

Bridging the financial inclusion divide digest: Addressing purpose and profit through regulation



Regulatory developments in the financial services industry (FSI) regarding financial inclusion

Leading off

From pandemic-related challenges to social injustices, recent events have shone a spotlight on the urgent need for financial institutions to advance financial inclusion initiatives. Expanding access to affordable financial services for underserved and non-served markets doesn't just recognize a moral imperative, but a business one as well. Increasing regulatory focus on consumer protection is driving changes to laws and regulations for FSI. Many financial institutions are taking bold steps toward financial inclusion by developing and offering a variety of products and services to help serve the furthest untapped markets.

The need to promote equal opportunity for economic prosperity has also caught the attention of regulators, who have realized the importance of inclusion. Policymakers have been emphasizing the importance to move toward a more inclusive approach to help boost economic opportunities among underserved and non-served sectors while maintaining the stability of financial systems. Several efforts are being made in the form of amendments to preexisting regulations to combat discrimination in the consumer financial marketplace, promote access to banking for all, overhaul the credit reporting system, and advance racial equity. With this push from regulatory reforms, there can be optimism about financial inclusion progress, with the realization that there is still much work to do.

Bridging the financial inclusion divide digest: Addressing purpose and profit through regulation

Financial Inclusion in Banking Act of 2021¹

To identify causes leading to certain sectors of consumers remaining underbanked, unbanked, and underserved, and the strategies to resolve the same, the House of Representatives passed a bill under the policy area of Finance and Financial Sector to amend the Consumer Financial Protection Act of 2010, officially known as the Dodd-Frank Wall Street Reform and Consumer Protection Act.

This bill expands the duties of the Office of Community Affairs within the Consumer Financial Protection Bureau (CFPB) to (1) lead coordination of research to identify any causes and challenges contributing to the decision of individuals who do not initiate or maintain ongoing and sustainable relationships with depository institutions; (2) identify subject-matter experts within the CFPB to work on the issues identified; (3) lead coordination efforts between other federal departments and agencies to better assess the reasons for the lack of (and help increase the participation of) underbanked, unbanked, and underserved consumers in the banking system; and (4) develop strategies to increase such participation.

The Office of Community Affairs shall submit a report to Congress on impeding factors for individuals and families that do not participate in the banking system. The report should discuss any regulatory, legal, or structural barriers to enhancing the participation of underbanked, unbanked, and underserved consumers with depository institutions and contain recommendations to promote better participation for all consumers with the banking system. This report needs to be submitted within two years of the date of enactment of this bill and every two years thereafter.

OCC statement on rescinding its 2020 Community Reinvestment Act (CRA) Rule²

The Office of the Comptroller of the Currency's (OCC) CRA rule, published on June 5, 2020, recognizes significant changes to the banking industry and how consumers bank since the last comprehensive revision more than 25 years ago. The June 2020 rule clarifies the activities that count for CRA credit, updates where bank activity counts, and evaluates CRA performance more objectively.

Based on the disproportionate impact of the pandemic on vulnerable groups, the comments provided on the Federal Reserve's advance notice of proposed rulemaking (ANPR), and lessons learned based on the partial implementation of the 2020 rule, the OCC proposed to rescind the CRA Rule. The OCC is committed to working with the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) to put forward a joint rulemaking that strengthens and modernizes the CRA. This decision follows the completion of a review initiated by Acting Comptroller of the Currency Michael Hsu shortly after he took office.

Colorado bill to address discriminatory insurance pricing heads to Governor Polis's desk³

The Colorado Legislature passed an important consumer protection bill to prevent insurance companies from using data and algorithms that result in unfair discrimination against consumers based on their race, gender, or other protected classes. It places a spotlight on pricing practices, such as the use of credit scores, that tend to result in higher premiums for consumers of color.

The bill will require insurers to demonstrate that their company practices, including rating, claims handling, and fraud investigation, do not unfairly discriminate against customers. In particular, SB 169 (sponsored by Senator Janet Buckner) identifies a range of classes, including race, ethnicity, gender, and sexual orientation, that are protected and require insurers to change practices when unfair discrimination results from algorithms or the use of external data sources by the insurer.

As per Michael DeLong, Consumer Federation of America's Insurance Advocate, "This bill holds insurers accountable for systemic biases built into company practices by requiring them to test their data systems, algorithms, and models to identify unfairness that has historically been ignored and accepted. The bill creates a process to ensure that insurance markets are more equitable. With its enactment, Colorado has an opportunity to be a leader in the national effort to reduce systemic bias in insurance and other financial services."

While the bill does not prohibit the use of credit scoring in insurance, it bans insurers from using any external consumer data or information, algorithms, or predictive models that disproportionately harm members of any protected class.

DeLong noted that the bill does not automatically change any insurance company practices, but it creates an important process to determine if unfair discrimination occurs in the Colorado insurance market and ensures that it will not persist if found.

Other notable developments

• Fair Access to Credit Scores Act of 2021 (H.R.745)⁴

Congress introduced a bill to amend the Fair Credit Reporting Act to require the inclusion of credit scores with free annual credit reports provided to consumers, and for other purposes.

The bill requires certain consumer reporting agencies to disclose, upon request and as part of a consumer's free annual disclosure, the consumer's current credit score generated using the scoring algorithm, formula, model, program, or mechanism that is most frequently used to generate credit scores sold to creditors, along with any information in the consumer's file concerning credit scores or any other risk scores or predictors relating to the consumer.

The bill also requires certain consumer reporting agencies to disclose any other consumer information the CFPB considers appropriate for consumer financial education, including the information describing the credit score of the consumer with respect to a range of possible credit scores and the general factors contributing to the credit scores of consumers.

This bill also updates the definition of (1) credit score: "The term 'credit score' means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default"; and (2) risk score: "The term 'risk score' means a numerical value or a categorization derived from a statistical tool or modeling system based upon information from a consumer report to predict the likelihood of certain behaviors or outcomes, and includes scores used for the underwriting of insurance."

Bridging the financial inclusion divide digest: Addressing purpose and profit through regulation

• **Overhauling the credit reporting system: “We need big, bold legislative solutions”⁵**

The House Committee on Financial Services held a full committee hybrid meeting discussing the flaws of the current credit reporting system, the need for reevaluating determination of creditworthiness, and learning to harness new technologies to build a more fair and equitable credit system. The title of the full Committee hybrid hearing by Congresswoman Maxine Waters (D-CA), chairwoman of the House Committee on Financial Services, is “A Biased, Broken System: Examining Proposals to Overhaul Credit Reporting to Achieve Equity.”

The historical exclusion of people of color from mainstream credit, which has also contributed to the disproportionate use of nonbank credit, has denied people of color and low-income persons access to capital to start a small business; access to mortgage loans to become homeowners; and access to credit to meet financial emergencies. While emerging technologies, including artificial intelligence and machine learning, that use alternative data may create more equitable credit reporting that increases access to credit for traditionally underserved communities, these technologies run the risk of algorithmic bias and making discrimination harder to find.

One of the solutions discussed during the hearing held by the House Committee on Financial Services was to create a consumer-oriented public credit reporting agency that would have more “transparency,” “accountability,” and new, better-formed algorithms for a fairer credit reporting system. During the 2020 campaign, now-President Biden also supported such a proposal.

• **Federal bank regulators issue rule supporting Treasury’s investments in minority depository institutions and community development financial institutions⁶**

The OCC, FRB, and FDIC (together, “the agencies”) issued an interim final rule to support and facilitate the timely implementation and acceptance of the congressionally authorized Emergency Capital Investment Program (ECIP) for the Treasury Department to make capital investments in low- and moderate-income community financial institutions. The rule provides that preferred stock issued under ECIP qualifies as additional tier 1 capital and that subordinated debt issued under ECIP qualifies as tier 2 capital under the agencies’ capital rule.

The idea behind ECIP is to support the efforts of minority depository institutions and community development financial institutions to provide loans, grants, and forbearance to small businesses, minority-owned businesses, and consumers who may be disproportionately affected by COVID-19.

Additional Deloitte perspective on financial inclusion

For additional insights, please see our ongoing series on financial inclusion and the impact it has on FSI and the broader economy.

- [Accelerating toward greater financial inclusion](#)
- [Advancing social and economic goals with global financial inclusion](#)
- [Corporate social responsibility and financial inclusion homepage](#)
- [Driving purpose and profit through financial inclusion](#)
- [Financial inclusion and the underserved life insurance market, part one](#)

Endnotes

1. US Congress, [H.R. 1711 – Financial Inclusion in Banking Act of 2021](#), May 19, 2021.
2. Office of the Comptroller of the Currency (OCC), [“OCC Statement on Rescinding its 2020 Community Reinvestment Act Rule,”](#) July 20, 2021.
3. Consumer Federation of America, [“Colorado Bill to Address Discriminatory Insurance Pricing Heads to Governor Polis’s Desk,”](#) June 9, 2021.
4. US Congress, [H.R. 745 – Fair Access to Credit Scores Act of 2021](#), February 3, 2021.
5. US House Committee on Financial Services, [“Waters at Hearing on Overhauling Credit Reporting System: We Need Big, Bold Legislative Solutions,”](#) June 29, 2021.
6. Federal Deposit Insurance Corporation (FDIC), [“Federal Bank Regulators Issue Rule Supporting Treasury’s Investments in Minority Depository Institutions and Community Development Financial Institutions,”](#) March 9, 2021.

Contacts us

Courtney Davis

Principal | Deloitte Risk & Financial Advisory
Deloitte & Touche LLP

David Sherwood

Managing director | Deloitte Risk & Financial Advisory
Deloitte & Touche LLP

Deloitte Center for Regulatory Strategy

Irena Gecas-McCarthy

FSI director, Deloitte Center for Regulatory Strategy, Americas
Principal | Deloitte Risk & Financial Advisory
Deloitte & Touche LLP
igecasmccarthy@deloitte.com



This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States, and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.

Copyright © 2021 Deloitte Development LLC. All rights reserved.