Request for Information – Taskforce on Federal Consumer Financial Law

The Task Force is considering what recommendations might promote the welfare of consumers in their involvement with consumer financial services providers. In general, consumers benefit from markets characterized by robust competition, which offer attractive choices and fair prices. In addition, the terms of the services must be clear, so that consumers can make informed choices and must be free of unfair, deceptive, and abusive practices. We are seeking information from all stakeholders in the consumer financial services industry on which markets are functioning well and which might benefit from changes that could materially increase consumer welfare. To that end, we ask a series of questions about various consumer financial services, with a special interest on these markets:

- Residential mortgages
- Mortgage servicing
- Educational lending
- Educational loan servicing
- Credit cards
- Prepaid cards
- Vehicle financing (credit or lease)
- Small dollar loans (installment, payday, title loans)
- Bank accounts (checking or savings)
- Money services (money transfers and electronic payments)
- Credit reporting
- Debt collection by collection agencies
- Debt collection by creditors (in-house)
- Credit repair
- Debt settlement

Which markets are functioning well? We recognize that change is not cost-free. When consumers have a wide selection of products and services that meet their financial needs, offer competitive prices, and have clear and truthful information about the price and features of the service, they may benefit less from changes in laws and regulations that attempt to improve the market or prevent abuses. Every statutory or regulatory change creates at least some cost – and often considerable cost – as both consumers and industry adjust to new rules and bear the cost of change.

For that reason, we are most interested in learning where changes would be most worth the cost. In other words, we hope to hear from stakeholders about the markets or services in which a change in the rules would provide the greatest marginal benefit considering the marginal costs.

The Regulations

These questions focus on the regulations the Bureau writes and enforces. Specific examples are especially welcome.

1. Are there gaps in consumer protections that should be filled by strengthening the Bureau's regulations? What type of protection is needed (e.g., additional disclosures, substantive requirements)? How should the costs and benefits of the proposed changes be evaluated?

2. Where would regulations benefit from increased clarity? Uncertainty increases compliance costs and litigation risk without benefitting consumers. Explain the lack of clarity and how the regulatory language should be made clearer.
3. Where have regulations failed to keep up with rapid changes in consumer financial services markets? Are regulatory changes needed to address new products and services and the way consumers obtain them? Are there regulations that have outlived their usefulness?
4. Some creditors and consumer advocates favor regulations with specific requirements, which draw bright lines for a company's compliance obligations. Others favor "principle-based" regulations, which are less likely to become outdated in an evolving industry and to have unintended adverse consequences. Federal regulations currently employ both approaches (e.g., the highly technical disclosure rules of Regulation Z and the Gramm-Leach-Bliley Act's implementing guidance for safeguarding consumer information, which requires "safeguards appropriate to the size and complexity" of the financial institution).

Expanding Access

These questions explore problems with financial inclusion.

1. Millions of U.S. households lack a bank account. Should the Bureau promote greater access to banking services and, if so, how? Are consumers content with alternatives to deposit accounts, such as prepaid cards and peer-to-peer electronic payments?
2. A clear need for short-term, small-dollar credit exists, but it is a costly product to deliver. What impediments exist for expanding access to short-term, small-dollar loans at affordable rates? What role do state laws have in limiting access to small loans? Is the annual percentage rate a meaningful measure for a very short-term loan? What other measures might be more useful to consumers in understanding the cost of short-term credit?
3. Some creditors are supplementing or replacing traditional methods of underwriting, such as using income, debts, credit history, and stability factors, and employing "alternative data." Some types of alternative data expand the sources of financial information, such as payment histories for rent, utilities, and other consumer obligations, and other types of alternative data have little in common with traditional information. Should the Bureau require that alternative data factors have a logical relationship with creditworthiness or other legitimate business considerations? Does it matter whether the use of alternative data increases access to credit to those who would not be approved by traditional underwriting?
4. The Supreme Court has validated the use of the disparate impact theory under the Fair Housing Act, but the Court cautioned that the theory can be abused by plaintiffs. Creditors complain that the standard significantly increases compliance costs and legal risk, because accurately determining the disparate impact (especially for nonmortgage credit where monitoring information is not collected), proving the business justification with hard data, and assessing whether any of a potentially infinite number of alternative criteria would meet the creditor's need just as well but be less discriminatory in its net effects. Should the Bureau continue to employ the disparate impact theory in its supervision and enforcement, pending any guidance from the Supreme Court on its application under the ECOA? If so, how should the Bureau implement the Supreme Court's cautionary language in upholding theory under the Fair Housing Act? Should properly designed credit scoring models be presumed to meet the business-justification standard?

Federal and State Coordination

The Bureau is only one of many federal agencies with supervision and/or enforcement responsibilities for financial institutions. Having more than one agency can increase the resources devoted to supervision and enforcement, but it can also increase the burden on the company (and costs to its customers) and may result in conflicting positions among governmental agencies. These questions focus on the costs and benefits of this overlap.

1. Should the federal banking regulators modify their memoranda of understanding to provide that the Bureau will have sole (or primary) responsibility for examining for and enforcing the consumer financial protection laws for institutions within the Bureau's jurisdiction? Should the prudential regulators refer to the Bureau for enforcement any consumer financial protection violations they discover in a safety-and-soundness examination? Would having a single source of authority enhance consumer welfare or detract from it?
2. How should federal agencies without supervision authority coordinate with the Bureau (e.g., the Federal Trade Commission and Department of Justice)? Should these agencies cede to the Bureau responsibility for enforcing the consumer financial protection laws for the entities within the Bureau's jurisdiction?
3. State regulators typically examine or audit financial institution's compliance with state law, but they can also bring cased under the federal consumer financial protection laws. Once the Bureau has decided to bring an enforcement action, the Bureau may invite states to join in the action. Are consumers and financial institutions helped or harmed by overlapping enforcement powers?

Consumer Data

Possible issues:

- Data security
- Privacy and appropriate use
- Accuracy