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Compliance Insights

Your monthly compliance news roundup

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Consumer Bureau's Spring Rulemaking Agenda and Other Key Changes

In May 2018, the Bureau of Consumer Financial Protection (BCFP, or the "Bureau") released its semiannual regulatory agenda, which identifies the regulatory matters it anticipates having under consideration in the coming months and serves as its contribution to the spring 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda provides the financial services industry with insight regarding the agency's rulemaking and supervisory priorities for the coming year.

The Bureau articulated three key priorities within its regulatory agenda, including meeting specific statutory responsibilities, continuing selected rulemakings that were previously underway and reconsidering two regulations issued during the term of the Bureau's previous director. The details of these priorities are set forth below:

- **Meeting specific statutory responsibilities:** The Bureau expressed its intent to focus on implementing rulemakings and directives required by the Dodd-Frank Act (DFA) and other statutes. This includes a rulemaking of primary significance required by Section 1071 of the DFA, which mandates that the Bureau prescribe rules and issue guidance to require certain information regarding women-owned, minority-owned and small business credit applications taken by financial institutions to be collected, reported and made public.

- **Continuing selective rulemakings:** With respect to continuing rulemakings that were underway, the Bureau indicated it is preparing a proposed rule to provide guidance to debt collectors on consumer communication and disclosures under the Fair Debt Collection Practices Act (FDCPA). Rather than contribute to the regulatory burden, this rulemaking has been encouraged by industry participants as a method of resolving conflicts in case law and other complexities of complying with the statute. The Bureau also affirmed that it is continuing its review of existing

regulations inherited from other agencies and that its initial focus will be on the open-end credit and credit card provisions of Regulation Z, which implements the Truth in Lending Act.

- **Reconsidering prior rulemakings:** The Bureau affirmed its prior announcements that it intends to reconsider the 2017 Payday Lending Rule and certain aspects of the 2015 final rule that implemented DFA-mandated changes to the Home Mortgage Disclosure Act (HMDA). The aspects of the HMDA rule the Bureau indicated it may reconsider include institutional and transactional coverage tests as well as those discretionary aspects of the rule not mandated by the DFA.

In addition to communicating the priorities, the Bureau indicated that it has classified certain projects described in prior regulatory agendas as now being "inactive." Such projects include previously discussed rulemakings on overdraft programs and on extending Bureau oversight to certain non-depository institutions offering personal loans.

Although not directly related to the Bureau's regulatory agenda, in May, the Bureau's acting director sent a memo to his staff that outlined key changes to the organizational structure of the Bureau. Most notably, the Bureau is relocating the Office of Students and Young Consumers to report now under the Office of Financial Education. Additionally, the Bureau is adding two new offices, the Office of Cost Benefit Analysis and the Office of Innovation. These changes are in addition to organizational structure changes that occurred earlier in the year in the Office of Fair Lending and Equal Opportunity.

The Bureau's rulemaking agenda should be a welcome relief to financial institutions subject to its oversight and rulemaking. While the Bureau does plan to issue new regulations in the coming months, the new regulations are limited to those mandated by the DFA (i.e., related to women-owned, minority-owned and small business credit applications) and regulations that may be beneficial to industry (i.e., FDCPA). At the same time, the Bureau has temporarily postponed discretionary projects such as rulemaking related to overdrafts and has noted its intent to reconsider other prior rulemakings for purposes of reducing regulatory burden. Financial institutions should stay vigilant about the evolving regulatory landscape, use this time to reassess their own compliance priorities and work to help ensure alignment with the Bureau's expectations.

Payday Lending Rule Remains in Place

The Bureau's Payday Lending Rule, portions of which went into effect in January 2018, survived a congressional attempt at elimination when the deadline for Congress to pass a

joint resolution of disapproval under the Congressional Review Act expired in mid-May 2018. The most significant elements of the rule do not go into effect until August 2019; however, other obstacles exist that may prevent the rule from reaching this date intact. The primary obstacles to the rule taking full effect include the Bureau's plan to "reconsider" the rule as part of a future rulemaking as well as a lawsuit filed by two industry groups in the U.S. District Court for the Western District of Texas. We will keep you informed of further developments related to the rule in future issues of *Compliance Insights.*

Landmark Sports-Betting Ruling Presents New Opportunities and Revives Money Laundering Concerns

In May 2018, the U.S. Supreme Court repealed the Professional and Amateur Sports Protection Act (PASPA), which effectively banned wagering on sports in all but a handful of states, by issuing a landmark ruling in the case of Murphy v. NCAA. As a result of the ruling, each state, rather than the federal government, can now decide whether to legalize sports betting. While the ruling paves the way for a potentially lucrative industry, it also spawns new risk and represents a dramatic reshaping of the sports-betting landscape, laden with anti-money laundering (AML) implications for gaming companies and financial institutions.

As legalized sports betting expands across the U.S., so, too, will attempts to use these legitimate sports-betting operations for illegitimate purposes. As pointed out by the Financial Crimes Enforcement Network (FinCEN) in 2014 in formal correspondence with the American Gaming Association (AGA), even legitimate sports-betting outlets are susceptible to AML risks. At the time, FinCEN's guidance was targeted to the casino industry; however, the message is of equal importance to any operation seeking to provide sports-betting services.

The focus of FinCEN's correspondence was the increasing use of third-party intermediaries, or "runners," to launder illicit proceeds through gaming operations. This activity, also known as third-party betting, is just one example of the types of AML risks that are present in the sports-betting landscape. The use of third-party intermediaries obscures the true source of wealth behind the transaction and creates downstream risks, including inaccurate reporting of currency transaction reports, failure to identify and report potentially suspicious activity, and insufficient recordkeeping and reporting.

Risks aside, various types of financial institutions, including banks, payment processors and credit card issuers, may stand to benefit from the ruling. These financial service providers will need to evaluate their appetite and readiness to service the various players within the sports-betting industry; however, such considerations may be heavily impacted by the

manner in which sports betting is licensed and regulated. It may be the case that each state will establish its own regulatory and licensing regime, potentially creating a fragmented landscape for the industry nationwide; or, perhaps Congress will help standardize the industry and work to create a uniform landscape by installing national oversight.

In the coming months, as states determine whether to legalize sports betting and how it should be regulated within their borders, financial institutions will be facing their own decision on whether to pursue the business opportunities created by the Supreme Court's ruling. Financial institutions will need to weigh carefully the business and legal risks against the potential revenue gains.

For those that pursue this opportunity, work remains to ensure they can do so within their risk appetite framework. Policies and procedures may need to be reevaluated and employees trained to recognize red flags associated with sports betting. As the industry monitors how the effects of the ruling continue to unfold, financial institutions are advised to review their intelligence tools and technologies to detect suspicious gambling patterns, and coordinate and communicate closely with law enforcement and regulators.

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