# How Economic Analysis Informs Consumer Lending Disputes

By **Anil Donmez, Alexei Orlov and Shastri Sandy** (August 31, 2026)

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Over the past two years, class actions challenging costly consumer lending practices have increased in both frequency and complexity, and the financial stakes have been substantial: Three recent cases alone produced over $2.5 billion in aggregate consumer relief.[1]

Recent filings illustrate that consumer lending practices continue to generate private class action litigation. In July, for example, borrowers filed a putative class action in Smilow v. Santander Bank, in the U.S. District Court for the Eastern District of New York, alleging that the bank systematically overcharged interest on variable-rate home equity lines of credit by failing to timely reflect reductions in the applicable prime-rate index.[2]

These trends in consumer lending class actions have coincided with a significant reduction in federal regulatory enforcement. Since early 2025, the Consumer Financial Protection Bureau has permanently dismissed approximately 20 pending enforcement actions, closed approximately 40% of its open investigations, and planned workforce reductions of nearly 90%, effectively withdrawing from active oversight of consumer lending markets.[3]

As federal enforcement has receded, plaintiffs attorneys and state attorneys general have moved to fill the void, driving an increase in private class action litigation targeting conduct the CFPB previously policed.[4]

This shift in enforcement has been accompanied by an evolution in the types of products and business models being challenged by plaintiffs. What once centered on traditional payday lending has expanded into a broader set of disputes involving fintech platforms, earned wage access products and online lending models that operate across jurisdictions and regulatory regimes. Despite differences in product design and legal theories, many of these cases hinge on a common set of economic allegations about how credit is structured, priced and repaid.

Several recurring themes emerge across these cases and, at times, within the same filing. Plaintiffs frequently allege that lenders rely on "rent-a-tribe" arrangements that obscure the identity of the true economic actor(s); fail to fully convey the true cost of credit due to fees, add-ons or product design; encourage repeat borrowing;[5] and employ repayment mechanisms that disguise lender priority over borrower cash flows.[6]

Defendants, in turn, contest these characterizations, arguing that challenged structures are transparent,[7] disclosed fees and optional charges do not constitute hidden interest,[8] and that consumer usage patterns reflect consumer choice rather than product design.

These competing narratives raise a set of economic questions that may assist litigators and courts in evaluating the underlying substance of these lending relationships. Courts may be asked to assess:

- Who effectively controls a lending relationship;
- How the cost of credit should be measured;
- Whether borrowing patterns are more consistent with consumer choice or product design;
- Whether repayment structures alter the lending risk characteristics; and
- Whether information was clearly and conspicuously disclosed to consumers or was instead obscured or presented in a misleading manner.

Analysis of each of these issues may require a robust economic framework.

This article examines these recurring issues in class actions and discusses how economic analysis can inform the accompanying arguments advanced by plaintiffs and defendants. Analyzing the underlying financial and economic substance of lending arrangements — rather than formal structure alone — may help clarify issues that could arise in current and future disputes.

**Four Recurring Themes in Recent Lending Disputes**

While recent lending class actions involve different products and defendants, they converge on a few recurring themes that help illustrate how modern lending models are structured and how plaintiffs characterize alleged fraudulent conduct: "rent-a-tribe" pricing, repeat borrowing and repayment.

One recurring allegation concerns so-called rent-a-tribe arrangements. In these cases, the entity identified as the lender is alleged to differ from the entity that controls the lending activity. Plaintiffs typically assert that nontribal or third-party firms are responsible for key functions of the lending business — such as underwriting, pricing and servicing — while the tribal entity serves as the named lender.

The alleged advantage of this structure is that federally recognized tribes may assert sovereign immunity and may not be subject to the same state licensing requirements and maximum interest rates (i.e., usury laws) that apply to nontribal lenders. By presenting loans as issued by a tribal entity, defendants are alleged to seek the benefit of that legal status while retaining control over the underlying economics of a transaction.

In Boddie v. McGraw, in the U.S. District Court for the Northern District of Illinois in May 2025, for example, the plaintiffs alleged that loans nominally issued by tribal entities were funded, marketed and serviced by nontribal firms, and that the tribe received only a small fraction of revenues.[9]

Similarly, in November 2024 in Wood v. W6LS Inc., in the U.S. District Court for the Western District of Kentucky, the defendants were alleged to have been circumventing state usury laws by operating a lending platform formally owned by a tribal entity.[10] These allegations highlight the importance of establishing the degree of overlap between formal ownership and economic control.

A second theme focuses on the price of credit. Complaints allege that the cost of credit is deceptively hidden from borrowers. Rather than relying solely on stated interest rates,

plaintiffs cite fees, add-on services or product features that increase the effective cost of borrowing.

In some instances, products are marketed using terms that suggest low or no interest, while the total payments associated with the transaction carry a materially higher effective cost when evaluated over the life of the transaction. The resulting annual percentage rate is often alleged to be several hundred percent or more.[11] How to properly measure and disclose the price of credit is a central issue in these cases.[12]

A third theme involves repeat borrowing. In these matters, plaintiffs allege that certain lending products are specifically structured to induce borrowers to take out loans or advances on a recurring basis. These claims do not depend solely on the existence of multiple transactions, but on the assertion that product design itself may contribute to continued usage. A key economic question is whether borrowing patterns reflect independent consumer preferences or if they are materially influenced by product design.

The issues related to repeat borrowing are particularly contentious in cases where earned wage access products are litigated. In 2025 in Burrison v. FloatMe Corp., in the U.S. District Court for the District of Massachusetts, for example, debt dependence was alleged to be created through a combination of short-term cash advances, recurring fees and a repayment schedule that encourages consumers to borrow again immediately after repayment.[13]

A fourth theme relates to repayment. Recent complaints, including Boddie and Burrison, emphasize mechanisms that give lenders direct or automated access to borrower funds, including bank account authorizations and repayment schedules tied to income or expected deposits.[14] Plaintiffs argue that these mechanisms may reduce the lender's exposure to repayment risk and are therefore relevant to whether the product functions economically as risky credit and should be compensated accordingly.

As a result, these types of litigation often focus on the economic characteristics of lending transactions and their repayment terms.

**The Role of Economic Analysis**

Consumer lending disputes often turn on key questions that economic analysis can help answer. One area where economic analysis is particularly insightful is properly conceptualizing and measuring the cost of credit.

Rather than focusing on a single disclosed rate or term, a more appropriate analysis may be to reconstruct the full set of payments associated with a transaction and equate them into a comparable measure of cost. This analysis may incorporate fees, add-ons and the timing of payments.[15] Even where disclosures exist, this type of analysis may be used to clarify whether the price a borrower actually pays aligns with how the product is marketed.[16]

Evaluating how lending models operate across entities may also add insight into the allegations. Contracts and agreements assign roles to different parties, but those roles do not necessarily reflect how decisions will be made or how revenues will be distributed. By examining funding arrangements and payment flows, this analysis can evaluate which parties control key aspects of lending transactions, who bears the economic risks, and how economic incentives are aligned within transaction structures.

In cases involving allegations of repeat borrowing or debt trap dynamics, examining how

borrowers utilize products over time may help add insight into consumers' understanding of the product. Transaction data reflect whether borrowing occurs as a one-time event or as part of a recurring pattern, including how frequently borrowers return, how long they remain in the system, and how total payments compare to initial loan amounts. Analyzing the combination of borrower histories and product features may provide insight into whether usage appears isolated or persistent.

Many of the products at issue in consumer lending cases include features such as automatic debits, direct access to bank accounts, or repayment timed to income or expected deposits. These features may reduce uncertainty in repayment outcomes and limit default risk.[17]

All else equal, higher-risk loans require higher interest rates. Litigants may analyze whether the pricing structure of a particular product reflects that risk profile by comparing observed terms to other forms of credit with similar or higher risk, as well as to industry benchmarks.[18] This type of analysis can be used to empirically establish whether pricing is aligned with risk or is materially higher than what should be reasonably expected.

Behavioral economic analysis provides an additional framework for analyzing consumer lending patterns. A recurring question in many of these cases is whether disclosures were adequate. Behavioral research demonstrates that the effectiveness of disclosures depends not only on what information is provided, but also how it is conveyed. The manner in which prices are displayed, the framing of fees and the sequencing of information all shape what borrowers can absorb.[19]

In practice, consumers may focus on salient figures — such as a headline rate or per-transaction fee — while placing less weight on prominent charges, creating a potential gap between technically compliant disclosures and borrowers' understanding of the true cost of credit. Behavioral economics offers an empirical framework for evaluating the potential gap between disclosed terms and consumer understanding, and the extent to which such a gap may be attributable to product design rather than borrower inattention.[20]

These insights from behavioral economics are also relevant to questions of causation. In cases alleging debt trap dynamics, defendants often argue that usage patterns reflect consumer choice.

Both plaintiffs and defendants may therefore find it useful to consider behavioral mechanisms, such as status quo bias, through which product features may influence borrower behavior — perhaps inadvertently — in predictable directions. For example, automatic repayment structures and a consumer's preference for maintaining existing arrangements may contribute to sustained borrowing patterns that do not reflect an affirmative decision to reborrow.

By quantifying how these design features affect the likelihood and frequency of repeat transactions, behavioral economic analysis may provide empirical evidence on whether product design materially influenced consumer outcomes — or whether those outcomes are better explained by other factors.[21]

**Conclusion**

The new wave of consumer class actions reflects a structural shift in how costly consumer credit is being scrutinized.

Across products ranging from tribal payday loans to earned wage access platforms, plaintiffs

and defendants are increasingly disputing not only formal product terms and disclosures, but also whether the economic substance of a lending relationship aligns with its stated structure.

The recurring questions — who controls the key aspects of the transaction, who bears the risks of the transactions, what credit costs in economic terms, whether product design affects repeat borrowing, and how repayment mechanisms allocate risk — are inherently empirical and often require evidence beyond the contractual language itself.

As lending models grow more complex and regulatory oversight contracts, the ability to translate business practices into testable hypotheses using financial and behavioral economic frameworks is becoming increasingly important to how these disputes are analyzed and litigated.

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[1] Fitzgerald et al. v. Wildcat et al. (W.D.Va. 3:20-cv-00044) settlement cancelled approximately $1.4 billion in tribal payday loan debt for nearly 980,000 borrowers. In re: Think Fin. LLC (Bankr. N.D.Tex. 17-33964) settlements accounted for about $1 billion in monetary relief and erased over 920,000 loans, and borrowers in Williams et al. v. Big Picture Loans LLC et al. (E.D.Va. 3:17-cv-00461) recovered $65 million.

[2] Smilow et al. v. Santander Bank NA, E.D.N.Y. 1:26-cv-04002-FB-PCG.

[3] CFPB, 2025, "2025 Enforcement Lookback," available at https://www.consumerfinance.gov/enforcement/2025-enforcement-lookback/; Consumer Reports, 2026, "CFPB on 'Life Support' One Year after It was Targeted for Shutdown," available at https://advocacy.consumerreports.org/press_release/cfpb-on-life-support-one-year-after-it-was-targeted-for-shutdown/.

[4] Reuters, 2025, "What Goes Down Comes Back Up: Federal Agency Enforcement Actions Drop and Private Enforcement Class Actions Rise," October 23, available at https://www.reuters.com/legal/legalindustry/what-goes-down-comes-back-up-federal-agency-enforcement-actions-drop-private--pracin-2025-10-23/.

[5] See, e.g., Burrison v. FloatMe Corp., D.Mass. 1:25-cv-10885.

[6] See, e.g., Boddie et al. v. McGraw et al., N.D.Ill. 1:25-cv-05480.

[7] See, e.g., Williams et al. v. Big Picture Loans LLC et al., E.D.Va. 3:17-cv-00461. In a reversal of a district court decision, the Fourth Circuit held that lender defendants (Big

Picture Loans LLC and Ascension Technologies LLC) were arms of a tribe entitled to sovereign immunity from a class action alleging Virginia usury law violations (929 F.3d 170, 4th Cir. 2019).

[8] See, e.g., Orubo et al. v. Activehours Inc., N.D.Cal. 5:24-cv-04702; 780 F. Supp. 3d 927, N.D. Cal. 2025.

[9] Boddie et al. v. McGraw et al., N.D.Ill. 1:25-cv-05480.

[10] Wood v. W6LS, Inc. et al., W.D.Ky. 4:24-cv-00128.

[11] Boddie et al. v. McGraw et al., N.D.Ill. 1:25-cv-05480; Burrison v. FloatMe, Corp., D.Mass. 1:25-cv-10885.

[12] An additional concern pertains to the incentive structure at loan origination: some class actions allege that loan officers face reduced — or even zero — commissions if they do not steer their customers toward loans with high interest rates and conceal this illegal activity (see, e.g., Johnson et al v. LoanDepot.com LLC, D.Md. 1:25-cv-02294).

[13] Burrison v. FloatMe Corp., D.Mass. 1:25-cv-10885.

[14] Boddie et al. v. McGraw et al., N.D.Ill. 1:25-cv-05480; Burrison v. FloatMe Corp., D.Mass. 1:25-cv-10885.

[15] Gabaix, Xavier, and David Laibson (2006), "Shrouded attributes, consumer myopia, and information suppression in competitive markets" Quarterly Journal of Economics, 121(2), 505-540.

[16] Stango, Victor, and Jonathan Zinman (2009), "What do consumers really pay on their checking and credit card accounts? Explicit, implicit, and avoidable costs," American Economic Review: Papers & Proceedings, 99(2), 424-429.

[17] Einav, Liran, Mark Jenkins, and Jonathan Levin (2012), "Contract pricing in consumer credit markets," Econometrica, 80(4), 1387-1432.

[18] Edelberg, Wendy (2006), "Risk-based pricing of interest rates for consumer loans," Journal of Monetary Economics, 53(8), 2283-2298.

[19] For allegations of misrepresentation of marketing and payment of interest, see, e.g., Ward v. Figure Lending LLC, W.D.N.C. 3:24-cv-00533.

[20] Bertrand, Marianne, and Adair Morse (2011), "Information disclosure, cognitive biases, and payday borrowing," Journal of Finance, 66(6), 1865-1893.

[21] Madrian, Brigitte C., and Dennis F. Shea (2001), "The power of suggestion: Inertia in 401 (k) participation and savings behavior," Quarterly Journal of Economics, 116(4), 1149-1187.