



Taskforce on Federal Consumer Financial Law Listening Session

*September 08, 2020
1:00pm to 2:00pm Eastern*

Organization: Federal Housing Finance Agency (FHFA)

CFPB Participants: Todd Zywicki, Bill MacLeod, Jean Noonan, Cheryl Parker-Rose, Alex Eckstein, Nat Weber, Ashlie Tarpley, Jeff Magliato

FHFA Participants: FHFA General Counsel Alfred Pollard, Senior Policy Analyst Office of Fair Lending Oversight Annalyce Shufelt; from the Office of Housing and Regulatory Policy: Supervisory Policy Analyst Single Family Servicing Policy and Asset Management Prasant Sar, Senior Policy Analyst Single Family Origination Sika Pryor, Supervisory Policy Analyst Single Family Origination Bill Merrill, Senior Associate Director Maria Fernandez, and Senior Policy Analyst Single Family Servicing Policy and Asset Management Eileen Zaenger.

Purpose: On Tuesday September 8, 2020, Taskforce Chair, Todd Zywicki, and Taskforce Members, Bill MacLeod and Jean Noonan met remotely via WebEx with numerous FHFA staff as part of the Taskforce's commitment to engage with external stakeholders to gain insights regarding the financial service industry and financial consumer protection laws. The group discussed opportunities to improve, strengthen, and modernize consumer financial protection laws.

Discussion:

1) Introductions and Opening

Taskforce members and FHFA personnel introduced themselves. Taskforce Chair provided background on the Taskforce and explained that this meeting was one meeting in a series that the Taskforce is conducting with federal and state parties.

2) General

- a) Alfred Pollard, the General Counsel, conducted a level set. He explained that there are over 40 related bank statutes and that FHFA only deals with a few. Some of the statutes are broader than mortgages.

3) On Consumer information and education (*see discussion prompts*)

- a) TRID's condensing of disclosures is the type of action that helps consumers. Problem develops when financial institutions overlay other disclosures on top of the law's requirements which can then confuse or distract the consumer. Education as well as specific disclosures are needed to properly arm the consumer.
- b) TRID costs and benefits: FHFA has not heard of recent complaints as to the costs and burden of the TRID disclosures. At the rule's inception, there were complaints but now that things are in place the theme seems to be, do not change the rule as it is understood, and systems are in place.
- c) Covid-19 has driven home the importance of remote electronic disclosures and the ability to conduct business remotely (ex: e-sign, remote notary (California requires in person notary)).
- d) FHFA has put out a lot of documents in foreign languages to help borrowers and lenders alike but fear of CFPB keeps institution's from using the documents. This might be an area where safe harbor ideas can work.

4) On Legal framework (*see discussion prompts*)

State independence comes into play as varying rules among states have an effect in the mortgage market because a lot of the nuts and bolts of mortgage activity is dependent on state specific rules (ex: notarizations). FHFA deals with a wide array of products and activity (credit scores, property management, liquidation, appraisals, zoning, and so on) that complicates the idea of substituting electronic records for the current paper-based systems. Federal financial law and state real estate law are at play in the mortgage area. These systems can conflict and create frictions.

- a) There are many interests involved in the real estate mortgage world. The idea of a central property record depository touches on the special interests associated with the current system of registering deeds locally in county records. Mortgage 360 touches on many interests, the interests of Wall St, buyers, sellers, form printers.
- b) FHFA has concerns about the current credit suppression environment due to Covid, how will credit decisions be made moving forward with holes in the credit information available to lenders.

5) On Competition and innovation (*see discussion prompts*)

Credit scores are not used by GSAs in underwriting. FHFA does not require use of three credit scores. They look at two and use the lower. Fannie and Freddie use three credit scores. The use of trending information is preferred rather than point in time credit score information. FHFA is in the process of assessing FICO and deciding if it should be replaced. A newer FICO score is using alternative data. FHFA is concerned with the idea of alternative data. Less than 5% of rental payments are reported to CRAs. Cell phone and utility payment data has not been correlated with high dollar loans so the predictability of such data is unknown. It is interesting to think that alternative data is being introduced into mortgage approvals when those values are so great. Perhaps best to start using alternative data first in credit card work and if it proves useful, then move on to the higher dollar loan area.

Potential recommendations:

- 1) Need a standard system/procedure for mortgage servicing transfers to avoid errors and problems that arise when transfers occur. FHFA is working in this area but it might be appropriate for CFPB
- 2) Create a central national level of property/mortgage depository-recording
- 3) Loss mitigation requires an “application” from the consumer. Often, consumer/mortgage servicing interactions naturally move into mitigation activity and this puts services in jeopardy so clarification of the application rule might make servicers more likely to be helpful to consumers. Is the application requirement a beneficial rule to the consumer?
- 4) Experiment with the use of alternative data in credit decisions using credit card decisions to see if it is effective in determining credit risk (REF: 5d)
- 5) Create a safe harbor for the use of foreign language mortgage materials that will protect from CFPB English/foreign language regulations (REF: 3d)
- 6) Consider using federal rules that preempt local laws to make the mortgage process more consumer friendly especially as to the efficiency of electronic transactions (REF: 3c)

6) Potential Action Items:

- 1) Confirm that GSE's do not require the use of three credit reports, and that GSE's do not require credit scores.
- 2) Confirm that GSE's use credit scores for some purposes (but not underwriting).
- 3) Confirm that GSE's have better algorithms so do not use FICO? Is it true that FICO is viewed as a point in time and not as accurate as other information?
- 4) Does HUD use FICO?
- 5) FHFA has a rule making in progress about credit scores (or a final rule out). Did FICO or Vantage comment, the GSE's?
- 6) Share information about symposium on thin files and alt data.