

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2020-XXXX]

Request for Information Regarding Taskforce on Federal Consumer Financial Law

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Taskforce on Federal Consumer Financial Law (Taskforce) with 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.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2020-XXXX, by any of the following methods:

- Electronic: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2020-XXXX in the subject line of the message.
- Mail: Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

- Hand Delivery/Courier: Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question on which you are commenting at the top of each response (you do not need to answer all questions). Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G St NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Nat Weber, Chief of Staff, or Matt Cameron, Staff Director, Taskforce on Federal Consumer Financial Law, at Redacted If you require this document in an alternative electronic format, please contact

Redacted

SUPPLEMENTARY INFORMATION:

I. Background

The Director of the Bureau established the Taskforce pursuant to the executive and administrative powers conferred on the Bureau by sections 1013(a) and 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Taskforce is charged with (1) examining the existing legal and regulatory environment facing consumers and providers of consumer financial products and services; and (2) reporting its recommendations for ways to improve and strengthen federal consumer financial laws, including recommendations for resolving conflicting requirements or inconsistencies, reducing unwarranted regulatory burdens in light of market or technological developments, improving consumer understanding of markets and products and services, and identifying gaps in knowledge that the Bureau should address through future research. Where possible and within time constraints, the Taskforce's report may include recommendations relating to the 18 enumerated consumer laws and titles X and XIV of the Dodd-Frank Act, including those provisions relating to unfair, deceptive, or abusive acts or practices.

The Taskforce is inspired in part by an earlier commission established by the Consumer Credit Protection Act (Act) in 1968. In addition to various changes to consumer law generally, the Act established a national commission to conduct original research and provide Congress with recommendations relating to the regulation of consumer credit. The commission's report contained original empirical data, information, and analyses—all of which undergird the report's final recommendations. The data, findings, and recommendations from the commission were all made public and the report led to significant legislative and regulatory developments in consumer finance.

II. Requests for Information

The Taskforce is considering what recommendations might promote the welfare of consumers in their involvement with providers of consumer financial products and services. On its website the Bureau explains, “We aim to make consumer financial markets work for consumers, responsible providers, and the economy as a whole.”¹ 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. To this end, the Director has asked the Taskforce to:

produce new research and legal analysis of consumer financial laws in the United States, focusing specifically on harmonizing, modernizing, and updating federal consumer financial laws—and their implementing regulations—and 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.

The Taskforce is seeking information from interested parties on which areas of the financial services markets are functioning well and which might benefit from changes that could materially increase consumer welfare. To that end, this Request for Information asks a series of questions about various consumer financial products and services, with a special interest in the below markets (though respondents should feel free to suggest others):

- Bank accounts (checking or savings)
- Credit cards
- Credit repair
- Credit reporting
- Debt collection by collection agencies

¹ Bureau of Consumer Fin. Protect., *The Bureau* (last visited March 2, 2020), <https://www.consumerfinance.gov/about-us/the-bureau/>.

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

As articulated more specifically in the questions below, the Taskforce is interested in information about how well financial markets are functioning for consumers. Efficient markets offer consumers a wide selection of products and services that meet their financial needs at competitive prices. Consumers can capture those benefits when they have access to truthful information about the prices and features of the services they seek. By contrast, markets that perform poorly are less likely to deliver services or offer them at prices commensurate with costs. Unfair, deceptive, and abusive acts and practices deprive consumers of the benefits that transparent and efficient markets can deliver. The Bureau, through its enforcement of laws and regulations prohibiting such behavior, strives to rid markets of these impediments. It is important, therefore, that the policies, laws, and rules effectively target the problems they are intended to address.

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, the Taskforce is 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 where a change in the rules would provide the greatest marginal benefits considering the marginal costs.

A. 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. Are there areas of ambiguity or inconsistency in the regulations? Where would regulations benefit from increased clarity or harmonization—both within the Bureau and with respect to other Federal authorities? 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? Are there new regulations that might be needed? Are there now regulatory areas or specific regulations now sufficiently so overlapping as to be redundant?
4. Some stakeholders favor regulations with specific requirements, which draw bright lines for a company's compliance obligations but can apply a one-size fits all approach. Others favor "principle-based" regulations, which can provide a company with flexibility

but can create compliance uncertainty. Federal regulations currently employ both approaches (*e.g.*, Regulation Z's highly specific disclosure rules, and Regulation V's requirement that data furnishers implement and maintain reasonable written policies and procedures concerning the accuracy of the data they furnish). Which approach is preferable, and does this depend on the industry, the statute, or other considerations? Please explain.

B. Expanding Access

These questions explore potential problems with financial inclusion.

5. Millions of U.S. households lack a bank account². Should the Bureau promote greater access to banking services and, if so, how? Are alternatives to deposit accounts, such as prepaid cards and peer-to-peer electronic payments, sufficient when compared to traditional banking products? What are the consumer satisfaction rates with these alternative products?
6. Consumers demand short-term, small-dollar credit, but it is a costly product to deliver relative to the amount of these loans. What impediments exist for expanding access to short-term, small-dollar loans at affordable rates and on fair terms? What has been the impact of state and federal efforts to regulate such credit? Is the annual percentage rate a meaningful measure for a very short-term loan? If not, what other measures might be more useful to determine whether the terms of short-term, small-dollar loans are affordable and fair and to help consumers in understanding and comparing the cost of short-term credit?

² Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018 – May 2019, [[HYPERLINK "https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm"](https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm)].

7. Some creditors are supplementing or replacing traditional methods of underwriting (which often use income, debts, credit history, and stability factors) by 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 underwriting information. What role should the Bureau play in regulating the furnishing, reporting, and use of alternative data, and what factors should the Bureau consider in developing policy in this area? Should the Bureau consider whether alternative factors that lack an intuitive relationship with creditworthiness, or other legitimate business considerations, may seem unfair to some consumers, even if creditors find them helpful in predicting risk? Does the use of such factors increase the risk of illegal credit discrimination?
8. 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. Proponents of the disparate impact theory believe that it applies equally in the context of the Equal Credit Opportunity Act (ECOA) and is vital to achieving the ECOA’s antidiscrimination purposes. Opponents of the theory question whether it applies to the ECOA and complain that the standard significantly increases compliance costs and legal risk. 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 used in upholding the theory under the Fair Housing Act? Should properly designed credit scoring models be presumed to meet the business-justification standard?

C. 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.

9. 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?
10. How should federal agencies without supervision authority (*e.g.*, the Federal Trade Commission and Department of Justice) coordinate with the Bureau? What are the costs and benefits of overlapping enforcement jurisdiction for nonbank creditors? Should these agencies cede to the Bureau responsibility for enforcing the consumer financial protection laws for the entities within the Bureau's jurisdiction?
11. State regulators typically examine or audit financial institution's compliance with state law, but they can also bring cases 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?

12. Given the jurisdictional overlap between state and federal regulators on consumer financial markets, are there quantifiable examples of whether this overlap has led to disproportionate compliance costs for small financial institutions, such as community banks, credit unions, or local retail creditors?

D. Consumer Data

These questions explore current and future-looking topics regarding the protection and use of consumer data.

13. Both the Fair Credit Reporting Act (FCRA) and its implementing Regulation V and the Gramm-Leach-Bliley Act and its implementing Regulation P contain important protections of consumers' personal information. Are these protections sufficient? Why or why not? If not sufficient, what further protections should the Bureau consider? Are there obligations in these regulations that impose a burden not justified by the corresponding consumer benefit?
14. The FCRA requires consumer reporting agencies to "maintain reasonable procedures to ensure the maximum possible accuracy"; requires these agencies to disclose the contents of their files to consumers; contains procedures for consumers to dispute the accuracy of information in their files; and requires notifications when information from their files has contributed to a user's adverse action. Are these provisions designed to ensure accuracy sufficient? Why or why not? If not sufficient, what further protections should the Bureau consider? Are there obligations in these laws that impose a burden not justified by the commensurate consumer benefit?
15. Most states have enacted laws that afford consumers certain protections in the event of data breaches. There is considerable variation among these laws, including the triggering

events for coverage by the law and the requirements and remedies relating to a breach.

Should the Bureau consider adopting a regulation addressing data breaches? Why or why not? If so, would it be desirable to have a uniform national standard for data breach obligations?

16. Innovations in financial technology, or FinTech, often use consumer data to provide financial services or products to consumers and businesses. With respect to consumer data, how best can Federal regulators balance between promoting consumer choice and ensuring consumer protection? What opportunities or technologies exist, such as zero-knowledge proofs, that may help regulators resolve the balance consumer choice and consumer protection?