


Anatomy of 3 of the Most Interesting* CFPB Enforcement Actions of 2023**

- ▶ ACUARP Region 5 Virtual Presentation
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 - ▶ October 1, 2024

*Actually, a rather random selection, almost all have the same problems as the ones presented. One isn't really more indicative than another.

** Since we're halfway through 2024, we thought we'd show problems from one in 2024 too.



▶ “There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.”

▶ Montesquieu

CFPB use of terms:

▶ **Predatory Loans**

- ▶ Colony Ridge Development, LLC et. al.
- ▶ CFPB and Justice Department (*and Texas AG Pacton*) Sue Developer and Lender Colony Ridge for Bait-and-Switch Land Sales and Predatory Financing PR December 20, 2023

▶ **Fee Harvesting**

- ▶ Atlantic Union Bank
- ▶ CFPB Orders Atlantic Union Bank to Pay \$6.2 Million for Illegal Overdraft Fee Harvesting PR Dec 7, 2023

▶ **Unfair, Deceptive, or Abusive Acts and Practices**

- ▶ Chime Financial, Inc
- ▶ CFPB Takes Action Against Chime Financial for Illegally Delaying Consumer Refunds PR May 7, 2024

What the heck is...

- ▶ Predatory Lending?
- ▶ Fee Harvesting?
- ▶ UDAAP?



**▶ PREDATORY
LENDING**

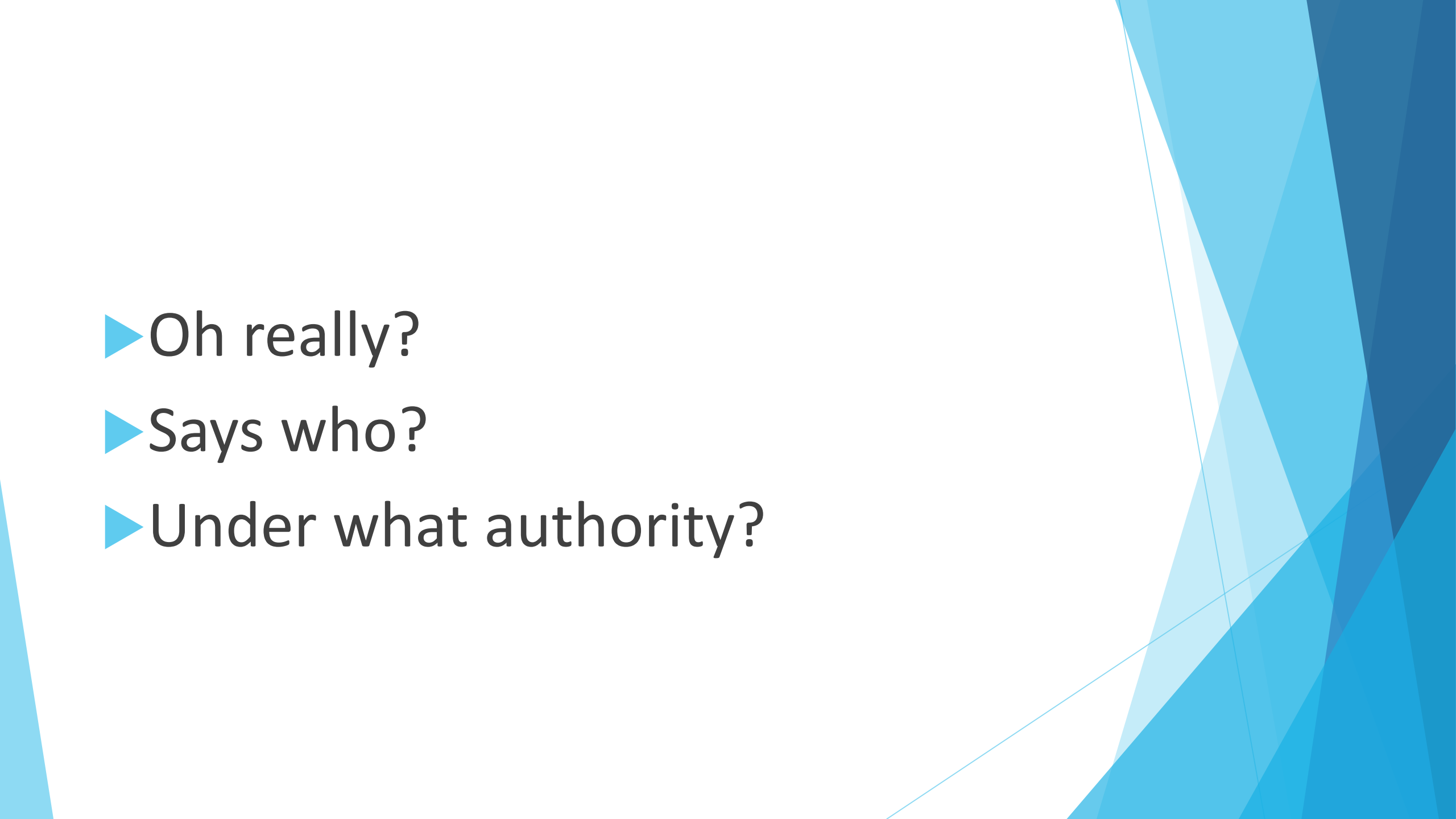


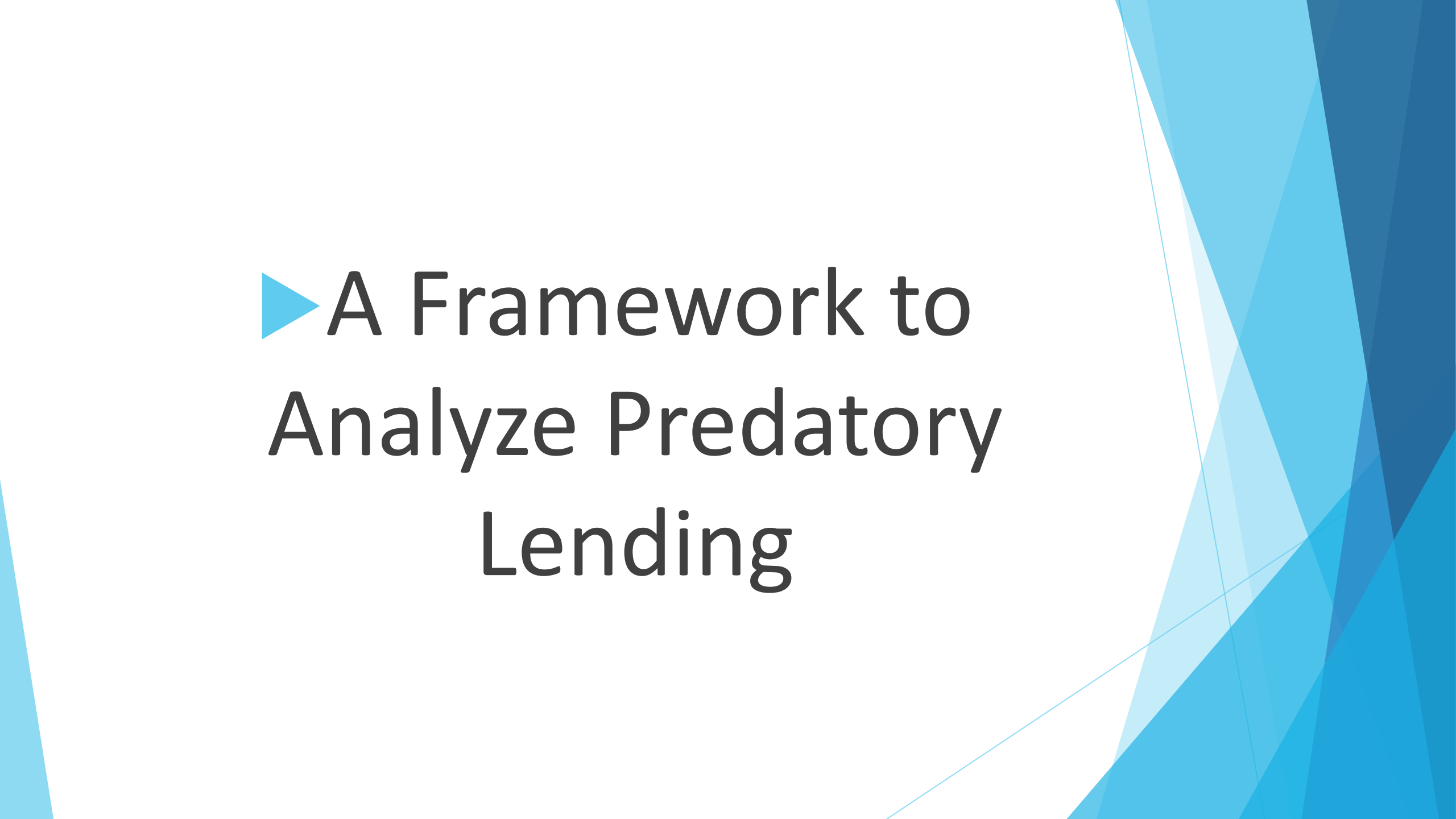
Three Types of Predatory Lending



- **Subprime Loans:** Loans offered to people who do not qualify for a conventional loan, because of factors like low income, and poor credit history.
- **Payday Loans:** Loan provided for a relatively small amount of money lent at a high rate of interest, to be repaid when the borrower receives their next paycheck.
- **Check Cashing:** check-cashing for a small fee, providing immediate cash with no further obligation.



- 
- ▶ Oh really?
 - ▶ Says who?
 - ▶ Under what authority?

The background features a complex geometric pattern of overlapping triangles in various shades of blue, ranging from light sky blue to deep navy blue. The pattern is most prominent on the right side of the slide, with some shapes extending towards the left.

▶ A Framework to
Analyze Predatory
Lending

Public Policy and Predatory Lending

**Credit
Union**

Member

Public Policy and Predatory Lending

Credit Union	Legal	Illegal
	Egregiously Illegal	Illegal
	Legal	Illegal
	Member	

Public Policy and Predatory Lending

	Legal	Member Criminal Fraud
Credit Union		
Egregiously Illegal		
	Legal	Illegal
	Member	

Public Policy and Predatory Lending

	Legal	Member Criminal Fraud
Credit Union	Egregiously Illegal	Spy v Spy
	Legal	Illegal
	Member	

Public Policy and Predatory Lending

	Legal	Public Policy	Member Criminal Fraud
Credit Union	Egregiously Illegal		Spy v Spy
	Legal		Illegal
		Member	

Public Policy and Predatory Lending

	Legal	Public Policy	Customer Criminal Fraud
Credit Union			
Egregiously Illegal		Predatory Practices	Spy v Spy
	Legal		Illegal
	Member		

Thoughts to ponder...

- ▶ So, under this framework for something to be predatory it must first be illegal.
 - ▶ Empowered legislature mandating public policy
 - ▶ Consider the following:
 - ▶ State law allows for a cash advance of \$15.00 per \$100 up to a minimum of 15 days. APR is approximately 365% on such a loan.
 - ▶ Is it illegal? Is it predatory?
 - ▶ Can I borrow \$100 from you, and I'll pay you back \$101 tomorrow?
 - ▶ That loan is has an APR of approximately 365%.
 - ▶ Predatory?
- ▶ Now the CFPB has authority to enforce against UDAP. Very broad discretionary authority with very vague terms.
 - ▶ Put another way, the CFPB can decide for itself what is deceptive or abusive without legislative mandate
 - ▶ Is this a form of emerging administrative tyranny?

Comment on the So-Called Bank Model (i.e., Rent-A-Bank)

- ▶ A model used to offer credit in jurisdictions that do not otherwise allow for a certain loan product, marketed and facilitated by a third-party vendor who shares in the credit risk, but it is a product that can be offered by a federally insured deposit institution, credit union or bank.
 1. Can a federally insured financial institution export rates to a host state consumer of the most favored lender in its home state? Yes, since the 1980s...
 2. Can a federally insured financial institution contract with a third-party service provider? Yes, since the creation of the bank charter, it's a right of contract.
 3. Can a federally insured financial institution sell all or a portion of its loan portfolio to a third party, thereby sharing the credit risk of such product with the third party, aka, a credit enhancement? Yes, not only is this a common practice it's encouraged by prudential regulators to hedge credit risk.
- ▶ Well, logically, if 1., 2., and 3 are true; isn't also true that the sum of 1,2, and 3 must be true!!

Back to Colony Ridge Development, LLC et. al.

- ▶ Alleged facts are egregious.
 - ▶ **From the Texas AG – PR March 14, 2024**
 - ▶ A months-long investigation by the Office of the Attorney General found that the developer has made numerous false, misleading, and deceptive sales, marketing, and lending practices that enabled their business model.
 - ▶ “Colony Ridge’s business model is predicated on churning land purchasers through a foreclosure mill,” the lawsuit explains.
 - ▶ “Colony Ridge has been flagrantly violating Texas law. The development profited from targeting consumers with fraudulent claims and predatory lending practices.”

More on Colony Ridge Development, LLC et. al.

▶ From the CFPB – PR Dec 20, 2023

- ▶ “Today’s complaint alleges that Colony Ridge targeted Hispanic consumers with predatory loans, misled borrowers about the water, sewer, and electrical infrastructure on its lots, and exploited language barriers by conducting most of its marketing in Spanish while offering important transaction documents only in English,”
- ▶ The complaint alleges that Colony Ridge has lured tens of thousands of Hispanic consumers into their predatory loan products.
 - ▶ Misleads borrowers about infrastructure on the lots it sells
 - ▶ Sells lots that flood with rain and raw sewage
 - ▶ Churns through borrowers in a cycle of foreclosure
 - ▶ Targets Hispanic consumers with predatory loans
 - ▶ High-pressure sales tactics
 - ▶ Exorbitant interest rates
 - ▶ Exploits language barriers



▶ Fee Harvesting

CFPB Orders Atlantic Union Bank to Pay \$6.2 Million for Illegal Overdraft Fee Harvesting PR Dec 7, 2023

- ▶ “Harvesting” implies intentional misconduct.
 - ▶ To harvest something, whether it’s grain or a fee, requires an intentional act on the part of the actor to do the harvesting. A farmer cannot accidentally gather his wheat at the end of summer.
- ▶ In this case, the CFPB alleges
 - ▶ **Fees were charged without *proper* consent.** “Employees sought oral confirmation from customers to enroll in overdraft coverage before providing them with the required written disclosures describing the terms of service.”
 - ▶ **Misleading customers about the terms and costs of overdraft coverage:** For customers who enrolled in overdraft coverage by phone, Atlantic Union Bank employees did not clearly explain which transactions were covered by the service and made other misleading statements about the terms and conditions of the service. In some calls, bank employees also omitted key information about the cost of the service and the fact that consumers could incur a hefty overdraft fee for each transaction covered by the service.
- ▶ At best sloppy practices, but not intentional misconduct

More on Atlantic Union Consent Order

- ▶ Don't assume that all facts as stated in a Consent Order are adjudicated findings of fact or are in fact true. They are not.
- ▶ A consent order is the CFPB's version of the facts and in most cases is verbatim language from the notice of charges.
- ▶ It is the stipulation that is signed by the respondent, which usually includes the following language: "Respondent, in the interest of compliance and resolution of the matter, and without admitting or denying any wrongdoing, consents to the issuance of a Consent Order substantially in the form of the one to which this Stipulation and Consent to the Issuance of a Consent Order is attached (Consent Order), and which is incorporated by reference." (Emphasis added)
- ▶ In this case the facts do not support "Fee Harvesting," but the CFPB uses the hyperbolized term anyway.



▶ UDAAP

CFPB Takes Action Against Chime Financial for Illegally Delaying Consumer Refunds

May 7, 2024

- ▶ Thousands of consumers waited for weeks, or even months, for balance refunds after closing their accounts - a failure that inflicted significant financial harm on consumers who did not have access to critical funds to help make ends meet.
- ▶ Chime's customers had to wait weeks or months for access to their own money and were forced to use alternative funds to cover their essential expenses
- ▶ Findings
 - ▶ Chime failed to issue consumer refunds within the 14 days promised by its policy, including thousands of instances in which Chime did not get refunds to consumers within 90 days.
 - ▶ Chime's slow response in returning consumer funds prevented thousands of consumers from accessing their money – sometimes for months on end. Consumers who did not have access to their funds were often unable to pay for basic living expenses, and likely had to use or search for expensive credit alternatives, such as credit cards or payday loans.
- ▶ Enforcement Action Under the Consumer Financial Protection Act, the CFPB has the authority to take action against institutions violating consumer financial laws, including engaging in unfair, deceptive, or abusive acts or practices

More on Chime Financial

- ▶ So, is Chime a serial violator of UDAAP? Let's look more closely at the facts.
 - ▶ Chime has annualized revenue of \$1.5 billion.
 - ▶ Approximately 7 million customers doing \$8 billion in transactions.
 - ▶ Those generally harmed qualified for approximately \$150 in redress, some had unfunded balances of \$10.
- ▶ Remedy
 - ▶ Pay \$1.3 million in redress.
 - ▶ Assuming average redress was \$150, that would be to approximately 8700 customers out of 7 million total customers.
 - ▶ Pay a fine of \$3.25 million, a greed factor ($3.25/1.3$) of 2.5x.
 - ▶ Provide timely refunds.
- ▶ Hardly a serial violator of UDAAP based on these facts.

The Takeaway

- ▶ Don't always take at face value what the CFPB's press releases say or the hyperbolized terminology they use.
- ▶ Are such terms...
 - ▶ Factual?
 - ▶ Sensationalized?
 - ▶ ... Ironically deceptive?
 - ▶ Or mere puffing?

**Freedom requires responsibility; without
responsibility, it devolves into chaos.**

Mark Levin

Make it a great day!
John L. Bley
President and CEO



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