HUSCH BLACKWELL

THOUGHT LEADERSHIP

Service

Consumer Financial Services

Industry

Financial Services & Capital Markets

Professional

MIKE G. SILVER
WASHINGTON:
202.378.5854
MIKE.G.SILVER@
HUSCHBLACKWELL.COM

ARTICLES

PUBLISHED: SEPTEMBER 26, 2024

CFPB Reinforces Its Skepticism Toward Fintech and Financial Services Innovation

Earlier this month, Consumer Financial Protection Bureau (CFPB) General Counsel Seth Frotman delivered remarks at the Poverty Law Conference that offer a capstone on the agency's emerging skepticism and distrust of fintech and technological innovation in the consumer financial services industry.

Frotman characterized fintech products as "an elixir" that is often a "shiny veneer on top of an age-old practice." Other notable remarks from the speech included:

Labeling fintech founders and investors "a new generation of entrepreneurs" who "devise[] an endless list of creative but often harmful ways to squeeze more out of people who all too often don't have much to give."

Claiming that fintech companies "boast" that they "'serve' an underprivileged population" and that "[s]ome of them may even believe that."

Describing earned wage access products as payday loans "with better branding and websites."

Concluding by saying that "we need to be serious about what steps are actually going to improve the lives of the least well-off, and what is rationalized by firms and investors looking to make a buck."

Evolution of the CFPB's innovation posture

Over the CFPB's 13-year history, the agency has addressed financial services innovation in shifting ways. Under director Richard Cordray, the agency gingerly explored innovation functions. During the tenure of director Kathy

Kraninger, the agency stood up a robust innovation office and issued a suite of new policies which allowed companies to apply for no-action letters and other regulatory relief tools.

However, under current director Rohit Chopra, the agency has made a sharp pivot. While the general counsel's speech is perhaps the most pointed example of the CFPB's current posture, the skepticism has been building for some time, starting in 2022 when the CFPB rescinded most of the 2019 innovation policies.

Even the messaging around those policy changes has evolved, which itself illustrates the evolution. When the policies were rescinded, Chopra used anodyne language, calling them "ineffective." But when announcing approval this summer of the Interagency Automated Valuation Model Rule, Chopra and Deputy Director Zixta Martinez framed the change as "terminating a program that handed out special legal immunities and favors to individual AI companies that they could exploit to gain an unfair advantage."

CFPB out of step with the White House and fellow regulators?

As CFPB leadership's rhetoric has amped up regarding the perils of artificial intelligence (AI) and other emerging technologies, there is an irony at play. While characterizing industry innovators as being fundamentally unserious about expanding financial services—or at least, having unclean motivations—the agency's own consideration of the important policy issues that face industry and consumers lacks depth.

In contrast to the CFPB's rhetorical grenades, the White House, Congress, other federal agencies, and the states are taking important, proactive, and indeed serious measures that will drive the progress toward balancing the benefits of AI and other technologies while protecting consumers from their perils. They include:

President Biden's Oct. 2023 Executive Order on artificial intelligence. In this Executive Order, the president wrote that harnessing AI's benefits while solving for its challenges "demands a society-wide effort;"

The U.S. Treasury Department's June 2024 request for information on the "Uses, Opportunities, and Risks of Artificial Intelligence in the Financial Services Sector;"

The July 2024 joint statement and request for information issued by the Office of the Comptroller of the Currency, the Federal Reserve, and FDIC on banking-as-a-service issues;

The September 2024 FDIC rulemaking proposal that would require banks to maintain ledgers of “for benefit of” accounts opened by third-party fintechs to address the significant issues that surfaced in the Synapse bankruptcy;

A July 2024 report on AI issued by bipartisan staff of the House Financial Services Committee; and

The Conference of State Bank Supervisors (CSBS)’s new advisory group to provide counsel and perspective to CSBS and state financial supervisors on the development and use of AI in the financial services sector.

The CFPB is notably absent from these substantive efforts, which collectively address different facets of the policy conundrum posed by emerging technologies in financial services: how to reconcile the benefits and challenges posed by emerging technologies in financial services. The CFPB appears to be ceding its leadership role in favor of fearmongering rhetoric and overly simplistic policy prescriptions. This is surprising given that the CFPB’s statutory mandate expressly directs the agency to ensure that consumer financial services markets operate transparently and efficiently to facilitate access and innovation. Balancing these objectives is challenging. But it is not a task that can simply be wished away.