Regulatory Alert

Financial Services Regulatory Insight Center

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Treasury releases FinTech report

Key points

- Treasury recommends changes to the regulatory framework that are intended to address the growing numbers of nonbank firms and emerging technologies operating alongside of traditional institutions in the financial services industry
- Approximately 80 recommendations are directed toward issues within four broad categories:
  - Adapting regulatory approaches for technology changes related to consumer financial data
  - Aligning the regulatory environment to diminish fragmentation between federal and state regulation and account for new business models
  - Updating specific regulations to reflect technology advances in areas where nonbank financial companies offer products and services
  - Advocating experimentation of new products and services.

Treasury report

At the end of July, the Department of the Treasury (Treasury) released the fourth and final report in its series analyzing the U.S. financial services regulatory framework and outlining recommendations to better align current regulatory requirements with the Administration's Core Principles for Regulating the United States Financial System. The report, "Nonbank Financials, Fintech, and Innovation," offers dozens of recommendations to "support nonbank financial institutions, embrace financial technology, and foster innovation." In that vein, Treasury states that it supports encouraging the launch of new business models as well as enabling traditional financial institutions to pursue innovative technologies.

Four key themes identified in the report and notable recommendations are highlighted below.

1. Adapting regulatory approaches to changes in the collection, sharing, and use of financial customer data, as well as new technologies.
   - **Recognizing digital communications:** Treasury recommends amending the Telephone Consumer Protection Act and the Fair Debt Collection Practices Act to simplify consumers' right to revoke consent as well as clarify rules regarding customer contact through digital communications.
   - **Providing clarity for use of new technologies:** Regulators should not hinder the use of AI and machine learning and provide more clarity to test and deploy these technologies. Further, regulators are encouraged to develop a private/public solution for data sharing, security, and liability issues arising from data aggregators and FinTech applications that access customer data.

- **Improving data security:** Treasury recommends that Congress enact a federal data security and breach notification law that would protect consumer financial data; maintain technology-neutral and scalable standards; recognize existing federal data security requirements; and preempt state law through uniform national standards.

2. Aligning the regulatory environment to diminish fragmentation between federal and state regulatory requirements and account for new business models.
   - **Harmonizing state licensing and oversight:** Treasury recommends state legislatures and regulators reduce unnecessary inconsistencies across state laws and regulations for licensing and supervision of nonbank financial companies. Congress is encouraged to establish greater uniformity, such as minimum requirements, with regard to lending and money transmission within three years if “meaningful harmonization” is not achieved by that time.
   - **Moving forward with OCC bank charters:** Treasury encourages the OCC to "move forward" with consideration of applications from FinTech firms for a special purpose national bank charter. Treasury further recommends the OCC prohibit these entities from accepting FDIC-insured deposits and consider the application of financial inclusion requirements.
   - **Simplifying bank investment in FinTech:** Treasury recommends the Federal Reserve reassess the definition of BHC control to provide "a simpler and more transparent standard" to facilitate investment in innovation. The banking regulators are encouraged to interpret the scope of permitted activities for banking organizations in a harmonized manner and in a manner that “recognizes the positive impact that changes in technology and data can have in the delivery of financial services."
3. Updating specific regulatory requirements to reflect technology advances for products and services offered by nonbank financial institutions.
   - **Codifying the "valid when made" doctrine:** Treasury recommends Congress codify the “valid when made” doctrine to preserve the ability of banks, including marketplace lenders, to buy and sell loans without the risk of conflicting state interest-rate limits; the federal banking regulators are encouraged to use their available authorities to address this issue.
   - **Rescinding the CFPB's payday-lending rule:** In recognition of established state product and licensing requirements for short-term, small-dollar instalment lenders, Treasury considers the CFPB "Payday Rule" to be unnecessary and recommends CFPB rescind the rule. In addition, Treasury recommends the FDIC reconsider its guidance on direct deposit advance services and issue new guidance similar to the OCC's core lending principles for short-term, small-dollar installment lending.
   - **Expanding access to credit:** Treasury supports industry efforts to capture "alternative credit data" to expand access to financial services.
4. Advocating experimentation to create innovative products, services and processes.
   - **Establishing regulatory sandboxes:** Through "regulatory sandboxes" federal and state financial regulators can coordinate and expedite "regulatory relief" to permit experimentation and promote innovation in products, services, and processes. If regulators are unable to fulfill this objective, Treasury recommends Congress consider legislation to establish a single regulatory process including preemption of state laws if necessary.
   - **Permitting financial regulators to use “other transaction authority”:** Certain federal regulators have used “other transaction authority” to better understand and apply new technologies for their own purposes. Treasury recommends Congress grant this authority to the federal financial regulators for use in research and development and “proof of concept” technology projects.

Developments since release of the Treasury report

- **OCC bank charter for FinTech companies.** The OCC announced that it will accept applications for special purpose national bank charters from non-depository FinTech companies "engaged in the business of banking." Chartering standards and supervisory expectations are outlined in the OCC's policy statement and the Comptroller's Licensing Manual supplement. Eligible companies must demonstrate a commitment to financial inclusion.

— **Regulatory Sandbox.** The CFPB announced its participation in an initiative with eleven financial regulators and related organizations, including the U.K. Financial Conduct Authority (FCA), to create the Global Financial Innovation Network (GFIN). The CFPB is the only U.S. regulator currently involved in the effort. Earlier this year, the CFTC separately entered into an information-sharing agreement with the FCA focused on FinTech innovation.

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