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End of Summer Regulatory Round-Up

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As summer comes to an end, here is a round-up of regulatory activities in financial services:

- Consumer Financial Protection Bureau Sues Synapse. The fintech filed for bankruptcy in April 2024 **has been sued by the CFPB on August 21** for unfair, deceptive or abusive acts or practices in violation of the Consumer Financial Protection Act. As readers may recall, Synapse was a middle-ware fintech that offered services involving maintaining ledgers for accounts consumers opened through other fintechs. The funds for the accounts were held in "for the benefit of" accounts at depository institutions, which means that transactions consumers effected through the accounts held by fintechs were not recorded by the banks, but rather were supposed to be maintained in ledgers by Synapse. When Synapse filed for bankruptcy, they ceased providing access to their ledgers and consumers were left without any access to their funds. Further, the amounts consumers thought they had in their accounts were mostly greater than the amounts held at the depository institutions. This has meant that affected consumers, as the complaint states, "they were unable to afford food or pay their rent, mortgage, hospital bills, or other bills without access to their funds." These consumers have not yet been made whole. Filed along with the court case was a **proposed stipulated final judgment** that included a whole raft of injunctive relief, but then assessed only $1 of civil penalties against Synapse. The point of this case and settlement? Two-fold – first, the CFPB wanted to ensure that whatever entity comes out of bankruptcy is permanently enjoined from engaging in the same or similar business, and second, the CFPB wanted to make sure that the consumer information is not sold or otherwise leveraged as an asset for the bankruptcy estate.
- Open Banking Rule May Not Be Dead at the CFPB. With comments due by October 21, 2025, the CFPB published an **advanced notice of proposed rulemaking** (ANPR) that seeks to start again on the concept of "open banking" per Section 1033 of the Consumer Financial Protection Act (CFPA). The so-called Open Banking Rule the CFPB put into place during the Biden administration, in October 2024, which is available **here**, was viewed as flawed by the Trump administration. Meanwhile, private litigants had sued the agency to prevent the rule from going into effect, and on "July 29, 2025, the court granted a motion to stay proceedings in the case, following the Bureau's announcement that it 'seeks to comprehensively reexamine this matter alongside stakeholders and the broader public to come up with a well-reasoned approach . . . that aligns with the policy preferences of new leadership and addresses the defects in the [Open Banking Rule].'" And now, the skeleton crew at the CFPB has put out a four-page ANPR that seeks to consider whether a more limited rule, addressing five distinct issues would be appropriate. Those five issues are: 1) to establish the proper understanding of who can serve as a ''representative'' making a request to a financial institution on behalf of the consumer; 2) the optimal approach to the assessment of fees to defray the costs incurred by a ''covered person'' in responding to a customer driven request; 3) the potential negative consequences to the consumer of exercising the right to request sharing of their financial data in an environment where there are tens of thousands of malign actors regularly seeking to compromise data sources and transmissions; 4) the potential negative consequences to the consumer in exercising this right where the data contains information that the consumer may not want disclosed, but does not fully understand or realize may be disclosed by the third party through which it has made a request; and (5) the potential benefits to consumers or competition of facilitating the consumer-authorized transfer of data to financial technology companies, application developers, and other third parties.
- CFPB Proposes Rule to Make Supervision of Nonbanks Much Narrower. With comments due just a month later, on August 25, **the CFPB issued a proposed rule** that seeks to ensure that nonbanks supervised by the CFPB are supervised only when there is high likelihood of significant potential harm to consumers caused by the products or services being offered. Characterizing the previous supervision approach as including even "immaterial potential

harms”, the proposed rule is vaunted as being able to “ensure that the Bureau acts within the bounds of its statutory authority and provide clarity to institutions about the standard the Bureau applies.”

- FDIC Will Examine Discrimination Claims Only Upon Direct Evidence of Disparate Treatment. The Federal Deposit Insurance Corporation (FDIC), which has authority to examine financial institutions for compliance with the anti-discrimination provisions of the Equal Credit Opportunity Act and the Fair Housing Act, has amended its examination manual to require that only when there is evidence of disparate treatment among protected classes, will the FDIC look at whether discrimination has occurred. This means that disparate impact analyses will no longer be used by the FDIC, and instead it will rely only upon “overt evidence of disparate treatment or comparative evidence of disparate treatment.” While most of the 57 pages of the manual that were redlined show changes only when the manual discusses disparate impact, there was one provision that was not necessarily related to disparate treatment that was deleted. The now-deleted provision was in a section that advises examiners how to evaluate statements from the institutions being examined and counseled, “Do not speculate or assume that the institution’s decision-maker had specific intentions or considerations in mind when he or she took the actions being evaluated. Do not, for example, conclude that because you have noticed a legitimate, nondiscriminatory reason for a denial (such as an applicant’s credit weakness), that no discrimination occurred unless it is clear that, at the time of the denial, the institution actually based the denial on that reason.”