

Foreword

The Consumer Financial Protection Bureau Taskforce on Federal Consumer Financial Law (Taskforce) is pleased to share the attached report with the American public. This report reflects the consensus views of the members of the Taskforce as to the existing legal and regulatory environment facing consumers and financial services providers and its recommendations for ways to improve and strengthen consumer financial laws and regulations.

One hundred years ago marked the dawn of the modern American consumer financial system, as increasing urbanization and the emergence of a wage economy led the Russell Sage Foundation to call for national efforts to erect a new regulatory framework that would better meet the needs of American workers. Fifty years ago, the National Commission on Consumer Finance (“NCCF”) was convened in response to the emerging national structure of consumer financial markets and the growing need for a larger federal regulatory presence to address those challenges. Today, as revolutions in technology, the economy, and consumer preferences raise new opportunities and threats for American consumers, it is a propitious time to once again review the framework of consumer financial protection.

The Taskforce firmly believes that robust federal enforcement is essential to effective consumer protection. Markets are important and cannot be ignored in the effort to maximize consumer welfare as judged by consumers. But, as recognized in the previous assessments, markets are not enough. Government has a crucial role to play in ensuring that the financial system delivers products and services that are fairly priced, with reasonable terms, and available to all consumers.

The report is organized in two volumes. Volume I provides a historical and economic overview of consumer finance, covers the key principles that form the core of federal consumer financial law and policy and discusses particular topics that are important to the Bureau’s work. Volume II develops recommendations to improve and strengthen the application of financial laws and regulations. Recommendations are grouped in alphabetically listed topics.

In drafting the report, the Taskforce has been animated by three overarching principles. First, consumer protection policy should be particularly attentive to the consequences for inclusion and access by those communities that have previously been underserved. Toward that end, an essential element of policy should be to facilitate competition, innovation, and consumer choice in the marketplace. Second, consumer financial protection policy should be focused on avoiding harms to consumers rather than attempting to specify how providers should design and market their products. Third, the existing regulatory framework needs modernization to enable it to adapt more nimbly to changes in technology and consumer preferences, respond to new opportunities and threats to consumers, and address future crises, such as the 2008 financial crisis that spawned calls for the Bureau’s creation and the 2020 Coronavirus pandemic.

The report is organized around the key areas of analysis of consumer protection: the legal framework of consumer protection, information and disclosure, competition and innovation, inclusion and access, and regulatory modernization.

First, in analyzing the legal framework of consumer protection, the report focuses on implementing the goal of minimizing consumer harm through effective regulatory policies that protect consumers, promoting the fair and efficient operation of markets for the benefit of consumers, and identifying the optimal use of the five regulatory tools available to the Bureau in executing its duties (enforcement, regulation, supervision, financial education, and policy research and development). The report also recommends the Bureau reorganize around the markets it regulates rather than the tools it implements with an eye toward efficiently minimizing consumer harm.

Second, the report identifies the role of consumer information and disclosures in promoting consumer protection and welfare. Since the enactment of the Truth-In-Lending Act, disclosure and information provision to consumers has been a primary focus of the consumer financial protection system. Today, however, consumers are overwhelmed by a blizzard of information and disclosures, which are often required for a variety of different and often contradictory purposes. The Taskforce believes that policymakers should review the current disclosure regime to focus shopping-related disclosures on the central goal of promoting informed choice by consumers. Disclosure policy should be reviewed and modernized, where appropriate, to facilitate electronic disclosures aimed at providing consumers with the relevant information needed at the moment of decision. Finally, the report also stresses that although information can be useful to promote consumer choice and competition, it is equally important that policymakers be cognizant of the limits of consumer attention and that *pro forma* notice and consent by consumers should not be a substitute for agency action to protect consumers from harm.

Third, the Taskforce emphasizes that an essential organizing structure of the consumer financial system should be an emphasis on competition, innovation, and consumer choice. Since the NCCF report fifty years ago, the development of the consumer financial system has contributed to widespread prosperity, autonomy, and material comfort. Competition and innovation have produced lower prices, greater variety, and expanded choice, putting bank accounts and credit cards within reach for millions of consumers for the first time in American history. To facilitate competition and innovation, the Taskforce recommends enabling non-bank institutions to provide a greater array of financial services, including authorizing nonbank payment systems, reducing regulatory obstacles to chartering of industrial loan companies, and expanding the opportunities for credit unions to serve low-income communities. Finally, the Taskforce recommends that the CFPB be authorized to grant charters to non-depository FinTech companies, payments processors, and other financial service providers that operate in inherently interstate markets.

Fourth, the Taskforce believes that increasing financial inclusion and access to products and services on fair and reasonable terms is a moral imperative and should be a central focus of consumer financial regulatory policy. Although the innovations and developments of recent decades have brought quality financial services at competitive prices into the hands of middle class consumers, some consumers remain on the

margins of the system, including those who are “credit invisible” or lack the resources or knowledge to navigate the consumer financial system successfully. A first step toward promoting greater inclusion involves continued vigilance to attack barriers to inclusion based on characteristics such as race or sex, but policymakers should consider expanding those protections to other characteristics, such as disability. The Taskforce also believes that policymakers should consciously adopt policies that will facilitate greater inclusion, such as creating a modern regulatory framework for FinTech firms, facilitating use of alternative data, allowing greater use of industrial banking charters for commercial providers of financial services, and adopting a faster payments clearing system. In addition, the Taskforce also recommends that policymakers reconsider existing laws and regulations that adversely affect financial inclusion, such as price controls on debit card interchange fees at larger banks and regulations that interfere with the ability of credit card issuers to adjust terms when a consumer’s risk profile changes, as well as to offer cards to consumers who currently have difficulty accessing credit.

Finally, the onset of the Coronavirus pandemic contemporaneously with the Taskforce’s deliberations has highlighted the urgent need for a flexible, nimble, and adaptive consumer financial protection system. Innovation and technical change have always been drivers of reform in consumer financial protection law. For example, the declining cost of long-distance telephone calls, the growth of national department stores and credit-granting practices, and the increase of interstate mobility of consumers in the post-World War II era created the need for a larger federal role in consumer financial protection beginning in the 1960s. Today, the pace of change in technology and consumer preferences has accelerated, putting even greater pressure on the need for adaptability to protect consumers from rapidly emerging threats to their privacy, data security, and financial well-being. In addition, this rapidly emerging environment places an enhanced premium on the need for consumers to have the tools of financial knowledge and literacy to take advantage of these innovations when appropriate. Although unprecedented in its nature, the Coronavirus pandemic has illustrated the need for a financial system that is resilient enough to respond nimbly to emergent crises through the design of its institutions and content. The report recommends that to promote a more responsive regulatory structure, financial regulators should make greater use of principles-based regulation, consider the efficient mix of the Bureau’s regulatory tools, and establish authorities and procedures for responding to crises in a predictable fashion.

Some important sectors and topics are not addressed at length. The Members used a three-pronged test to help determine the scope of the report: (1) was a sector or subject already substantially and adequately addressed by recent activity by the Bureau or some other source, (2) did the Members possess a comparative advantage in offering insights or was it beyond the scope of expertise or the Taskforce’s charter, and (3) did the Taskforce have something meaningful or constructive to contribute to identifying important problems and possible solutions. For example, mortgages and mortgage service providers are hugely important topics for consumers and the economy; nevertheless, they are only covered tangentially given the recent and extensive modernization efforts the Bureau has undertaken since its inception. Due to the time-limited nature of the Taskforce’s work, numerous recommendations suggest further

research and deliberation before developing a position. The importance of topics should not be measured by the number of pages or recommendations devoted to them, and the potential for improving consumer financial protection should remain a perennial subject of reexamination.

This report seeks to make the complex subjects of law, economics, and consumer financial protection approachable and easy to understand. Readers will notice that the background and recommendations are written in plain language while scholarly studies, analyses, and denser material can be found in footnotes and references. Policy makers should consider the report in totality, but other readers will not be lost should they choose to review a single chapter or section. Important themes are repeated to help accomplish this goal.

The research and analysis presented in Volume One is a framework for thinking about consumer financial protection law and economics. It is intended to lay a foundation of knowledge and principles to which policymakers, bureau employees, and the public can return as new issues in consumer finance and financial protection arise. It may also serve as foundational thinking or guiding principles for future Bureau actions (rule makings, supervisions or enforcement actions, assessments, research, policy guidance, consumer education, et cetera).

Volume Two is more pragmatic and temporal in nature. The recommendations are being made at a point in time. Government executives, policy makers, and their staff should consider how the current financial regulatory regime and framework has evolved when viewing these recommendations in the future.

The members of the Taskforce are grateful for the opportunity that we have been provided to undertake this report on behalf of the American people. The insights of the NCCF's report fifty years ago shaped consumer financial protection policy for decades to come—indeed, the NCCF report called for the creation of a consumer financial protection regulator much like the one that later became the CFPB. As the Bureau celebrates its 10th Anniversary and looks forward to the next fifty years, the Taskforce hopes that our contributions may prove equally long lasting.