



THINGS THAT GO BUMP IN THE NIGHT: Top 10 Considerations to Watch Out for in the Small Dollar Lending Industry

Nothing is scarier than 2020! But Bradley has you covered with a treat. Here is a list of “Things That Go Bump in the Night: Top 10 Considerations to Watch Out for in the Small Dollar Lending Industry.” Wishing you a frightfully fun Halloween!

1. While internal audits can produce scary results and are a necessary component of a compliance program, external audits serve to provide an independent examination of policies, procedures, and practices, and an extra set of eyes to catch mistakes.
2. The payment provisions of the Small Dollar Rule are likely to become a reality. While the Texas litigation remains pending regarding the compliance date and potentially other issues on the final rule, don't get caught unprepared.
3. A 36% rate cap! Always scary. Colorado's settlement with Avant included a rate cap, and while it provides a “safe harbor” for those utilizing the bank partnership model in Colorado, there are still a number of outstanding issues and potential risks.
4. This year has seen a number of significant decisions related to the tribal lending model. Specifically, the Fourth Circuit's decisions related to arbitration clauses for tribal lenders directly impacts what language is needed in loan agreements to avoid arbitration clauses being severed.
5. The CFPB's Winter 2020 Supervisory Highlights raised a number of issues that small dollar lenders need to watch out for. In particular, the CFPB noted that some lenders failed to properly disclose the APR for certain loans and failed to disclose certain finance charges in the loan agreement.
6. The CFPB's Winter 2020 Supervisory Highlights also noted issues with lenders' adverse action notices. According to the CFPB, examiners identified instances where lenders provided one or more incorrect principal reasons for taking the adverse action.
7. If there is a new presidential administration in place, there are bound to be important changes affecting the industry. Some of these changes may include new people in agency leadership, such as the CFPB's enforcement division, changes in regulatory guidance, and the potential for new rules, or the elimination of proposed rules, such as the Madden Fix or the true-lender rules issued by the OCC and FDIC.
8. Don't pick up that phone! The Supreme Court is set to resolve the circuit court split related to the definition of auto-dialer this term. In particular, this may impact the ability to use stored phone lists.
9. Any day now, the CFPB will release its long-awaited final debt collection rule. While the new rule contains several welcome changes – such as increased regulatory certainty related to debt collection calls – industry members will have a year to come into compliance. Run, don't hide.
10. Poor vendor management may haunt you long after the relationship ends. Indeed, whether it's a data breach or failure to abide by consumer lending laws, a poorly managed vendor can ensnare you in unwanted litigation and regulatory attention.



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