Earlier this year, the Consumer Financial Protection Bureau (“CFPB”) established a Taskforce to assist with the improvement and oversight of existing federal consumer financial laws. According to the CFPB, the Taskforce “is charged with developing recommendations on harmonizing, modernizing, and updating the Federal consumer financial laws, as well as identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance,” amongst other notable responsibilities. In April, CFPB issued a Request for Information (“RFI”), to enable interested parties to provide information on the functioning of the financial markets. By requesting responses to 23 separate questions, the goal of the RFI was to help the Taskforce identify areas of consumer financial protection in which it should focus its research and analysis during the balance of its appointment. The deadline to provide the information was June 1, 2020, and, well... as has been the case in the consumer credit space, the information submitted provided a not-so-gentle reminder of the stark divide between the industry folks and the consumer interest advocates.
The Consumer Advocates

The submission from a group of consumer interest advocates was not very encouraging given its view of the Taskforce “as illegitimate, one-sided, and highly inappropriate during a pandemic.” From questioning the legitimacy of the formation of the Taskforce and the appointment of its members, to the “short” time window provided to respond to the RFI, all during a global pandemic, the submission alleged that by creating this Taskforce, CFPB was essentially “undoing consumer protections than enhancing them.”

Directing the CFPB to review its 2018 submissions, this group also charged the CFPB with “largely ignor[ing] the lengthy and detailed responses that our organizations submitted.” To a neutral observer, the list of the 23 questions may not seem as one-sided as alleged in the consumer advocates’ letter, but that perspective is not surprising given the group’s candid questioning of taskforce’s legitimacy of a taskforce.

Not so surprisingly, shortly after the group’s recent submission, it proceeded to file a lawsuit against CFPB and its Director, Kathleen L. Kraninger, in the District of Massachusetts, alleging that they “illegally” chartered and appointed members to the Taskforce, “unlawfully” refused to provide public notice and participation in meetings, and “unlawfully” withheld Taskforce records. The lawsuit was filed last week, and based on its establishment charter, the Taskforce has about 7 months left in its term (if it ends up providing its final report sooner however, it may not even survive the 7 months). It thus remains unclear if the lawsuit would really affect the Taskforce’s survival.

The Industry

The Consumer Data Industry Association (“CDIA”) took a more even-handed approach to its response. Its 19 page letter outlined several suggestions including detailed and extensive recommendations for regulatory and legislative changes. The CDIA also noted that it has “previously commented on ways the Bureau could improve...but have not seen improvement in this regard.”

Observing the steep rise in class action lawsuits, and noting that individual consumers rarely gain from million dollar class action settlements, CDIA provided several examples of how amendments to the Fair Credit Reporting Act (“FCRA”), and the growing trend of class action lawsuits, has opened the “floodgates to frequent and massive class action judgments against restaurants, retailers, Internet sellers, grocery stores, university systems, [and] financial institutions...”

Amongst its recommendations, CDIA has suggested placing reasonable and consistent limits on class action liability for claims brought under the FCRA, bringing it in line with similar consumer laws (such as the Fair Debt Collection Practices Act, The Electronic Funds Transfer Act, The Equal Credit Opportunity Act, and Truth-in-Lending Act). To address concerns with data security, CDIA has also requested federal guidance addressing data breach obligations and CFPB support of federal data breach legislation to replace the patchwork quilt of state breach laws.
Which recommendations are adopted – and, given the pressure from both sides of the industry whether the Taskforce will (re-)review submissions from earlier years – is still a question. And in the midst of the currently pending lawsuit questioning the legitimacy of the Taskforce, it’s also unclear if CFPB would even implement the Taskforce’s recommendations. We will continue monitoring and reporting on developments – Stayed tuned for more on this!

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