Client Alert

October 26, 2016

CFPB Makes FinTech Headlines

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The Consumer Financial Protection Bureau (the "CFPB" or "Bureau") made headlines in FinTech on October 24, 2016. First, the Bureau released its first-ever Project Catalyst report on promoting consumer-friendly innovation (the "Report"). The Report summarizes the work conducted by Project Catalyst to date and sets forth in broad strokes some of the financial innovations that the CFPB is encouraging. While the Report does not represent new policy, it provides a helpful glimpse into the key developments in financial services that the Bureau is encouraging or monitoring.

On the same day, Director Richard Cordray addressed Money 20/20 in Las Vegas, Nevada, covering a range of FinTech issues that affect consumers. Key points from the Director's remarks are identified below.

The CFPB launched Project Catalyst in November 2012 as a means of achieving Congress' statutory directive to the agency to "operate transparently and efficiently to facilitate access and innovation." The Report highlights Project Catalyst's work to date and describes a number of innovative market developments that have the potential to benefit consumers. The Report also highlights Catalyst's efforts to engage with industry stakeholders and government agencies through Project outreach and conversations, including through its "office hours" program. The Report notes the "Trial Disclosure Waiver Policy" and "No-Action Letter Policy" as two initiatives developed by the CFPB to help facilitate innovation, but does not provide empirical data about the effectiveness of these policies. The Report, however, does highlight a number of collaborative research and testing projects that the Bureau has conducted with various companies, such as testing methods of promoting consumer saving among prepaid card users. The CFPB said that it welcomes additional testing of innovations that have the potential to serve consumers' financial needs, either with or without CFPB collaboration.

Aside from reporting on Project Catalyst's work, the Report also highlights market innovations that the CFPB believes have the potential to benefit consumers. The CFPB expressed a commitment to using its policies and programs to help facilitate innovation in the following areas:

- **Cash flow management**, including tools and services that allow a consumer to "smooth" his or her income, access accrued wages earlier than his or her regular payday, or deduct a portion of his or her wages and set it aside for future recurring payments.
- **Improved credit assessment**, including potential opportunities for creditors to use non-traditional underwriting data or machine learning to help create an effective credit scoring model for consumers who are "credit invisible," while being mindful of potential risks associated with new underwriting methods.
- **Consumer financial data access**, including tools that allow consumers to permit personal financial management tools to access data. In his Money 20/20 remarks, Director Cordray strongly endorsed open financial data, stating that the Bureau is "gravely concerned" that financial institutions are limiting or shutting off access to financial data, rather than "exploring ways to make sure that such access…is safe and secure." The Director continued: "Let me state the matter as clearly as I can here: We believe consumers should be

able to access this information and give their permission for third-party companies to access this information as well."

- **Student lending and refinancing**, noting that some FinTech companies have reported that incumbent servicers may create obstacles for new entrants to enter the student loan refinancing market, such as precluding such a lender from obtaining an accurate payoff balance from the originator.
- **Mortgage servicing platforms**, specifically, servicer efforts to replace legacy systems with modern technology platforms that improve loan servicing through features such as automated reconciliations and user-friendly interfaces.
- **Credit reporting accuracy and transparency**, acknowledging that industry participants ranging from incumbent banks to FinTech startups are offering consumers more information about their credit scores and credit reports on a more regular basis than has been the case historically. The Bureau also recognized that new tools and services are being used to help consumers understand how their actions may affect their credit standing and help prompt consumers to make beneficial changes in their behaviors.
- **Peer-to-peer payments**, noting that many companies are working to develop services that allow consumers to make peer-to-peer transfers more quickly and at lower cost.
- **Savings**, noting that some companies are creating tools to help consumers automate their choices to save money and help advise consumers as to how much they can afford to save.

Throughout the Report, the CFPB makes clear that the agency does not believe that FinTech companies receive special regulatory treatment as compared to industry incumbents. The Report states that it is "especially important for banks and non-banks to be held accountable to the same compliance standards and oversight, which is known as the level playing field that the Bureau is working to achieve."

In his Money 20/20 remarks, Director Cordray reiterated this "equal treatment" point: "Everyone who provides consumers with financial products and services must adhere to the same standards and will be held to the same expectations. [The Bureau is] not looking to punish anyone merely for raising novel issues that present unsettled points of law or questions that fall into unforeseen cracks in the regulatory framework."

Director Cordray's remarks also are noteworthy because of the position he articulated for the Bureau related to safe and secure—but open—access to consumers' financial data. Noting that some financial institutions have declined to permit third-party personal financial planning providers to access data concerning the accounts of consumers, the Director suggested that the burden of mitigating information security risks should rest with the financial institution. This approach stands in stark contrast to the approach prudential regulators have taken with respect to information security, under which financial institutions are directed to verify and validate third parties' risk management and risk mitigation in connection with consumer information sharing and information security.

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