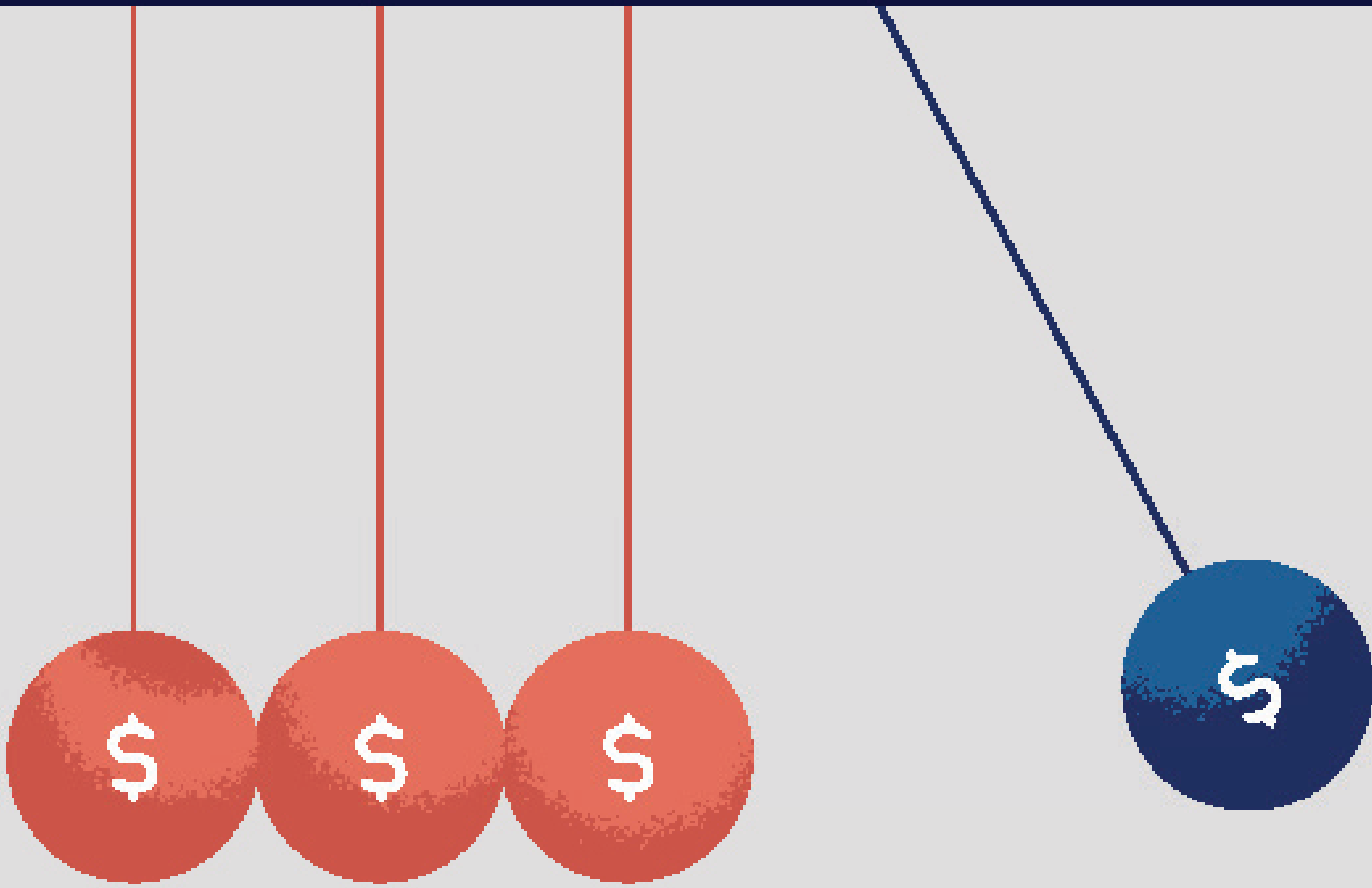
Consumer Finance Policy 2026 Preview

The Deregulatory Pendulum Swing

Life after a Neutered Consumer Finance Protection Bureau



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Consumer Finance Policy 2026 Preview:

THE BOTTOM LINE

Capstone believes the Trump administration is intent on closing the Consumer Financial Protection Bureau (CFPB), even as the bureau, despite budget and staffing constraints, seeks to implement an extensive deregulatory rulemaking agenda broadly favorable to the industry. As the CFPB scales back enforcement and supervision, well-resourced Democratic-led states will try to fill the regulatory void, creating a patchwork of requirements

Outlook at a Glance

- TRUMP ADMINISTRATION EFFORT TO SHUTTER THE CFPB WILL CONTINUE THROUGH 2026 AS LEGAL CHALLENGES CONTINUE
- AMBITIOUS POLICY AGENDA INCLUDES 24 RULES GENERALLY AIMED AT INDUSTRY-FRIENDLY DEREGULATION ACROSS THE CONSUMER FINANCE ECOSYSTEM
- DEMOCRATIC-LED STATES WILL STEP IN TO FILL FEDERAL VOID THROUGHOUT 2026; NEW YORK AND CALIFORNIA LEAD THE WAY WITH OTHER WELL-RESOURCED BLUE STATES LIKELY TO FOLLOW

Trump Administration Effort to Shutter the CFPB Will Continue through 2026 as Legal Challenges Continue

Winners	Consumer finance industry, including banks, auto and mortgage finance companies, fintechs, consumer reporting, debt collection, and other consumer finance operators
Losers	N/A

TRUMP ADMINISTRATION REMAINS COMMITTED TO PUTTING WATCHDOG TO SLEEP

We expect the Trump administration to continue to deploy all available strategies to neuter the CFPB, and for the litigation challenging such efforts to continue throughout 2026. While the ultimate outcome of the litigation remains unknown, it is clear that consumer finance companies across the ecosystem will benefit from reduced federal enforcement and supervisory risks as the administration starves the agency of resources and appears committed to reducing the bureau to an agency on paper only.

Since Russell Vought was named acting director of the agency, the bureau has faced litigation challenging various administrative decisions intended to shutter it. Perhaps most significantly, in February 2025, the CFPB attempted to slash its staff to fewer than 200 employees, down from around 1,700 under Biden. Vought also cancelled numerous mission-critical contracts, issued stop-work orders, and closed CFPB offices, among other actions.

The CFPB chapter of the National Treasury Employees Union (NTEU) immediately challenged the actions. After evidentiary hearings, Judge Amy Berman Jackson of the US District Court for the District of Columbia issued a preliminary injunction pausing the reductions in force (RIFs) and other actions, holding that the CFPB was attempting to render itself functionally inoperable.

The CFPB and the US Department of Justice (DOJ) appealed the decision to the DC Circuit Court of Appeals, arguing that the administration had no intention of closing the agency and that the RIFs, contract reviews and cancellations, office closures, and other decisions were routine in the course of the transition of power. DOJ and CFPB lawyers acknowledged that eliminating the bureau would require an act of Congress and that the CFPB remained responsible for performing its statutorily required functions under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

On August 15, 2025, the DC Circuit issued a 2-1 decision in favor of the CFPB, partially vacating Judge Berman Jackson's preliminary injunction that blocked the bureau from implementing mass RIFs, but staying the decision pending appeal.

Following the decision, the plaintiffs requested an en banc hearing before all 11 judges in the DC Circuit, seven of whom were nominated by Democratic presidents. En banc hearings are rarely granted, but we expect NTEU's request to be approved in this instance, given the detailed district court record, Judge Cornelia Pillard's lengthy dissent on appeal, and more recent actions that signal the Trump administration intends to functionally close the CFPB.

VOUGHT AIMS TO FURTHER LIMIT CFPB FUNDING AFTER CONGRESS SLASHED ITS BUDGET IN RECONCILIATION

In addition to litigating the RIFs and other administrative actions aimed at closing the agency, the Trump administration aims to build off budget cuts incorporated into the reconciliation bill passed in July to further starve the CFPB of resources.

That effort hinges on nuances associated with the bureau's unique funding model. Dodd-Frank insulates the CFPB from direct appropriations by Congress, instead authorizing it to request funding directly from the Federal Reserve, with the amount capped at a percentage of the Fed's operating expenses, subject to an annual inflation adjustment.

The bureau's ability to bypass Congress has regularly stirred criticism from congressional Republicans, and, in the spirit of that ire, the reconciliation package passed in July reduced the CFPB's funding from 12% of the Fed's operating expenses to 6.5%.

The CFPB's funding method has long been the subject of legal debate, with defendants in CFPB actions intermittently challenging its constitutionality. In CFPB v. Community Financial Services Association of America, defendants argued the funding method violated the Appropriations Clause of the Constitution. While the Fifth Circuit agreed, the US Supreme Court did not. In a 7-2 decision in May 2024, Justice Clarence Thomas' majority opinion held the CFPB's funding method constitutional.

The Trump administration makes the technical legal argument that the CFPB cannot lawfully request funding from the Federal Reserve unless the Fed is profitable. The central bank has largely operated at a loss since 2022, and the argument offers yet another signal that the administration has no intent of returning the agency to a normal operating posture in 2026.

The technical legal argument was filed in November in the NTEU litigation. The CFPB said it would run out of money in early 2026 and could not lawfully request funding from the Fed, citing a memorandum opinion from the DOJ's Office of Legal Counsel (OLC). Using the arguments made by defendants in other CFPB litigation, the OLC's memorandum opinion interprets the Dodd-Frank law, which permits the CFPB to draw funding from the "combined earnings" of the Federal Reserve, to argue that "earnings" mean "profit" as opposed to "revenue." As a result, because the Fed has been running at a loss, it does not have "combined earnings" from which the CFPB may lawfully draw funds.

The filing adds color to Vought's October remarks, indicating that he expects the administration to close the watchdog agency "probably within the next two or three months." As a result, the administration views the only pathway to funding the CFPB to be through a request to Congress. Accordingly, in early December, the CFPB followed up on its filing by sending letters to Trump and Congress saying that the agency required approximately $280 million to continue performing its statutorily mandated functions.

In our view, the new but recurring funding argument will likely be folded into the NTEU litigation. The petition for en banc rehearing in that case remains pending, with a decision and appeal to the US Supreme Court likely to provide greater clarity over the watchdog's fate in 2026.

Ambitious Policy Agenda Includes 24 Rules Generally Aimed at Industry-Friendly Deregulation across the Consumer Finance Ecosystem

Winners	Most consumer finance companies; mortgage lenders and servicers; auto lenders and servicers; fintechs; smaller consumer reporting, debt collection, remittance, and auto finance companies
Losers	N/A

ROBUST RULEMAKING AGENDA UNDERSCORES ADMINISTRATION'S DEREGULATORY POLICY PROGRAM

We expect the CFPB to push aggressively to implement an ambitious deregulatory agenda in 2026, in tension with the Trump administration's effort to starve the agency of resources. Anticipated rulemakings will benefit a variety of market participants across the consumer finance ecosystem, including mortgage and auto lenders and servicers, smaller consumer reporting, debt collection, remittance, and auto finance companies, and fintechs.

In September 2025, the CFPB published its Spring 2025 Regulatory Agenda, with 24 rulemakings. The agenda follows the agency's rescission of nearly 70 interpretive rules, policy statements, circulars, and advisory opinions dating back to the agency's inception. Similarly, the bureau released its 2025 supervision and enforcement priorities memorandum, which highlighted a shift in supervision back to depository institutions and mortgage lenders, an increased focus on areas such as fraud, support for veterans and service members, and a narrower enforcement posture.

Fair Lending Oversight to Virtually Vanish, Reducing Risks for Mortgage, Auto, Other Lenders

The CFPB's fair-lending agenda includes two major notices of proposed rulemakings (NPRMs), which we expect the CFPB to seek to finalize and for consumer advocates to litigate in 2026. We view the proposed rule changes as broadly favorable to both consumer and small-business lenders, as they narrow potential liability and exposure to fair-lending scrutiny. Especially relative to the Rohit Chopra-led CFPB during the Biden administration, we expect fair-lending supervision and enforcement to virtually vanish in 2026.

First, a proposed rule to narrow Equal Credit Opportunity Act (ECOA) regulations aims to eliminate disparate impact claims and to narrow the scope of the discouragement provision that prohibits creditors from making oral or written statements intended to discourage a consumer from applying for credit.

Second, the CFPB proposed changes to the small-business lending rule issued during the Biden administration which would require small-business creditors to submit certain loan tape data to the CFPB with the ultimate goal of ensuring minority- and women-owned businesses have equal access to credit. The new proposal, which reporting suggests will be finalized on an interim basis no later than early 2026, dramatically narrows the Biden-era rule to exclude certain small-dollar loans from coverage, lowers the threshold for what is considered a small business, and removes many data fields.

Open Banking Rule Set for 2026 Finalization with Stakes for Banks, Fintechs, Data Aggregators

The CFPB appears set to issue an updated open banking rule in early 2026, with significant implications for banks and other traditional financial institutions, fintechs, and data aggregators across the consumer finance ecosystem.

The rule, required under Section 1033 of Dodd-Frank, was first proposed during the Biden administration in October 2023 and sought to require data providers, such as banks, credit unions, and other financial institutions, to make consumer financial data available to third-party entities, including fintechs, at no cost. The rule was finalized in March 2024 and included tiered compliance dates based on the size of the financial institution, with the largest required to begin compliance in April 2026.

The final rule was immediately challenged in May 2024 by bank trade associations, which argued that the CFPB exceeded its statutory authority in issuing the rule, specifically targeting the prohibition on fees as unlawful. In May 2025, the CFPB filed a motion for summary judgment agreeing with the plaintiffs. The court issued a stay as CFPB reconsidered the rule.

In our view, the Vought-led bureau may consider permitting a "reasonable fee" or a similar standard to enable data providers (e.g., banks) to recoup costs associated with providing the data while also narrowing the risk that fintechs and data aggregators are priced out of the market. In our view, the CFPB is likely receptive to a balanced approach that addresses banks' concerns about data production costs while fostering innovation among data-reliant fintechs in the consumer finance ecosystem.

Larger Participant Rules Will Narrow CFPB's Supervisory Reach Across Key Markets

We expect the CFPB to dramatically reduce its supervisory reach in 2026 by finalizing four larger participant (LP) rules that establish CFPB supervisory jurisdiction over non-bank covered persons in various end markets. The changes will benefit smaller operators in the consumer reporting, auto finance, consumer debt collection, and international money transfers markets.

While the specific thresholds have not yet been formally proposed, we expect the CFPB to raise the required activity level (i.e., the number of annual originations for auto lenders, revenues from consumer reporting activities for consumer reporting companies, revenues from debt collection activities for debit collectors, and aggregate number of annual international money transfers for remittance companies), shrinking the pool of entities subject to CFPB supervision

Mortgage Servicing and Compensation Rules Will Loosen, Favorable for Lenders and Servicers

Consistent with the weakening of ECOA rules, we expect the CFPB to implement various deregulatory measures in the mortgage ecosystem in 2026, at least to the extent possible given limited funding and staff. In our view, the suite of mortgage-related deregulatory rulemakings will be small wins for mortgage lenders, servicers, and brokers as they are likely to reduce compliance burdens and associated costs.

Specifically, the CFPB plans to (1) narrow the loan originator compensation rule, which prohibits loan originators from receiving compensation based on the terms of the loan in order to prohibit steering borrowers into higher-cost loans, (2) issue rules to help the bureau assess the costs and

benefits of the "discretionary provisions" of Regulation X (which implements the Real Estate Settlement Procedures Act) and Regulation Z (which implements the Truth in Lending Act, or TILA) mortgage servicing rules relating to mortgage servicer communication with borrowers and the adequacy of loss mitigation procedures. These efforts build on an interim final rule issued in 2025 that rescinded certain COVID-era loss-mitigation protections.

Democratic-led States Will Step in to Fill Federal Void throughout 2026; New York and California Lead the Way With Other Well-Resourced Blue States Likely to Follow

Winners	N/A
Losers	Consumer finance operators with mature compliance systems face the least risk; fintechs

STATE CONSUMER PROTECTION ACTIVITY WILL INCREASE IN 2026, ESPECIALLY IN DEMOCRATIC JURISDICTIONS

Capstone expects that, as federal supervision and enforcement wanes and consistent with an emerging 2025 trend of renewed leadership of states like New York and California, more Democratic-led states will enhance their consumer protection initiatives. As a result, we expect the 2026 environment to be characterized by growing fragmentation of risk for consumer finance firms across the ecosystem.

SOME DROPPED CFPB ENFORCEMENT ACTIONS HAVE BEEN PICKED UP BY BLUE-STATE ATTORNEYS GENERAL

In the days before Trump began his second term, then-director Rohit Chopra and the CFPB released a report titled "Strengthening State-Level Consumer Protections." It aimed to provide state regulators with the tools to "modernize" and strengthen consumer protection at the state level, directly calling on states to refresh "statutes to address the challenges of the modern economy." It was hotly criticized by Republicans and industry groups.

Perhaps reflecting the Biden administration's foresight regarding Trump's approach to the CFPB, the report may be interpreted as a call to arms for regulators and state legislators, particularly in well-resourced, Democratic-led states. Since Vought took the reins as acting director of the CFPB, the agency has dropped more than 20 enforcement actions it had previously initiated. States have not sat idle in response, with New York, in particular, leading the way.

For example, the CFPB filed a lawsuit against Capital One Financial Corp. (COF) in January 2025 for marketing misrepresentations and allegedly failing to move customers from its "360 Savings" account to a virtually identical product, the "360 Performance Savings" account. The latter product had a significantly higher interest rate, despite the bank's representations that the former product had the "highest" rates. The CFPB dropped that case in February 2025, soon after Vought was named acting director.

In response, New York Attorney General Letitia James (D) filed her own lawsuit against Capital One in May 2025 for alleged bait-and-switch tactics. James also led a group of over 15 other state attorneys general in filing an amicus brief against Capital One in a separate multidistrict litigation (MDL), opposing the proposed $425 million class action settlement. On November 6, 2025, a

federal judge rejected the settlement, finding that it would not provide adequate relief to consumers harmed by Capital One's business practices.

Another example is the December 2024 suit brought by the CFPB against Early Warning Services, Bank of America Corp. (BAC), Wells Fargo & Co. (WFC), and JPMorgan Chase & Co. (JPM) for their alleged failure to protect consumers from fraud on the Zelle peer-to-peer network. In May 2025, the CFPB announced it had dropped the lawsuit. James picked it up in August 2025.

These two examples suggest that, far from being free of consumer protection oversight, industry operators remain exposed to supervisory and enforcement risks, albeit on a more fragmented basis.

In other words, one effect of Vought's functional dismantling of the CFPB is to catalyze a more fragmented risk ecosystem for consumer finance firms, which we believe is especially pronounced in states such as New York, California, Massachusetts, and Michigan. While states may not have the resources or capacity to achieve redress at the same scale as the CFPB, we expect this trend to continue into 2026 and persist during Trump's term.

STATES ARE REASSESSING CONSUMER PROTECTION LAWS AS THE CFPB PULLS BACK

In response to the pullback at the federal level, states such as California and New York have proactively revisited and revised their consumer protection statutes. We expect the trend to continue, especially across blue states, through 2026, reinforcing a fragmented compliance environment for consumer finance firms, especially fintechs offering Buy Now, Pay Later (BNPL) and earned wage access (EWA) products.

New York and California Strengthen UDAAP Oversight, Adding to State-Level Risks

In 2025, California and New York revisited their unfair, deceptive, and abusive acts or practices (UDAAP) statutes, giving the Department of Financial Protection and Innovation (DFPI) and the Department of Financial Services (DFS), respectively, additional tools to regulate state consumer financial products.

On October 6, 2025, California passed SB 825, which permits the DFPI to enforce its state UDAAP laws against various lenders and other consumer finance firms that had historically been exempt from coverage. Similarly, New York passed S 8416 in June 2025, broadening the state's General Business Law to prohibit "unfair" and "abusive" practices and granting the state attorney general enhanced enforcement authority.

New York Initiates Direct Regulation of BNPL; Other States May Follow Suit in 2026

New York also reworked its BNPL regulations in 2025. The framework requires BNPL providers to obtain a license from the state and consent to oversight from DFS. It also includes substantive regulation, heightening disclosure requirements for BNPL products and categorizing BNPL as "closed-end credit," subjecting such products to state usury caps that limit interest rates to no more than "sixteen per centum per annum."

While BNPL products have historically benefited from a carve-out in TILA that exempts "pay-in-four" credit products from Annual Percentage Rate (APR), fee, and other disclosure rules applicable to certain credit products, the New York framework does not preserve that relief, introducing compliance burdens and enhanced risk for BNPL providers operating in the state. We believe other

Democratic states may follow New York's lead in 2026, consistent with reporting that suggests a coalition of state attorneys general has requested information from large BNPL operators.

Trend of States Introducing Direct Earned Wage Access Regulation Will Continue in 2026

States are also active in the EWA space, with many legislatures having established or considering formal frameworks to regulate EWA products that allow employees to access their earnings before payday. In our view, the viability of EWA products will vary by model (i.e., employer-integrated and direct-to-consumer, or DTC) and by underlying regulatory requirements, which we expect to vary across states based on political composition and other dynamics.

States have taken different views on the acceptance of tips, late fees, and specific marketing rules that are fundamental to DTC models.

Nevada and Missouri enacted EWA laws in 2023, while Wisconsin, South Carolina, and Kansas passed legislation in 2024. In 2025, states such as Connecticut and Utah established opposing regulatory frameworks for the product, with Connecticut declaring EWA as credit and subjecting the offering to fee caps while Utah explicitly distinguishes EWA products from loans. California's law requires providers to register with the state, but does not subject EWA products to fee caps.

This lack of standardization across states, which we expect to continue in 2026 as more states adopt EWA regulations, will continue to force providers to be mindful of state-specific rules as they expand offerings in a growing product category.

Democratic States Will Continue Consumer Protection Focus in 2026

Other states have likewise been active in strengthening consumer protection rules. On September 2, 2025, Massachusetts implemented a set of consumer protection initiatives targeting "junk fees," which was a key focus area for Biden's CFPB. The Massachusetts laws require sellers to clearly disclose the "total price" of a product or service before collecting consumer payment information, be transparent about mandatory charges and fees, and implement clear, simple mechanisms for consumers to cancel subscriptions.

Also in 2025, California Governor Gavin Newsom (D) signed into law California's own version of the Federal Trade Commission's Combating Auto Retail Scams (CARS) rule. The rule implements requirements on auto retailers such as total price disclosure, prohibits misrepresentations about vehicle sales and financing terms, and bans "valueless" add-on products.
While not a direct CFPB initiative, the auto retail industry is an area where the bureau has flexed its enforcement muscle. This is another example of heightened consumer protection initiatives by states amid the CFPB's dramatic pullback.

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