



Taskforce on Federal Consumer Financial Law Listening Session

*July 22, 2020
9:00am to 10:00am Eastern*

Participants: Taskforce and Conference of State Bank Supervisors

Taskforce Participants: Todd Zywicki (Chair)

Taskforce Staff and CFPB Participants: Cheryl Parker-Rose—Assistant Director Intergovernmental Affairs, Nat Weber—Staff Director, Ashlie Tarpley-Taskforce Senior Counsel, Jeff Magliato-Paralegal

Conference of State Bank Supervisors Participants: Chuck Cross-SVP Consumer Protection and Non-Depository Supervision and Enforcement Section, Tony Vasile-Senior Director Consumer Protection and Non-Depository Supervision and Enforcement Section, Mike Stevens-Senior Executive Vice President, Jim Cooper-Senior Vice President Policy, Mike Townsley-Director of Regulatory Policy and Regulatory Counsel, Daniel Schwartz-Director Policy Development, Lead Staffer, Consumer Compliance, Camille Polson-Policy Analyst

Readout: On Wednesday, July 22, 2020, the Chair of the Taskforce on Federal Consumer Financial Law (Taskforce) met remotely via WebEx with representatives of the Conference of State Bank Supervisors (CSBS) as part of the Taskforce's on-going effort to solicit input from outside groups to inform the Taskforce work.

Nat Weber opened the meeting and the Taskforce Chair issued opening remarks. He described the Taskforce, and its overall assignment. He explained how the pandemic stymied the overall Taskforce to reach out to groups like CSBS. He pointed out the five topics being addressed by the Taskforce:

- Consumer protection
- Consumer empowerment via information
- Competition and innovation
- Financial inclusion and access
- Regulatory modernization

CSBS provided an overview of their organization and role as a regulatory association. Its Board consists of 22 state regulators. Its original work revolved around the bank side of state

oversight. Overtime, its purview expanded to cover state activity in the non-bank mortgage and money transmission areas. CSBS does not have working groups on other regulatory issues handled by states such as, for example, check cashing or payday lending. It does work with sister organizations as needed to for coverage in the product areas such as check cashing/payday lending that it does handle during its normal course of business. Its chief role is to bring states together and work as a conduit for the states into the federal realm.

CSBS is a proponent of the federal-state shared regulatory model. CSBS points to the long and consistent tradition espoused via the laws passed by Congress of leaving the states with a definitive role in job of consumer protection.

Chuck Cross covered coordination, information sharing, exam/complaints, and how state supervision differs from CFPB supervision.

State's started to gain authority over more entities than just banks, into non-bank entities, through the mid-1990s into the middle of the first decade of the 21st century. This furthered the CSBS role in helping with coordination among states. With the creation of the CFPB, the CSBS coordination role expanded. CSBS formalized coordination with the CFPB via a number of agreements (2011 information sharing agreement, 2013 supervision coordination agreement).

CSBS works for information sharing among states and between state/federal levels. CSBS considers itself a choke point of information flows. It would like to have more information sharing like it has with CFPB. In contrast, it has no such agreement with FHA.

States play a very large role in the examination of process. They do 32,000 non-bank small business exams where the CFPB does 125 non-bank exams. CFPB spends longer periods of time on its exams with deeper digs. CFPB does up to 5 dozen enforcement actions a year where the states take 7,000 to 10,000 such actions.

CFPB has a complaint database that takes in a huge number of complaints. The CFPB system allows for analysis and trending of the complaint data. States actually investigate each and every complaint presented.

CFPB supervises for compliance with consumer protection. States do not focus on consumer protection as a stand alone subject as does CFPB. States do safety and soundness with consumer protection as part of the reviews with the view that failure by entities to maintain consumer protection can lead to institution failure and thus effect safety and soundness.

CSBS has a 2019 white paper on its website about supervision. Chapter 2 might be interesting to the Taskforce.

CSBS gave an example of the examination of Quicken Loans as how the state exam process works in regard to the cooperation of states on exams. Quicken is headquartered in one state but licensed to loan in other states by the states where it operates. CSBS terms this process as network supervision which is the idea of one exam with numerous states participating.

The CSBS regulatory policy person, Mike Townsley, commented on the letter CSBS sent in response to the Taskforce RFI. The letter was sent in response to the state's in mass finding concern with the RFI questions that set off worry among the state's about issues of preemption.

They feared that any change to Dodd-Frank and other rules would impact state authority and CSBS and the states do not want to be pushed aside. They saw reference to the earlier National Commission work as a threat as that commission pushed for more federal authority.

CSBS Jim Cooper emphasized the idea of state usefulness. States are innovators. States are on the front line seeing local issues. States lead the way in seeing issues with mortgage predatory lending that ultimately led to the 2008-09 financial crisis. CSBS formed a 2017 Fintech Advisory panel that included 33 fintech firms. CFPB current head of SEFL, Brian Schneider, participated in that effort when he was still an Illinois bank regulator. CSBS put together the NLMS system in early 2000's before the federal SAFE Act mandated licensing.

Todd asked about the single exam model

to hear ideas and perspectives on innovation, inclusion, competition, and modernizing the financial regulatory framework. Highlights from the meeting included:

What trends in financial technology or FinTech are you seeing today? How could these trends impact the marketplace ten to fifteen years from now? What might be the impact for consumers as the market evolves?

- One trend is that both sides are working together more in FinTech than they have in other areas. Everything is going mobile now, and people have the ability to conduct business and transactions without touching common surfaces. Open banking has promise for consumers, but with services being spread out among many players, there may be concerns about data security and protecting consumers' privacy.
- With mobile transactions, it is important to consider how to bring the traditional paper disclosure regime into the modern era, such as assessing how to provide information at the right time and in the right format. The Bureau has thus far not given institutions enough flexibility and, while the E-Sign Act was designed to promote electronic disclosures, it sometimes can be an impediment. Regulation Z provisions permitting electronic disclosures outside of the E-Sign process are worth looking into.
- The Bureau should look also at the content of disclosures, such as considering how consumers assess the cost of credit. APR is one measure, but some research shows that consumers look at the total costs.
- Mobile transactions and the collection and use of data raise concerns, such as potential discrimination. There are also concerns that there can be differences between the advertised terms and the actual terms of service for some products.
- The Bureau should be mindful of other regulatory guidance that affects markets, such as the Administration's recent guidance on artificial intelligence, and ensure a consistent and level playing field for both banks and non-banks. The Bureau should also consider how other Federal agencies are using data to inform policy, such as the Department of Transportation's approach regarding drones.
- The Bureau is in a unique position to encourage innovation and create a more transparent consumer protection regime by using its authority under Dodd-Frank Act section 1033, which could create generally applicable rules in a way that the GLBA and Regulation P have not.
- Initiatives such as the Bureau's Sandbox are helpful to allow banks to develop new products and services.

- On the other hand, consumer advocacy groups and others have concerns about initiatives such as the Sandbox, including that it may afford FinTech companies safe harbors without sufficient protections against consumer harm.
- In assessing these issues, the Taskforce needs to be neutral and consider the benefits and costs to both consumers and industry, as well as that the Bureau was created because no other financial regulator was focused on consumer protection.

Do you believe there are regulatory issues that should be addressed at the federal level to promote greater access to consumer financial products or services to underserved individuals and/or communities?

- Goal is to make sure that people who can afford loans actually get those loans. Alternative data sources can be useful if they are ECOA-compliant and structured enough so that they can be examined to ensure that they are not used discriminatorily. Consumers now have the ability to choose to provide some types of data that can improve credit score. State laws are the primary obstacles to consumer reporting agencies obtaining and using alternative data sources.
- House just passed comprehensive FCRA amendments that encourage the inclusion of alternate data. The legislative history and evidentiary record are informative, including Chi Chi Wu's testimony. For example, some evidence that utilities do not furnish accurate information, particularly in the Northeast. When considering different types of alternative data, note that some can be further afield from traditional financial data.
- Alternative data is not either all good or all bad. Sometimes the additional data can benefit consumers, but in other cases it could hurt their score.
- The Bureau's guidance on alternative data was helpful with respect to looking at transaction data, but more guidance is needed regarding discrimination.
- Consumers need a viable small-dollar alternative to payday loans both for financing needs and to build credit histories.
- Research is necessary on the need for, and harms arising from, small-dollar lending.
- Compliance costs of Bank Secrecy Act and anti-money laundering laws dwarf other consumer-protection costs and affect lower-income people in particular by restricting supply of bank accounts and remittance services. Lower-income consumers and immigrants regardless of income have more difficulty establishing their identity for purposes of obtaining services. Clearing times for payments affect prices and competition between providers, and too many people have to access workarounds (e.g., overdraft) to obtain funds. Helpful changes could include increasing the Bank Secrecy Act's threshold levels for remittances, using artificial intelligence to identify problematic transfers, or establishing a central repository to which creditors could furnish information regardless of country.
- Some providers that are building products to target the underbanked deserve regulatory scrutiny.

Do you believe that promoting competition, innovation, and efficient markets can enhance consumer choice in the marketplace? Does the Bureau have a role in promoting competition while at the same time furthering its mission of consumer protection? Are there examples of state, Federal, or foreign regulators that have successfully balanced these goals?

- Federal regulators could promote competition if they treated compliance with State law as precluding a finding of unfairness under Federal law.

- Unlike the FTC and U.K. regulators, the Bureau does not have a straightforward competition mandate. Regulation is particularly appropriate to fill the void in markets where consumers cannot choose their provider (e.g., mortgage servicing). But competition is limited when services, such as payments services, are limited to banks and those with a relationship to a bank. By comparison, China's banking system is less functional but its payments systems are more advanced because they are not tied to banks.
- Mortgage market suffers from ant-competition forces, such as focusing enforcement of RESPA section 8 on banks and the LO Comp rules.
- Open banking would promote competition, as it has done in the U.K. and Canada. Data aggregators can collect a consumer's data and help identify other banking or investment options. However, providing bank-account access to a data aggregator could open a consumer up to theft or fraud and may limit a consumer's ability to seek remedies. A DFA section 1033 rule is one option but may not be necessary if the Bureau could address data-aggregator issues through guidance on and revisions to Regulation E and Regulation P, among others.
- Federal solution to data privacy issues is necessary, and it either parallels or comes before DFA section 1033 discussion.
- Consumer advocacy groups have also engaged with these issues and their analysis should be reflected in the Taskforce's work.

Do you believe there are gaps or conflicts in financial regulations; redundancies in financial regulations; or areas of financial regulation where additional clarity is needed. If so, what are they? And where are there opportunities for improved coordination between federal and state regulators, specifically from the perspective of regulated entities and consumers?

- Federal regulators should improve their coordination and MOUs. Duplicative supervision and examination can be challenging and burdensome, particularly when regulators have differing views. FinCEN's approach to coordination is worth considering.
- The Bureau should consider doing automated or data-based examinations, similar to how institutions have automated their internal reviews.
- Increased dialogue with State regulators could bridge knowledge gap and streamline regulation.
- Enforcement benefits from more consumer cops, and the Bureau's partnerships with States, the OCC, and others have been successful.
- Appears to be a consensus that credit repair organizations raise consumer protection concerns by charging upfront fees, charging subscription fees or services that consumers maybe be able to do for themselves, and removing accurate information from credit reports, which, in turn, raises safety and soundness concerns. Credit repair organizations may be below the threshold for Bureau supervision, though the Bureau may have authority to supervise particularly risky actors. Foregoing concerns do not apply to financial counselors.
- Some just-in-time disclosures may work (e.g., a consumer receives an alert before sending money to someone for the first time).
- Consider looking at dark patterns that may steer people to options that are not in their interest. Also consider looking at whether disclosures are working, but disclosures alone are not enough without related substantive protections. APR can be a good measure for comparing loans, even for short-term or rent-to-own options.

Are there new areas of research that the Bureau should consider undertaking or expanding on in the consumer financial marketplace?

- The Bureau should study the error rate and the error-resolution rate for consumer reports. The FTC's 2012 study was the last comprehensive effort, and it showed pervasive and systemic errors.
- The Bureau should also research security freezes, including consumers' ability to lift a freeze and place a freeze at all three major credit bureaus, as well as how freezes compare to credit locks and if consumers readily understand the difference.
- Related consumer-reporting issue is how to address recent immigrants who may have good credit in their former country but no credit file in the U.S. and thus have a difficult time obtaining credit. Resolving this issue also would require protection against discrimination.
- Bureau should look at recent reports of redlining.
- Bureau has a tremendous research office and should utilize Office of Consumer Response for any information that has not been published. Likewise, the Bureau should look at the substantive outcomes of consumer complaints, such how often complaints result in meaningful change (e.g., a refunded fee or fixing a credit report), and whether different institutions are responding to complaints differently.
- Disclosure regime needs to be overhauled, and the Bureau should research what people need to know when they need to know it in order to make an informed decision. There is a question about who benefits from current disclosure regime, as in many cases it doesn't appear to be institutions or consumers.

Are there additional topics that the Bureau should consider reviewing or addressing?

- The Bureau should review the levels of restitution it is obtaining for consumers and how that has changed over time.
- The Bureau should consider its approach to student loans and how it works with the Department of Education. Student loans are made to some of the most vulnerable borrowers, who are also actively trying to improve their financial positions. The Bureau should consider its authority to oversee DOE-related loans.

Roster of Participants:

- *Francis Creighton, Consumer Data Industry Association*
- *Christine Hines, National Association of Consumer Advocates*
- *Anna Laitin, Consumer Reports*
- *Ed Mierzwinski, U.S. Public Interest Research Group*
- *Virginia "Ginny" O'Neill, American Bankers Association*
- *David Pommerehn, Consumer Bankers Association*
- *Naeha Prakash, Bank Policy Institute*
- *Garry Reeder, Financial Health Network*
- *Julie Stitzel, U.S. Chamber of Commerce*
- *Ruth Susswein, Consumer Action*
- *Scott Talbott, Electronic Transactions Association*
- *Celia Winslow, American Financial Services Association*

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