

Treasury Releases Report on Nonbank Institutions, Fintech, and Innovation

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On July 31, 2018, the [U.S. Department of the Treasury released a report](#) identifying numerous recommendations intended to promote constructive activities by nonbank financial institutions, embrace financial technology (“fintech”), and encourage innovation.

This is the fourth and final report issued by Treasury pursuant to [Executive Order 13772](#), which established certain Core Principles designed to inform the manner in which the Trump Administration regulates the U.S. financial system. Among other things, the Core Principles include: (i) empower Americans to make independent financial decisions and informed choices; (ii) prevent taxpayer-funded bailouts; (iii) foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis; (iv) make regulation efficient, effective, and appropriately tailored; and (v) restore public accountability within federal financial regulatory agencies and rationalize the federal financial regulatory framework.

Treasury’s lengthy report contains over 80 recommendations, which are summarized in an appendix to the report. The recommendations generally fall into four categories: (i) adapting regulatory approaches to promote the efficient and responsible aggregation, sharing, and use of consumer financial data and the development of key competitive technologies; (ii) aligning the regulatory environment to combat unnecessary regulatory fragmentation and account for new fintech business models; (iii) updating a range of activity-specific regulations to accommodate technological advances and products and services offered by nonbank firms; and (iv) facilitating experimentation in the financial sector.

Some notable recommendations include:

Embracing Digitization, Data, and Technology

- [TCPA Revisions](#): Recommending that Congress and the Federal Communications Commission amend or provide guidance on the Telephone Consumer Protection Act to address unwanted calls and revocation of consent.

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- Consumer Access to Financial Data: Recommending that the Bureau of Consumer Financial Protection (“BCFP”) develop best practices or principles-based rules to promote consumer access to financial data through data aggregators and other third parties.
 - Data Aggregation: Recommending that various agencies eliminate legal and regulatory uncertainties so that data aggregators can move away from screen scraping to more secure and efficient methods of access.
 - Data Security and Breach Notification: Recommending that Congress enact a federal data security and breach notification law to protect consumer financial data and notify consumers of a breach in a timely manner, with uniform national standards that preempt state laws.
 - Digital Legal Identity: Recommending efforts by financial regulators and the Office of Management and Budget to enhance public-private partnerships that facilitate the adoption of trustworthy digital legal identity products and services and support full implementation of a U.S. government federated digital identity system.
 - Cloud Technologies, Artificial Intelligence, and Financial Services: Recommending that regulators modernize regulations and guidance to avoid imposing obstacles on the use of cloud computing, artificial intelligence, and machine learning technologies in financial services, and to provide greater regulatory clarity that would enable further testing and responsible deployment of these technologies by financial services firms as these technologies evolve.

Aligning the Regulatory Framework to Promote Innovation

- Harmonization of State Licensing Laws: Encouraging efforts by state regulators to develop a more unified licensing regime, particularly for money transmission and lending, and to coordinate supervisory processes across the states, and recommending Congressional action if meaningful harmonization is not achieved within three years.
- OCC Fintech Charter: Recommending that the Office of the Comptroller of the Currency move forward with a special purpose national bank charter for fintech companies.
- Bank-Nonbank Partnerships: Recommending banking regulators tailor and clarify regulatory guidance regarding bank partnerships with nonbank firms.

Updating Activity-Specific Regulations

- Codification of “Valid When Made” and True Lender Doctrines: Recommending that Congress codify the “valid when made” doctrine and the legal status of a bank as the “true lender” of loans it originates but then places with a nonbank partner, and that federal banking regulators use their authorities to affirm these doctrines.
- Encouraging Small-Dollar Lending: Recommending that the BCFP rescind its Small-Dollar Lending Rule and that federal and state financial regulators encourage sustainable and responsible short-term, small-dollar installment lending by banks.

- Adoption of Debt Collection Rules: Recommending that the BCFP promulgate regulations under the Fair Debt Collection Practices Act to establish federal standards governing third-party debt collection, including standards that address the reasonable use of digital communications in debt collection activities.
- Promote Experimentation with New Credit Models and Data: Recommending that regulators support and provide clarity to enable the testing and experimentation of newer credit models and data sources by banks and nonbank financial firms.
- Regulation of Credit Bureaus: Recommending that the Federal Trade Commission and other relevant regulators take necessary actions to protect consumer data held by credit reporting agencies and that Congress assess whether further authority is needed in this area.
- Regulation of Payments: Recommending that the Federal Reserve act to facilitate a faster payments system, as well as changes to the BCFP's remittance transfer rule.

Enabling the Policy Environment

- Regulatory Sandboxes: Recommending that federal and state regulators design a unified system to provide expedited regulatory relief and permit meaningful experimentation for innovative financial products, services, and processes, essentially creating a "regulatory sandbox."
- Technology Research Projects: Recommending that Congress authorize financial regulators to undertake research and development and proof-of-concept technology partnerships with the private sector.
- Cybersecurity and Operational Risks: Recommending that financial regulators consider cybersecurity and other operational risks as new technologies are implemented, firms become increasingly interconnected, and consumer data are shared among a growing number of third parties.