitted “bona fide activities or bona fide transactions that are not economically or functionally equivalent to the payment of interest or yield on an interest-bearing bank deposit.” Absent passage of the CLARITY Act, the question now rests with regulators to consider whether a reasonable reading of the statutory text accommodates such payments.

One of the reasons proponents of the CLARITY Act cited as a need for a federal market structure bill is preemption, and specifically whether and to what extent the act would preempt state money transmitter laws for covered securities, commodities, or ancillary assets. In addition to the money transmitter licensing regime described in, and potentially preempted by, the federal regulatory frameworks described above, many states require specialized licenses to operate a virtual currency business or offer such products to their residents. Updates to these regimes during 2026 include the following:

- **California.** On July 1, 2026, the licensing requirements under California’s Digital Financial Assets Law (“DFAL”) became effective. The DFPI accepts applications through the Nationwide Multistate Licensing System. Applicants that were not exempt had to file a complete application by July 1, 2026 to keep serving California residents. The California Office of Administrative Law approved revised DFPI regulations on June 29, 2026 covering license applications. SB 97 was an urgency statute that took effect immediately upon signing, shortly before the licensing requirement went into effect.¹⁴¹ It extended the cutoff for a qualifying New York virtual currency (BitLicense) approval from January 2023 to January 2025. SB 97 also repealed Chapter 6 of the DFAL, which contained its stablecoin provisions, in full. As a result, stablecoin issuers do not need a DFAL license. The California legislature made this change because of the federal framework under the GENIUS Act.

¹⁴⁰ Proposed N.Y. Comp. Codes R. & Regs. tit. 23, pt. 202, <https://www.dfs.ny.gov/system/files/documents/2026/07/rp-fs-23nycrr202-text.pdf>.

¹⁴¹ S.B. 97, 2025-2026 Leg., Reg. Sess. (Cal. 2025), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260SB97.

- **Illinois.** The provisions of the Digital Assets and Consumer Protection Act (“DACPA”), including the registration requirement, do not become operative until July 1, 2027. Digital asset businesses still have until July 1, 2027, to register with the Illinois Department of Financial and Professional Regulation (“IDFPR”). IDFPR is setting up a digital assets supervision unit within its Division of Banking to administer the new regime. IDFPR published its proposed rules implementing the DACPA, which will be subject to a hearing and are not yet final.¹⁴² The proposed regulations lay the groundwork for Illinois to seek SCRC certification of its state payment stablecoin regime under the GENIUS Act. On September 2, 2026, IDFPR adopted a rule under the Uniform Money Transmission Modernization Act exempting activity covered by the new digital asset rules from the money transmission rules, to avoid overlap.¹⁴³

G. Outlook

The GENIUS Act’s significance extends beyond creating a federal licensing regime for payment stablecoin issuers. The statute has brought tokenized payments out of the sandbox and into the mainstream of U.S. financial regulation. The proposals surveyed in this publication, from the federal banking agencies, Treasury, and a growing number of states, are converting what was once a loosely supervised corner of the crypto markets into a field governed by reserve, capital, custody, and disclosure requirements comparable to those applied to other regulated payment products. Even with the July 18, 2026, rulemaking deadline having passed, the January 18, 2027, effective date puts pressure on adopting a strategy. Players in the financial services space generally will need to settle on how they intend to participate in this market, whether by issuing their own stablecoins, safeguarding reserves or tokens for others, partnering with third-party issuers, offering tokenized deposits as an alternative, or observing market developments for now, and each role carries its own regulatory, operational, and competitive trade-offs. Marketplace lenders face parallel questions about how stablecoins will be used in loan funding, collateral, servicing, and settlement. Those that build out their compliance infrastructure, risk controls, liquidity planning, and technical capabilities ahead of the effective date are likely to have a meaningful advantage as stablecoin-based payments move from novelty to routine.

¹⁴² 50 Ill. Reg. (No. 20), https://www.ilsos.gov/content/dam/departments/index/register/volume50/register_volume50_20.pdf#page=176.

¹⁴³ Ill. Admin. Code tit. 38, § 207.120.

More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. Please do not hesitate to reach out to author Marc Franson, a member of our marketplace lending team, or any other Chapman attorney with whom you regularly work.

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Appendix A

About Chapman

Chapman and Cutler LLP has represented nearly every type of financial services entity, from hedge funds to specialty lenders, to some of the world's largest financial institutions. Our lawyers are actively involved in providing legal advice to and about marketplace lending programs.

We Know Lenders. For decades, we have represented lenders in capital structures ranging from the straightforward to the complex. For us, representing lenders isn't just another service area—rather, representing lenders is at the heart of what we do every day. Our experience has helped us gain a thorough understanding of our clients' processes, products, and systems, as well as their market challenges and legal needs.

Commitment to Value. We understand the evolving needs of financial services clients and skillfully combine legal acumen with business and market insight. Our commitment to value goes beyond closing a deal or resolving a matter—we share our market knowledge to help clients advance their own business goals.

Depth of Knowledge. We have extensive experience representing Internet-based platforms engaged in consumer, student, and small business lending and providing other financial products. We have the experience needed to help our clients comply with the novel legal and regulatory issues presented by these programs and to assist with expanding funding sources.

Comprehensive Counsel. With our singular focus on finance, Chapman has developed a deep bench of attorneys with the experience and skills necessary to tackle virtually any issue our clients may face. From beginning to end, Chapman provides a tailored, dynamic team of attorneys prepared to respond to any legal matter that may arise.

Securitization Experience. Chapman has been at the forefront of the efforts to develop securitization structures for marketplace lending platforms. Our broad experience in asset-backed transactions enables us to provide effective advice to our clients in connection with this developing sector of securitizations. We represent sponsors, agent banks, and investors in securitizations of consumer Internet loans as well as lenders and institutional investors in connection with securitization warehouse facilities.

Marketplace Lending Services

We handle funding arrangements for originators and purchasers of marketplace loans and also assist with development of programmatic whole-loan sale, servicing, and custodial agreements; due diligence and compliance reviews for investors; and assessment of federal and state regulatory requirements, including securities law compliance; lender, broker, and debt collector licensing requirements; usury and fee limitations; and disclosure, reporting, and fair lending regulations.

Startup Advice. We advise startup online lenders (in both consumer and commercial loan segments) in connection with the negotiation of program/marketing, servicing, and loan sale agreements with originating bank partners.

Issuance Program and Regulatory Advice. We advise online lenders interested in establishing notes issuance programs and we counsel all participants on compliance with applicable federal and state laws, rules, regulations, and requirements.

Regulated Investment Companies and Private Funds. We represent regulated investment companies and private funds in connection with investments in marketplace lending products. We were the first to structure a closed-end fund filed with the SEC specializing in marketplace lending investments.

Consumer Loans. We represent various online lenders and loan investors in connection with loan sale and servicing agreements and participation agreements.

Small Business Loans. We represent online small business lenders in structured loan facilities and in the establishment of Internet-based notes issuance programs directed to individual and institutional accredited investors.

Student Loans. We were among the first to structure capital markets-based financing solutions for marketplace education finance platform sponsors and we have recently been involved as either bank/issuer counsel or counsel to lenders and note purchasers for three newly formed marketplace student loan originators.

Securitization. We represent issuers, platforms, and lenders/investors on a variety of warehouse and term securitizations of consumer loans, student loans, small business loans, and other asset classes.