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Nat to suggest intro tech on how to use, read, navigate Volume II.

Alternative Data (#1-2, 138)

As consumer credit markets evolve, new technologies and methods are rapidly evolving to better serve customers such as artificial intelligence (AI), machine learning (ML), and the use of alternative data. In addition to reducing cost, increasing speed, and improving accuracy, these technologies allow better predictions of the risk of default and prepayment, enabling credit on better terms for more consumers. Industry is increasingly turning to alternative data, or data outside of the scope of traditional credit reporting data, to increase predictive accuracy of their models and to subsequently lower risk, lower prices, increase competition, and increase financial access and inclusion to traditionally underserved customers.

There are two main types of alternative data that are used in consumer credit. The first, financial alternative data, are data that are directly related to a consumer's financial history but are not typically recorded on a consumer's credit report. Examples of these data include bank statements showing the consumer's cash flow history or records of payments to landlords or utilities such as electric, water, or cell phone bills. The second type of alternative data, non-financial alternative data, are data typically related to a customer's behavioral habits that may be correlated with their probability of repayment, such as social media presence, email domain, device used to access the credit application, or amount of time spent reading the financial institution's website prior to application for credit.

Each of these types of alternative data potentially can increase predictive power of underwriting and pricing models used by financial institutions, allowing institutions to expand access to credit to previously uncreditworthy individuals (as assessed by traditional models). For instance, cash flow underwriting gives a more holistic and real-time view of a consumer's actual financial situation rather than relying on point-in-time markers like monthly revolving balances that would be found on a traditional credit report. This expansion of the range of consumers a lender is willing to work with via lowering previously non-negotiable credit score or payment history requirements, particularly to consumers on the margin of acceptance under traditional regimes, expands access to previously thin-file or no-file consumers who previously could not be considered for credit. In light of the benefits of use of alternative data, regulators should be cautious about unduly and prematurely restricting the use of new sources of data as consumer norms and expectations about privacy and data usage continue to evolve, especially among younger consumers who are those who will benefit the most from use of alternative data. This allows for greater inclusion of racial and other minority consumers who are disproportionately thin- and no-file consumers.[1] For a more robust discussion of alternative data and data aggregation, see Chapters 9 and 11 in Volume I of this report.[2]

Often, these data are provided by data aggregators, companies that collect information and sell it to lenders for use in their models. The two main ways that consumer-permissioned alternative data aggregators gain access to this information are through credential-based access (or "screen scraping") and Application Programming Interface (API) access, detailed in Chapter 9 of Volume I of this report.[3] These aggregators read the bank account, social media, or other website information and then feed it into their system to be transferred to a lender for use in underwriting, pricing, and fraud detection.

[1] The CFPB Office of Research, *Data Point: Credit Invisibles*, 16, 2015 (https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf)
[2] Cite to Chapter 9 and Chapter 11
[3] Cite to Chapter 9

Safety and security questions raised by the first approach and the bilateral negotiation process necessary for the second have impeded adoption of alternative data, but industry is accelerating resolutions to these problems as the business case becomes clear.

Currently, the use of alternative data is allowed, but liability concerns over its use, methods of collection, and compliance with credit reporting laws have slowed its widespread adoption by industry. Under the Fair Credit Reporting Act (FCRA), firms that collect and sell any piece of data for use in the credit underwriting and evaluation process are regulated as consumer reporting agencies and subject to the validation, security, and privacy requirements laid out within the law. Some data aggregation firms have resisted this designation as it would require them to comply with, among other consumer safeguards, resource-intensive record accuracy dispute resolution processes outlined under the law.

Te FCRA states to mean that any firm that aggregates and sorts data, including alternative data, and provides it to a third party for use in making a credit decision would meet the definition of "consumer reporting agency" and would be subject to the FCRA's privacy, accuracy, and security requirements. The Taskforce recommends that the Bureau clarify the FCRA's application to data aggregators and the use of alternative data. Alternative data will be a consumer report and regulated by the FCRA if it is used, expected to be used, or collected in whole or part for determining eligibility for consumer credit, insurance, employment, or any other FCRA permissible purpose.[4] A data aggregator that assembles or aggregates data for the purpose of assembling consumer reports to third parties is likely to be a consumer reporting agency.[5]

Some stakeholders have expressed concern that specific kinds of alternative data such as educational or geographic data may serve as proxies for race, sex, age, or other protected class and that disparities in lending will emerge if these data points are used. These concerns are often tied up with larger questions about algorithmic bias, interpretability and explainability, and black boxes in AI/ML models. These concerns are valid, but these models are still subject compliance with fair lending law and discriminatory disparities in treatment or impact for a protected class are still illegal. Institutions who do not wish to be sanctioned under these regulations will strive to reduce discrimination and algorithmic bias while also investing in tools to explain their outcomes to regulators when they are examined for compliance with fair lending law. Moreover, as discussed in Chapter 10, by increasing competition and increasing choices for consumers, as well as by increasing reliance on data-based underwriting systems, entry by FinTech firms tends to reduce pricing disparities among different groups of consumers; thus, the Bureau should be careful not to deter new entry unduly. The Bureau's Office of Innovation policies, such as the Compliance Assistance Sandbox, allow institutions to proactively collaborate with the Bureau on issues of fair lending and innovation.

Alternative data can improve the ability of consumers to be scored by credit decisionmakers by providing vital tradelines and information to underwriters. For instance, data regarding rental, utility, and phone bill payment information, as well as cash-flow information from deposit accounts, is often viewed as useful in helping a consumer with limited credit usage or a consumer trying to restore good credit following late or defaulted payments qualify for credit that could improve the consumer's financial well-being.

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[4] 15 U.S.C. §1681a(d).
[5] 15 U.S.C. §1681a(f).

Currently, many entities do not report this information for a variety of reasons, one of which is concern over the applicability of privacy provisions in other statutes that may bar them from reporting this information. For example, telecommunications billing information is regarded as customer proprietary network information and subject to special privacy protections. However, the benefit to consumers, especially those thin- or no-file consumers on the margins who may become scorable or prime for the first time, can outweigh the privacy and security concerns. Moreover, when the reports are limited to credit performance, the privacy concerns are no greater than with any other type of payment information. Even reporting negative information from alternative sources provides a net benefit to consumers, because it is likely a signal of the overall creditworthiness of these consumers, thereby making the market more efficient.

Recommendations:

1. ***The Bureau, Congress, and other federal and state regulators should eliminate and identify restrictions on the ability of consumer reporting agencies to report payment and cash-flow data. One means is for the Bureau to clarify the FCRA's application to data aggregators and the use of alternative data. All sources of alternative data should satisfy existing privacy, accuracy, and credit reporting laws.***
2. **The Bureau, Congress, and other federal and state regulators should exercise caution in restriction of the use of behavioral alternative data. These data can be very useful indicators of creditworthiness, and to the extent that certain behaviors are correlated with status as a protected class, existing fair lending laws prohibit unlawful discrimination.**

138. Allow any entity with an account that requires regular payments by consumers, other than health care providers, to report the performance of that account for purposes of credit reporting, regardless of privacy provisions in other statutes.

Bureau Organization (#3 and 4)

There is no one "correct" approach to internal organization and structure for a complicated agency such as the CFPB. Any structure that is adopted invariably entails tradeoffs and a system for promoting coordination across the agency to promote consistent interpretations of legal standards, a coherent approach to pursuing policy objectives, and accountability to agency goals.

The CFPB presents challenging questions of internal organization and structure because of the large number of regulatory "tools" at its disposal, or what Dodd-Frank refers to as "functions." Since its inception, the CFPB's internal structure has been largely organized around its regulatory "tools," i.e., regulation, enforcement, supervision, research, and consumer education, in addition to its statutorily mandated offices. In the opinion of the Taskforce, this tools-based organizational structure is not optimized to promote regulatory effectiveness with respect to maximizing consumer welfare in the financial sphere and has created coordination difficulties within the Bureau and its approach to external stakeholders. Regulatory effectiveness has been hampered because this structure has made it more difficult for the Bureau to use an integrated approach to efficiently identify and apply the most effective tool or mix of tools to address a specific legal or policy issue. Coordination between different divisions as to determining the appropriate tool or tool mix to accomplish a specific regulatory objective has been largely *ad hoc* and unsystematic.

The CFPB's tool-based organizational structure produced a concern in some instances that rather than fitting the best tool to provide a solution, there can be a tendency to retrofit outcomes to the chosen tool. Thus, for example, the CFPB has been criticized for pursuing what is called "regulation by enforcement," using enforcement to make industry-wide policy changes that might have been more effectively addressed through a regulation. In some instances, the choice of a regulatory tool seems to have produced highly prescriptive, highly detailed regulations that try to anticipate and resolve every possible scenario under the regulation, rather than promulgating a more principles-based regulation and then using enforcement, supervision, or other tools (such as guidance) to develop the details. By starting with a determination as to which agency tool will be used to address a particular issue and then fleshing out the substance later, it is more difficult for the agency to effectuate its policies in an efficient manner.

Policy coordination is also difficult under the current tool-based organizational structure. With respect to the Bureau's rules defining "Larger Market Participants" for determining entities subject to supervision, for example, the Regulation division is responsible for establishing the definition as to which entities will be covered. Yet once the threshold is defined and established, the supervision division actually conducts the examinations and sets examination policy as to priorities. Fragmenting oversight of particular markets and industries across multiple divisions makes it difficult to coordinate effectively to ensure that all divisions are pursuing the same priorities in a coherent fashion; for example, by ensuring that the Bureau's enforcement, supervision, and rulemaking divisions are all applying the same legal definition of terms such as "abusive" to participants in a given market.

Given this, the Taskforce recommends that the CFPB reorganize its internal structure so that it is primarily organized around *markets* instead of *tools*. Thus, for example, the CFPB might have divisions dedicated to credit cards, mortgages, small-dollar loans, fintech, and third-party service providers (such as debt collectors and mortgage servicers). Enforcement, rulemaking, and supervision responsibilities would reside primarily within those divisions. Other tools, such as research, consumer education, and consumer complaints, might remain Bureau-wide but would be expected to develop expertise in working with each of the markets-based divisions.

In the view of the Taskforce, this approach would be an improvement over the current organizational arrangement by starting with a primary focus on particular markets and their challenges and then determining which tools would be most effective in addressing those problems. A market-based organizational structure also would make it easier to use a combination of several tools to effectively respond to a problem. The Taskforce recognizes that this approach would create some coordination problems of its own, leading to a concern about maintaining consistent legal interpretations and policy goals across different markets, rather than across different tool-based divisions. Although both types of consistency are undeniably important, consistent guidance to market participants from all of the Bureau's operations (i.e., enforcement, supervision, and rulemaking) is more important to enable regulated entities to predict the Bureau's legal posture than ensuring that, for example, all rules or all enforcement actions are consistent with one another.

A markets-based approach to oversight also reflects the manner in which consumers shop for and use different products and providers supply them. Effective regulation should focus on these interactions and competitive consequences. For example, prepaid cards and bank accounts are treated as substitutes by many consumers and regulations on one could influence demand and usage for the other. Similarly, consequences for consumers of restrictions on small-dollar loans will be impacted by regulations involving comparable products, such as pawnbrokers, bank overdraft protection, and deposit advance products. It is the opinion of the Taskforce that reorganizing the Bureau's internal organizational structure around markets will orient the Bureau toward a consumer choice-centered approach to oversight that will facilitate policies that align with the dynamics of consumer choice.

The Taskforce also recommends that the CFPB create an Office of Policy Planning (OPP) with responsibility for (1) promoting coordination and consistency across the Bureau's operations, (2) identifying and Bureau's top priorities and engaging in strategic planning operations to accomplish them, (3) conducting assessment of the Bureau's effectiveness, including providing independent review of cost-benefit analysis initially conducted by Bureau divisions, (4) conducting retrospective review of regulations and major enforcement initiatives, and (5) drawing on the Bureau's research and policy expertise to conduct competition and consumer protection advocacy. OPP would assume some of the responsibilities currently executed by the Office of Strategy as well as new responsibilities.

Recommendations:

1. The CFPB should reorganize its internal structure and operations to instantiate a "markets-based" organizational structure, as opposed to a "tools-based" operational structure.

2. The CFPB should establish an Office of Policy Planning with responsibility to coordinate operations across the Bureau, engage in strategic planning to achieve the Bureau's strategic objectives, and in collaboration with the divisions, conduct assessment of the effectiveness of the Bureau's operations, including independent cost-benefit review and retrospective review of regulations and major enforcement initiatives. The CFPB should also add a competition and consumer protection advocacy function based in OPP.

Competition (#25, 27, 22, 6, 28, 15, 29, 5, 30, 109)

The Bureau's toolbox of consumer protection activities includes supervision and enforcement, consumer education and engagement, research and market monitoring, and rulemaking and regulation. The Taskforce believes that a guiding principle that should inform the use of each of these tools is competition and its power as a consumer protection tool.

Bureau effects on competition

The purpose of the Bureau as defined in the Dodd-Frank Act is to "ensure[] that the federal consumer financial laws are enforced consistently so that consumers may access markets for financial products, and so that these markets are fair, transparent, and competitive." This mandate to ensure competition in markets is crucial to protecting consumers as described in detail in Chapter 8 of Volume I of this report. Regulation, supervision, enforcement, and education are all tools that the Bureau can use to foster robust competition in consumer financial markets and enhance consumer choice and access to credit. Imprecise application of those tools, however, can have unintended effects on competition. Accordingly, the Bureau should carefully consider the market effects of interventions of all types.

Currently, the Bureau does not have any full-time staff dedicated to considering the effects of Bureau actions on the competitive landscape of consumer markets, nor does it have particularly strong relationships focused on these issues with other regulators. The Bureau should increase its internal capacity to research competition, potentially by bringing experts into the Office of Research. Data to evaluate competition in various markets do exist but are sometimes difficult for one agency to collect on its own. Therefore, the Bureau should cooperate with prudential regulators to obtain the necessary research data the Bureau may lack.

The Bureau has statutory authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank "larger participant[s]" in markets for other consumer financial products or services, as the Bureau defines by rule. To ensure larger participant rules do not have unintended anticompetitive effects, the Bureau should attempt to determine whether there are threshold effects, or distortions of firm behavior as they approach thresholds for larger participant rules. Additionally, the Bureau should continue to consider costs and adverse consequences in establishing thresholds. For example, the Bureau should determine whether the $10 billion threshold artificially stunts the growth of their financial service providers.[6] Should the Bureau determine such threshold effects are harming growth and competition, it should consider means to ameliorate the unnecessary costs.

Retrospective Bureau effects on competition

The Bureau is required by statute to assess the effects of regulation on the marketplace before and after new rules are implemented, but those assessments do not have the evaluation of effects of regulation on competition as a core requirement. Undoubtedly major changes to the regulatory structure spurred by the passage of the Dodd-Frank Act and the creation of the CFPB have affected the makeup and structure of the consumer finance marketplace, and it is important to understand how and

[6] *See* the regulatory framework discussion in Chapter 13 for additional information about the Bureau's $10 billion threshold for supervision.

why those disruptions have shaped consumer experiences, especially regarding competition. The Bureau should retrospectively look at the effects of its rulemakings on consolidation, market entry and exit, and cost structures changing the nature of competition – and subsequently consumer protection – in the marketplace.

Enforcement is an important tool that the Bureau uses to ensure markets are "fair, transparent, and competitive," and other areas of Bureau operation should consider the effects of its actions on the competitive landscape of a particular market as well, including the tool of enforcement. As of now, little formal analysis is done on previous enforcement cases to understand how precedents that are established by those past cases affect lending products today and in the future.

To better understand its effects on markets, the Bureau should conduct retrospective analyses of completed cases with a specific eye toward identifying market impacts and assessing costs and benefits of those impacts. Learnings from these analyses should be used as an input into the decision-making process before new cases are opened. The FTC conducted similar analyses in its work on hospital mergers and acquisitions, and market-specific retrospective studies of selected CFPB cases, preferably published publicly, would go a long way to enhancing both the Bureau and other market participants' understanding of the effects of enforcement action on competition.

Cost of Credit

The Bureau's supervision, enforcement, and rulemaking activities often drastically affect the way that markets work by compelling changes in the behavior of individual providers and of the market as a whole. These decisions are made after considering voluminous evidence and detailed analyses of the costs and benefits of regulatory action, but insufficient attention is paid to the structure of individual markets themselves. A key consideration of the competitive landscape of markets is the cost of doing business, and actions to protect consumers and enhance competition should be informed by those costs.

An accurate assessment of the costs of various types of credit, as well as an understanding of how those costs influence the structure and dynamics of markets, can inform public policy decisions. Tracking costs and provision of credit on an ongoing basis can also reveal how Bureau and other regulatory action affects the way companies do business and what products consumers can access.

Facilitating Competition in Bank Accounts

Markets with low switching costs are usually competitive, as consumers can be enticed by better offers. However, not all markets make it easy for consumers to change financial service providers.

While there are legitimate fraud and security reasons that may warrant a painstaking process for account changes, there should not be unnecessary friction caused by the process. High switching costs allow incumbents to avoid competition from rivals, regardless of price or service because customers succumb to inertia rather than go through the process to find a better offer at a competitor.

Other nations, especially in the EU and Australia, have pioneered reductions in account inertia via regimes that they call 'open banking,' which are larger efforts to promote innovations in payment systems. The EU open banking regime, as laid out in the Payment Services Directive (PSD2), allows for portable bank account numbers that customers can use to easily switch banks across the EU zone.

Lowering the switching cost for consumers is expected to increase competition and spur innovation in the payments sector, leading to better economic and consumer protection outcomes. The Taskforce recommends that the Bureau study ways to promote competition in domestic depository accounts, including how to lower switching costs and the potential of account number portability.

State licensure

Currently, a patchwork of state licensing laws makes it difficult for many types of consumer financial service providers to expand their business across state lines. While safeguards are important, inconsistent standards and confusing requirements can prevent safe and efficient providers from entering a market. Inconsistent requirements artificially constrain expansion of popular services and insulate declining sectors from fair competition, leaving consumers worse off if they are unable to benefit from a truly competitive landscape. What should be paramount in consumer protection at the state level is not the legacy of yesterday's arrangements, but the steps states can maintain protection while lowering the cost and increasing the quality of financial options. States should research their regulations and those of other states to better understand what they can do to eliminate barriers to competition caused by these inconsistencies while still protecting consumers, with the end goal being both a high standard of consumer protection and a low cost of doing business.

Some states have taken important steps, for example by adopting consistent standards in the Uniform Consumer Credit Code (UCCC). The UCCC was drafted in 1968 by the National Conference of Commissioners on Uniform State Laws and has been updated since. Adoption of the UCCC gives consumers consistent protections against unfair contracts, and it encourages lower interest rates by limiting barriers to entry in the consumer credit markets and lower compliance costs, especially by creditors with multi-state operations. There are currently nine states who use this code as a basis for their state laws. Colorado, Idaho, Indiana, Iowa, Kansas, Maine, Oklahoma, Utah, and Wyoming are all adoptees, and several other states have adopted substantially similar laws.

While the Taskforce does not specifically endorse adopting the UCCC, we believe that states should consider modeling their consumer credit laws after these principles and do what they can to alleviate unnecessary burden on financial institutions who wish to serve more customers. As an additional step, states should consider eliminating or significantly streamlining license requirements, which are often costly to comply with, especially for multistate creditors.. Licensure in some states can take up to a year before institutions can legally operate, leaving consumers out in the cold. The burden and protracted time for licensure in some states can serve as a barrier for new market entrants, depriving consumers of a greater choice in selecting a creditor and potentially more competitive pricing and terms. For its part, the Bureau can conduct a review of state creditor licensing laws to identify the practices that produce unnecessary burdens and require excessive amounts of time for licensing approval, thereby creating unwarranted barriers to entry.

Recommendations:

25. ***The Bureau should implement the Dodd-Frank Act mandate to consider the effects of Bureau actions on competition. Consider competition, effects on***

consumer choice, and competitive effects of remedies in policy decision-making, including supervision, enforcement, and rulemaking.

27. *The Bureau should increase capabilities of researching competition, in line with recommendation #25 to include analysis of competition when taking action. The Bureau should cooperate or coordinate with prudential regulators to obtain necessary research data the Bureau may lack.*

22. *The Bureau should determine threshold effects when establishing thresholds for Larger Participant rules. Should the Bureau identify serious threshold effects, it should determine why the phenomenon exists and address any anticompetitive effects.*

6. *The Bureau should conduct case selective retrospectives to identify the market impacts of the Bureau's cases and assess the costs and benefits of those impacts. Evaluate selective cases grouped by market and look to FTC's work on mergers and acquisitions as a model. Seek to answer the question: how do the precedents that are established by these cases affect lending products today and in the future?*

28. *The Bureau should conduct retrospective research on the effects of Bureau regulations on consolidation of FIs and certain types of institutions exiting markets and effects on competition and consumer protection (as different cost structures have different impacts on consumer use).*

15. *The Bureau should conduct a program of regular studies of the cost of lending in key product markets.*

29. *The Bureau should conduct a general, ongoing study of the cost structure of different types of markets. The Bureau should look at total costs, not just cost of regulatory compliance.*

5. *The Bureau should study ways to ease consumers' changing financial institutions and promoting competition, such as the feasibility of allowing consumers to port checking account numbers to a new bank.*

30. *The Bureau should research the effect of state creditor licensure laws for covered entities on whether the burden and time for licensing approval create unwarranted barriers to entry.*

109. *States should consider eliminating or streamlining licensing requirements for providers of financial services, to avoid anticompetitive barriers to entry.*

Consumer Empowerment

5 recommendations	X Preambles	Status: Alex assumed from Greg

Establish financial education research pilot programs
Establish a National Youth Financial Fitness Program
Research the economic effects of student loans
Create Innovation program encouraging FIs to produce educational programming
Operationalize 2015 report on consumer financial well-being

Consumer Empowerment (#37-38, 106, 133, 149, 151)

Traditional approaches to consumer financial education have failed to show meaningful increases in consumer financial literacy. For a deeper exploration of the issues in financial literacy and education, please see Chapter 12 of Volume I of this report. Nevertheless, it is well-recognized that financial literacy can be an important tool for consumer empowerment, improving market competition, and making markets work better for all consumers. Disappointing results found in research reflect a number of limits of the traditional approach to financial literacy: First, the goals of financial education are often poorly defined and frequently reflect the beliefs of those providing the information as to what issues are important, rather than the needs of consumers. Further, information is not always provided at the relevant time or in the relevant period of a consumer's financial lifecycle. For example, younger consumers may need more information on accessing a bank account and using credit while middle aged consumers may need more information on investments.

In addition, much of consumer financial education is focused on developing "optimizing" behavior in consumers. Yet evidence suggests that many consumers lack the time, attention, and financial acumen to make use of this information. Recent research suggests that instead of attempting to pursue optimizing strategies, consumers might be more successful in using proper habits, heuristics, and rules-of-thumb that could, in general, be more successful.

General opportunities

The Taskforce has identified several specific research items in the next section that could be explored to further the goal of financial literacy, but there is much work to be done to understand what interventions actually work to help consumers. The literature has not found evidence that many financial literacy efforts are consistent or reliable at improving consumer financial well-being. The Bureau is well positioned to be a leader in financial education due to its unique Congressional mandate, expertise of the staff, and the relatively low opportunity costs for the Bureau to take up this research compared to other agencies. The Bureau should explore study methodologies that tell us more about when and how to intervene in consumer financial education, including incorporating credit and financial education issues in ongoing longitudinal panel studies such as the Panel Survey of Income Dynamics (PSID). The Bureau should also consider retrospective studies to test the efficacy of various consumer education interventions. To the Taskforce's knowledge, serious research on this subject has not been conducted before. Understanding what kinds of interventions work is a prerequisite for many of the financial education proposals offered below.

Specific opportunities

The Bureau's 2015 Report on measuring consumer financial well-being[7] is an important step forward in understanding the goals of consumer financial education and literacy. By focusing on both objective and subjective measurements of consumer well-being, the goals captured there provide a useful set of metrics to measure efforts to empower consumers throughout their lifecycle to be informed and responsible consumers.

The Taskforce urges the Bureau to continue to experiment and to conduct research on how to operationalize the normative goals of the 2015 Report. We believe the Bureau should conduct research on how consumers actually make decisions, on how well their decision processes work, on how decision processes might be improved, and how best to provide financial education. The Bureau should focus on larger items in consumers' budgets—mortgages, retirement savings, and auto purchases, for example. It should consider the extent to which consumer education should consider developing less cognitively-taxing tools like rules of thumb and heuristics rather than only optimizing decisions in particular choice contexts. In the research process the Bureau should consider the extent to which "buyer behavior modeling" used in applied psychology studies and marketing would be useful in these contexts. The Bureau should conduct research on the extent to which the ballooning student debt crisis is affecting the financial well-being of consumers as well as their financial maturation broadly. As the Bureau is the only federal regulator with a statutory mandate to address and improve consumer education, the Bureau should invest the resources to become the leader in this research.

Specific research projects conducted by the Bureau or other research institutions can help advance our knowledge of what works and what doesn't in the field of consumer education. Well-designed educational pilot programs will help individual consumers meet their financial goals and

[7] Cite to well-being report: https://www.consumerfinance.gov/practitioner-resources/financial-well-being-resources/

advance Bureau goals of increased consumer savings, the reduction of foreclosures, and the reduction of credit defaults among others. These pilot programs can have a variety of targets, varying by locality, participant demographics, length, and objective goals. The creation of many small, nimble pilot programs can create further areas of exploration and research to empower consumers.

Utilizing Bureau infrastructure and expertise in innovation and project management, the Bureau could create a program analogous to the existing Tech Sprint program in the Office of Innovation to field proposals for these pilot experiments, creating competition from inside and outside of the Bureau to identify the best proposals. The Office of Innovation program would not be limited to these small educational pilot programs but could support a broader mission of encouraging private entities to partner with the Bureau to implement effective financial literacy programming.

Often, financial literacy education targeted at young people is designed entirely by financial professionals and ignores the large body of research on pedagogy broadly. While the Bureau should of course strive for a deep understanding of pedagogical research and reality, it is unlikely that the Bureau will be able to overcome this pitfall entirely in its design of educational programs. Thus, after identifying effective interventions that can be targeted toward young people, the Bureau should look to successful educational programs designed and administered by other government bodies as potential models to actually implement them. One such program is the Presidential Youth Fitness Program designed by the Department of Health and Human Services, which is heavily embedded into primary and secondary school physical education curriculums. A similar program for financial literacy fitness could be established at a national level, possibly including a partnership of government promotion (and existing resources) and private participation on a Board or Council. Such a program would be voluntary throughout the country but provide valuable education for kids, schools, and families, offering educators and families free access to courses and assessments for youth fitness at appropriate levels and motivational recognition to empower students to adopt and maintain financial well-being.

Recommendations:

149. The Bureau should explore study methodologies that tell us more about when and how to intervene in consumer financial education, including incorporating credit and financial education issues in ongoing longitudinal panel studies such as the PSID. The Bureau should also consider retrospective studies to test the efficacy of various consumer education interventions.

151. The Bureau should continue to experiment and conduct research on how to operationalize the normative goals of the 2015 Report. Conduct research to understand how consumers actually make decisions, assess how well their decision processes work, consider how decision processes might be improved, and determine how to disseminate the findings to consumers. The Bureau should first focus on larger items in consumers' budgets—mortgages, retirement savings, and auto purchases, for example. Consider the extent to which consumer education should be focused on developing tools to engage in optimizing decisions in particular choice contexts versus less cognitively taxing heuristics and rules of thumb. Finally, the Bureau should consider the extent to which the buyer behavior model used in marketing would be useful in this context.

37. The Bureau should establish an ongoing research program utilizing educational pilot programs with specific, objective goals in mind. Develop multiple pilots and approaches in differing in localities, target demographics, objective goals, and length. If feasible, attempt the same pilot in multiple locations with similar target groups, goals, and lengths to control for variation and assess the efficacy of the program.

133. The Bureau's Office of Innovation should create a new program analogous to its tech sprint program around financial education at FIs and in the private sector generally. These tech sprints should provide as a prize the opportunity for FIs to pilot these programs with supervision.

106. The Bureau should research the economic effects of student loans, especially on the financial well-being generally and financial maturation of younger consumers.

38. The Bureau should consider studying the efficacy of and subsequently experimenting with programs designed to educate and reward financial literacy for young consumers. One example could be a Presidential Youth Financial Fitness Program.

TF Member acknowledgement	Todd:	Jean:	Howard:	Bill:	Tom:
Please type "Approve," "Conditionally approve" (subject to specific edits), "Reject," or specific commentary (you may also use the Comment feature)					

CFPB-0027701

Consumer Reporting (#44, 45, 48, 126, 143, 152, and 153)

Congress enacted the Fair Credit Reporting Act ("FCRA") in 1970,[8] and the Dodd-Frank Act transferred rulemaking authority to the Bureau effective July 2011. The Bureau issued a consolidated restatement of the FCRA's implementing regulation, Regulation V,[9] but otherwise it has not engaged in significant rulemaking related to consumer reporting. The Taskforce recommends that the Bureau amend Regulation V in various respects and research certain consumer reporting issues, and it recommends that Congress amend the FCRA to address civil liability for class actions.

Rulemaking and Interpretive Issues

Between 1970 and 2011, the Federal Trade Commission ("FTC") issued numerous informal interpretations and guidance, including over 400 staff opinion letters and a staff compliance manual. The FTC initially consolidated many of these in its 1990 FCRA commentary,[10] on which the FTC sought public comment before publishing a final version in the Federal Register. FTC staff were revising the commentary when Congress passed the Dodd-Frank Act. To assist the Bureau and the public, the FTC published a compendium of its FCRA interpretations, often referred to as the "40-Year Report,"[11] that included updates to the 1990 commentary and other staff letters, informal opinions, and rulemakings.

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[8] 15 U.S.C. §§ 1681–1681x. Congress has amended the FCRA numerous times.

[9] Bureau of Consumer Fin. Protect., *Fair Credit Reporting (Regulation V)*, 76 Fed. Reg. 79307 (Dec. 21, 2011); Bureau of Consumer Fin. Protect., *Correcting Amendments*, 77 Fed. Reg. 67744 (Nov. 14, 2012); Bureau of Consumer Fin. Protect., *Finalization of Interim Final Rules (Subject to Any Intervening Amendments) Under Consumer Financial Protection Laws*, 81 Fed. Reg. 25323 (Apr. 28, 2016).

[10] Fed. Trade Comm'n, *Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act*, 55 Fed. Reg. 18804 (May 4, 1990) (rescinded July 2011).

[11] Fed. Trade Comm'n, *40 Years of Experience with the Fair Credit Report Act: An FTC Staff Report with Summary of Interpretations*, 2011 WL 3020575 (July 2011),

The degree to which the public may rely on the FTC's interpretations is uncertain. As with the prior 1990 commentary, the interpretations in the 40-Year Report have no binding legal effect, though courts have sometimes cited them as persuasive authority. The Bureau has stated generally that it gives "due consideration" to informal guidance that other agencies issued prior to the Dodd-Frank Act, but that it determines whether to apply such guidance "in light of all relevant factors," such as the formality of the guidance and its persuasiveness.[12] The public thus cannot predict reliably which aspects of the 40-Year Report the Bureau or a court may find persuasive. Consequently, consumers may be uncertain of their rights, while furnishers, consumer reporting agencies ("CRAs"), and users of consumer reports may be uncertain of their obligations.

The Taskforce recommends that the Bureau adopt the FTC's interpretations set forth in the 40-Year Report—specifically, that the Bureau identify the interpretations that it finds persuasive and to which it gives weight, updating them as necessary. Preferably, the Bureau would do so by codifying the interpretations as official commentary to Regulation V. Pending any rulemaking, the Bureau may wish to take an interim measure clarifying the aspects of the FTC's interpretations on which the public may rely. Such an approach would give the public and courts greater certainty about how the Bureau interprets the FCRA.

When Congress enacted the Dodd-Frank Act, the FTC was also revising the content and model disclosures for the FCRA's summary of consumer rights,[13] notice to furnishers of information to CRAs,[14] and notice to users of consumer reports.[15] The FTC issued a proposed rule that would have, among other things, added information relating to the then-new Furnisher Direct Dispute Rule, improved the notices' clarity, and deleted certain information that the FCRA does not require.[16] However, the FTC did not finalize the rule because its authority transferred to the Bureau. In 2018, the Bureau issued an interim final rule amending the summary of consumer rights to incorporate new statutorily required language,[17] but unlike the FTC's proposal, it has not generally revised the notices.

The Taskforce recommends that the Bureau engage in rulemaking to update the summary of consumer rights, notice to furnishers, and notice to users. As the FTC observed, adding

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https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf.

[12] Bureau of Consumer Fin. Protect., *Identification of Enforceable Rules and Orders*, 76 Fed. Reg. 43569, 43570 (July 21, 2011) ("The CFPB will give due consideration to the application of other written guidance, interpretations, and policy statements issued prior to July 21, 2011, by a transferor agency in light of all relevant factors, including: whether the agency had rulemaking authority for the law in question; the formality of the document in question and the weight afforded it by the issuing agency; the persuasiveness of the document; and whether the document conflicts with guidance or interpretations issued by another agency.").

[13] FCRA section 609(c) (15 U.S.C. § 1681g(c)).

[14] FCRA section 607(d)(2) (15 U.S.C. § 1681e(d)).

[15] *Id.*

[16] Fed. Trade Comm'n, *Summary of Rights and Notices of Duties Under the Fair Credit Reporting Act*, 75 Fed. Reg. 52655 (Aug. 27, 2010).

[17] Bureau of Consumer Fin. Protect., *Summaries of Rights Under the Fair Credit Reporting Act (Regulation V)*, 83 Fed. Reg. 47027 (Sept. 18, 2018).

information about the Furnisher Direct Dispute Rule and revising the language on the notices could improve consumers' understanding of their rights and furnishers' and users' understandings of their duties. It also may be helpful to consider how the language that Congress added to the summary of consumer rights in 2018 interacts with other information on that form. To ensure the revised disclosures' efficacy, the Bureau should conduct consumer testing of at least the summary of consumer rights, if not all three notices.

The Bureau should also clarify the obligations of CRAs and furnishers when responding to consumer disputes. CRAs and furnishers report that they receive many repeated, frivolous disputes, with credit repair organizations submitting a large portion. But they express reluctance to use the FCRA's streamlined dispute-response procedures applicable to "frivolous or irrelevant" disputes because of uncertainty about when they have satisfied the requirement to "reasonably determine" that a dispute is in fact frivolous or irrelevant.[18] Investigating and responding to disputes thus reportedly imposes a greater burden on CRAs and furnishers than may be necessary to comply with the law and may lead to the removal of accurate information because the investigation is not completed in a timely manner. It also gives them an incentive respond superficially to disputes—such as removing accurate negative information from a consumer's file to avoid additional disputes or rejecting a meritorious dispute without sufficient investigation. These outcomes are harmful generally to consumers and the market because they reduce the amount of accurate information available to creditors and other users of consumer reports.

The Bureau should clarify through rulemaking what constitutes a reasonable determination that a dispute is frivolous or irrelevant. In particular, it may be beneficial for the Bureau to identify examples of disputes that are (or are not) frivolous or irrelevant and the steps that CRAs or furnishers must or may take in various factual circumstances. The FTC has used this approach in some of its Guides, stating a general principle and then providing examples of its application.[19] Relatedly, with respect to disputes that are not frivolous or irrelevant, the Bureau should consider clarifying the FCRA's requirement that a CRA or furnisher conduct a "reasonable [re]investigation" of disputed information.[20] Again, the public may benefit from examples of disputes regarding various types of alleged furnishing errors and steps that would (or would not) constitute a reasonable investigation.

Research Issues

The Fair and Accurate Credit Transactions Act of 2003 required, among other things, the FTC to conduct a national study of the accuracy and completeness of consumer credit reports. As discussed in chapter 11, the FTC's 2012 report summarized findings from the first national study designed to engage all the primary groups that participate in the credit reporting and scoring process.[21] Stakeholders commonly cite to this report, including its finding that at least 24 percent of credit reports potentially contained errors.[22]

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[18] FCRA section 611(a)(3) (15 U.S.C. § 1681i(a)(3)); 12 C.F.R. § 1022.43(f).

[19] *See, e.g.*, Green Guides, 16 CFR Part 260, and Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.

[20] FCRA section 611(a)(1)(A) (15 U.S.C. § 1681i(a)(1)(A)); 12 C.F.R. § 1022.43(a).

[21] Fed. Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2012),

The FTC and the Bureau continue to engage with stakeholders regarding the accuracy of consumer reports,[23] and the Bureau has indicated its intention to conduct a follow-up to the FTC's influential 2012 report. As discussed in chapter 11, the Taskforce wholeheartedly endorses these endeavors because they will add greatly to the Bureau's and the public's knowledge regarding the impact of recent changes in consumer reporting. The Taskforce recommends that the Bureau update the FTC's 2012 study periodically, so that it can assess how the accuracy and completeness of consumer reports change over time, as well as monitor trends in the types of furnished information. In addition, while the FTC's 2012 study addressed accuracy concerns that existed at the time, the Taskforce recommends that the Bureau also focus on how consistently various types of information are included in consumer reports, in light of the financial system's increasing reliance on new technology and expanded datasets. These studies could provide valuable insight to the consumer reporting market, including to the accuracy and completeness of any non-traditional, or alternative, data that may be furnished.

The Bureau should specifically study the tradeoff between accuracy and completeness implicit in the NCAP requirement for a minimum amount of identifying information before pubic record information is included in credit reports. It should also study the problem of "file fragments" more generally.

As part of these studies, the Bureau should consider consumer reporting issues that arise in connection with a consumer's bankruptcy. Commenters to the Taskforce RFI, as well as the recent American Bankruptcy Institute ("ABI") Commission on Consumer Bankruptcy, noted that the interplay of the FCRA and the Bankruptcy Code can raise questions about how a creditor complies simultaneously with both laws.[24] The FCRA contains two discrete provisions regarding bankruptcy,[25] but they do not state how a creditor must furnish accurate and complete information about debts owed by consumers who have filed bankruptcy or are co-liable with another person who has filed bankruptcy. The ABI Commission's report identified several specific issues, including examples of potentially inaccurate furnishing or inconsistent reporting methods, though it noted that it had not yet explored whether these are widespread problems. The Commission recommended further study.

The Taskforce echoes the ABI Commission and recommends that the Bureau research issues in consumer reporting related to bankruptcy. In particular, the Bureau should investigate the

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https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

[22] *Id.* at 63.

[23] For example, the FTC and the Bureau held a joint workshop in 2019 regarding accuracy in consumer reporting. *See* Fed. Trade Comm'n, *Accuracy in Consumer Reporting Workshop* (Dec. 10, 2019), https://www.ftc.gov/news-events/events-calendar/accuracy-consumer-reporting-workshop.

[24] Am. Bankruptcy Inst., *Final Report of the ABI Commission on Consumer Bankruptcy* § 5.05 (2019), https://consumercommission.abi.org/commission-report.

[25] FCRA section 605(a)(1) (providing that consumer reports generally must exclude information about bankruptcy cases that arouse more than ten years before the date of the report), (d)(1) (stating that any consumer report that contains information about a bankruptcy must include the specific chapter of bankruptcy and, if applicable, that the consumer withdrew the bankruptcy case before a final judgment). (15 U.S.C. § 1681c(a)(1), (d)(1).) The FTC's 40-Year Report provides various guidance regarding bankruptcy (see Comments 605(a)(1)-1 through -3, 607(b)-6, and 611(a)-3), but they are limited in scope and, as discussed above, are not binding.

accuracy and completeness of information furnished regarding debts in bankruptcy and consider whether potential uniform reporting standards are necessary. Depending on the Bureau's findings, it may wish to provide guidance to stakeholders or engage in rulemaking under the FCRA, or Congress may need to amend relevant statutes.

Supervision

As part of its supervision of CRAs, the Bureau should examine the success of consumers' request for security freezes. In 2018, Congress enacted the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA"), which prohibited nationwide CRAs from charging a fee to place, remove, or temporarily lift a security freeze. The Taskforce notes that the CFBP Examination Manual includes an assessment of compliance with requests for security freezes. However, the Bureau received feedback through its Request for Information that some consumers may nonetheless have difficulty placing or removing security freezes, and the volume of consumer complaints on this issue supports a degree of concern..

Legislation

The FCRA affords consumers a private right of action and the ability to seek damages for violations. Unlike other consumer protection statutes, however, it does not have any limitations on class action awards. For example, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act , and the Electronic Funds Transfer Act each limits class action awards to the lesser of $500,000 or $1,000,000 or one percent of the creditor's net worth.[26] To promote consistency among consumer protection laws, the Taskforce recommends that Congress amend the FCRA to impose appropriate limits on civil penalties in class actions.

Recommendations:

[26] TILA § 130(a)(2)(B), (15 U.S.C. § 1640(a)(2)(B), ECOA § 706(b), (15 U.S.C. 1691e(b); FDCPA § 813(a)(2)(B), 15 U.S.C. § 1692k(a)((2)(B); EFTA §916(a)(2)(ii), (15 U.S.C. § 1693m(a)(2)(B).

44. ***The Bureau should engage in rulemaking to clarify the obligations of CRAs and furnishers with respect to disputes under the FCRA. In particular, the Bureau should provide guidance on when an entity has "reasonably determine[d]" that a dispute is frivolous or irrelevant, and it should consider clarifying what constitutes a "reasonable investigation" of disputed information. The Bureau should consider providing examples of conduct that does, and does not, satisfy these standards in various factual circumstances.***

45. ***The Bureau should engage in rulemaking to codify as Commentary to Regulation V the FTC's interpretations of the FCRA, which are set forth in the FTC's 40-Year Report. The Bureau should assess whether any of the interpretations requires updates or revisions.***

143. ***The Bureau should engage in rulemaking to update and revise the FCRA's summary of consumer rights, notice to furnishers of information to CRAs, and notice to users of consumer reports. The Bureau should conduct consumer testing on the summary of consumer rights to ensure its efficacy, and it should consider testing the notices to furnishers and users***

48. The Bureau should update periodically the studies of credit reporting errors that the FTC conducted pursuant to the Fair and Accurate Credit Transactions Act. The Bureau's studies should include a focus on whether consumer reports include all the types of information that they should include.

153. The Bureau should determine through its examination authority whether consumers are able to obtain and remove security freezes appropriately.

152. The Bureau should research consumer reporting issues that arise in connection with a consumer's bankruptcy.

126. Congress should adopt class action civil penalty limitations for FCRA, to bring the FCRA civil liability provision in line with similar laws.

Cost-Benefit and Bureau Activities Analysis (# 17, 18, 20, 21) #19 missing

To improve regulatory decision-making, transparency, accountability, and credibility, the Bureau should incorporate cost-benefit analysis into its regulatory program to a greater degree. In order to achieve these goals, the Bureau should adhere to established principles and best-practices of cost-benefit analysis and include CBA analysts and economists in regulatory deliberations as early in the process as possible. To maximize the benefits of regulatory CBA, the analysis should be conducted prior to a final selection of the regulatory alternatives. To enhance the objectivity of the Bureau's analyses, the Bureau should establish a system of independent review of its analyses.

An established policy of adhering to a set of principles and best practices of CBA standardizes important elements and provides a set of guidelines to which agencies are held accountable. The fundamental principles of CBA involve an analysis of the problem and relevant market failures; the identification of alternative solutions to the problem; an analysis of the costs and benefits of each alternative that is quantified and monetized to the maximum extent possible; and a recommendation to select the policy that maximizes net benefits. Other principles and best practices provide guidance on more technical matters, such as, among other things, establishing a baseline, discounting costs and benefits to present value, and the treatment of uncertainty. Still other principles and best practices of CBA are intended to advance the transparency of the rulemaking, such as providing clear presentation of the costs and benefits of regulations and clearly articulating analytical inputs to ensure reproducibility. The principles and best practices of CBA are listed and discussed at length in chapter 13.

Cost-benefit analysis must be able to accommodate qualitative information when quantitative and monetized values are unavailable. These qualitative benefits include distributional concerns, fairness, equity, and human dignity. Because of the importance of inclusion and credit availability to the Bureau's mission, the Bureau should evaluate any positive or negative effect on inclusion as part of its cost-benefit analyses as appropriate.

That said, CBA is most effective at achieving the goals stated above when all benefits and costs are quantified and monetized. As noted in Chapter 13, the CFPB is still a young agency and many of the benefits associated with CFPB regulations are difficult to quantify and monetize due to a lack of quality research. The Bureau should endeavor to conduct or sponsor quality research intended to develop reliable estimates of the benefits of avoided consumer harms.

In order to maximize the impact of regulatory CBA, it is important that the appropriate internal procedures be in place to ensure the lessons of the analysis are fully socialized in the agency and amongst decision-makers. To do this, economists and other analysts responsible for developing the CBA should be incorporated into regulatory deliberations as early as possible – and the decision-making process should allow for the analysis to be completed prior to final option selection.

Finally, to promote accountability the Bureau should subject its analyses to a review by an independent body. This review could be accomplished by existing regulatory authorities in the executive branch, such as the Office of Information and Regulatory affairs (OIRA) which performs this task for Executive regulators. Alternatively, the Bureau could establish its own office that operates independent of the offices responsible for analytical development and regulatory decision-making. The Bureau should also consider codifying the principles and best practices of CBA in a rulemaking to further enhance the accountability of its analyses.

The Taskforce notes that many of its recommendations are consistent with recommendations made by the Administrative Conference of the United States (ACUS) in its report, *Benefit-Cost Analysis at Independent Agencies.* In its report, ACUS recommended that independent agencies consider adopting principles of cost-benefit analysis akin to OMB Circular A-4, consultation with OIRA, and early incorporation of CBA into decision-making processes. ACUS also recommended that independent agencies should quantify and monetize benefits and costs whenever possible; produce transparent and reproducible estimates; and include clear summary information about the estimated costs, benefits, and transfer payments.[27]

Recommendations:

1. ***The Bureau should adopt principles and best-practices like those identified in chapter 13 in a public-facing statement to promote accountability and transparency. The Bureau could develop these principles and best practices on their own or voluntarily adopt OMB Circular A-4. The Bureau should consider implementing these principles and best practices via rulemaking. (#16)***
2. ***The Bureau should establish independent review of its regulatory cost-benefit analyses by either staffing an office of cost-benefit analysis at the Bureau and establishing the appropriate internal controls to promote independent review, or by voluntarily submitting its analyses to OIRA for review. The Bureau should analyze these options and proceed accordingly. (#17)***
3. ***The Bureau should conduct or sponsor high-quality empirical work to monetize the reduction in risk of consumer harms that comprise the benefits of its regulations. (#18)***
4. ***The Bureau should involve staff responsible for conducting regulatory CBA in the development of the regulation at the earliest possible point in the process. The analysis should be completed prior to any final option selection is made, so that decision-makers are able to consider the results of the analysis when deciding. (#20)***
5. ***Because of the importance of inclusion and credit availability to the Bureau's mission, the Bureau should evaluate any positive or negative effect on inclusion as part of its cost-benefit analyses as appropriate. (#21)***

Deposit Accounts

6 recommendations	**X Preambles**	**Status: Waiting on Greg**

The Taskforce endorses a faster payments system
Apply same Reg E rules to prepaid cards and debit cards
Take all reasonable steps to encourage faster payments, including updating Reg CC
Give mobile-deposited checks the same clearance time requirements as other methods

[27] Admin. Conf. of the U.S., Recommendation 2013-2, *Benefit-Cost Analysis at Independent Regulatory Agencies*, 78 Fed. Reg. 41,355 (July 10, 2013). Pg. 56. Report can be accessed at https://www.acus.gov/sites/default/files/documents/Copeland%20Final%20BCA%20Report%204-30-13.pdf.

Treat deposits to prepaid cards the same as deposits to checking accounts
Eliminate the 6-transaction limit on savings accounts

Disclosures

7 recommendations	2 Preambles	Status: 6 Alex assumed & 1 circulated

Disclosures (#32-33, 35, 67, 98, 148, 150)

Disclosure is one of the key tools of consumer financial protection, but effective disclosures are hard to come by. To make informed financial decisions consumers must be exposed to, pay attention to, comprehend, accept, and then retain information necessary to evaluate a transaction. With so many steps in the decision-making process there is ample opportunity for intervention and failure, leading to less efficient outcomes for consumers. For an in-depth discussion of disclosures please see Chapter 7 of Volume I of this report.

The role of government in regulating financial disclosures is contentious because the potential for market interventions that harm rather than help consumers is high, usually because of a lack of understanding of what effective disclosures and related policies are. Simply adding another required disclosure to a stack of already monotonous and unreadable paperwork does not result in increased consumer protection. New research on disclosures, consumer attention, and the economics of information discussed in Chapter 7 as well as decades of experience with the current regime lead to the conclusion that the Bureau and other financial regulators should re-think their overall approach to disclosures, especially when making new rules. Where possible the Bureau should encourage principles-based rules rather than the overly prescriptive regulations that led us to our troubles today. Mandatory disclosures should only contain the minimum information that is relevant and necessary for consumers to understand at the time that they make a decision, and subsequent important information should be readily available to consumers when they need it. Disclosed information does not have to include everything in the contract – that's why the contract exists and consumers have the opportunity to read it in full. The Bureau should conduct research on the availability of information, including timely or ongoing access to information and retainability, and conduct more testing on usability of consumer financial disclosures. As appropriate, based on research, the Bureau should make necessary recommendations to Congress for disclosure reform.

Shopping around for any product or service is a great way to find the best option to suit a consumer's needs and one of the key contributions of consumer financial disclosure regulations is offering a standardized way to do so via measures like the APR. See Chapter 7 for a longer discussion of the benefits of shopping. All disclosure rules or regulations that the Bureau and others consider should be focused on enabling consumers to shop and make comparisons to find the product that best suits their needs. Increasing the opportunity for shopping will increase competition amongst product providers, thereby lowering prices and resulting in consumer benefit.

Many of our rules and regulations around disclosures were written decades before the widespread adoption of digital technology. Today, some customers would rather take out a mortgage online at home or on their phone than in person at a bank, and the implications for how substantial disclosures should disseminated and processed by the consumer are unclear. The Bureau should conduct research on electronic disclosures and how they can be delivered in ways that benefit consumers, particularly looking at the varieties of experience consumers can have with mobile technology and smart speakers.

America's status as a melting pot of people, cultures, and languages can only survive if people are given the opportunity to thrive. However, some regulations restrict or discourage the advertising of products because of a perceived inability to disclose necessary information to consumers, especially in mortgage markets. To combat this and provide equal access to credit and housing for people who do not speak English, safe harbors should be provided to responsible actors for foreign language marketing of mortgages. There is no reason why a translation of materials from English to another language should run afoul of consumer protection regulations.

Beyond disclosures at the time of purchase or contract signing, there are a litany of required disclosures in advertising. Television commercials, radio spots, and print ads often require disclosure in the unreadable fine print or by actors sped up to incomprehensible speeds. This approach to advertising disclosure is ineffective and cumbersome, the butt of many jokes, and downright annoying to most consumers. The Bureau should review advertising disclosure requirements, especially those involving advertising trigger terms, with the purpose of avoiding misleading advertising in presented terms and to require presenting additional information necessary to prevent deception. Instead of the overly prescriptive rules of the past, a principles-based approach enforced by UDAAP authority will streamline advertisements, allowing entities to advertise their products effectively and consumers to understand what is important to them in the moment.

Recommendations:

32. The Bureau should only issue disclosure-related rules guided by research into what information is important to consumers and should use this research to re-think its overall approach to disclosures. The Bureau should conduct research on the availability of information, including timely or ongoing access to information and retainability. The Bureau should conduct more testing on usability of consumer financial disclosures. As appropriate, based on research, the Bureau should make necessary recommendations to Congress for disclosure reform.

33. The Bureau should conduct research on electronic disclosures and how they can be delivered in ways that benefit consumers.

35. To make disclosures more useful, the disclosures mandated by Congress and the Bureau should consist of only the minimum information consumers need to make an informed decision and to verify they received the product terms promised.

67.

The Bureau should develop a foreign language disclosure scheme that allows FIs to reach out into underbanked/unbanked consumer communities without forcing the FIs to maintain an underlying foreign language infrastructure.

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98. The Bureau should revise credit advertising disclosure requirements, especially streamlining advertising trigger terms, with the purpose of avoiding misleading advertising in presented terms and to require presenting additional information necessary to prevent deception.

148. Congress and the Bureau should focus shopping disclosures on reducing the cost to consumers of locating the product or service they want.

TF Member acknowledgement	Todd:	Jean:	Howard:	Bill:	Tom:
Please type "Approve," "Conditionally approve" (subject to specific edits), "Reject," or specific commentary (you may also use the Comment feature)					

Disclosures for Adverse Action (#46)

The FCRA and ECOA both contain requirements for notices of adverse action in certain situations. Although the FCRA is the older law, its adverse action notice requirement was amendment by amendment over 25 years after the ECOA's adverse action notice requirements. Commentary to Regulation B that was appropriate when first drafted has become obsolete and poses unintended compliance obligations for creditors and sometimes limits the useful information available to consumers.

Specifically, the FCRA's requirements overlap with similar requirements in the ECOA, as implemented by Regulation B, sometimes creating uncertainty. Regulation B requires an adverse action notice to include a statement of the specific reason for the action, and it identifies as insufficiently specific a statement that the consumer failed to achieve the qualifying score on the creditor's credit scoring system.[28] When the Federal Reserve Board promulgated this rule in 1976, the provision helped ensure that consumers learned the reasons underlying their non-qualifying score.[29] The prohibition against stating that the consumer "failed to achieve a qualifying score on the creditor's credit scoring system" has been widely understood to similarly prohibit a reason relating to not achieving a qualifying score on *a credit bureau's* scoring system.

But Congress has since amended the FCRA to require that, when a person takes adverse action based on information in a credit report, the person disclose to the consumer the key factors that

[28] 12 C.F.R. § 1002.9(a)(2)(i), (b)(2).

[29] Bd. of Governors of the Fed. Res. Sys., *Amendments to Regulation B to Implement the 1976 Amendments to the Equal Credit Opportunity Act*, 42 Fed. Reg. 1242, 1248-49 (Jan. 6, 1977).

adversely affected the consumer's credit score.[30] Consequently, the FCRA ensures that consumers learn the underlying reasons for their non-qualifying credit scores, and there is no need for Regulation B to require disclosure of the same information, duplicating the information in the FCRA portion of the combined notice. The Bureau should therefore amend Regulation B to permit a creditor to state, as a specific reason for denial, that the consumer failed to achieve a qualifying credit score when the notice also contains the key factors as part of its FCRA notice.

This change, which would apply only when the creditor gives the key factors for a low credit score, would provide to a consumer both the valuable information that a low credit score was a principal reason for adverse action and the key factors preventing the score from being higher. Without this change, creditors are left trying to figure out which ECOA reasons to list based on the credit score key factors and which to list based on non-credit score reasons for denial – all while staying within the maximum four reasons the Regulation B commentary recommends. This change would simplify compliance for creditors and provide as much or more information to consumers who are denied credit.

Commenters to the Taskforce RFI raised a second compliance issue concerning whether and how a retail seller complies with the ECOA's adverse action notice requirements when the seller's sole reason for denial was that all indirect lenders refused to purchase the consumer's contract. For example, automobile dealerships may deny a consumer's credit application because all prospective indirect creditors that reviewed the application declined to purchase the proposed contract from the dealer. Dealerships question whether they must send an ECOA adverse action notice if the indirect creditors already provide one and, if so, what they should identify as the reason for denial.

Regulation B excuses a dealership or other retail seller from sending an adverse action notice if another party sends one on its behalf. Most potential assignees will not agree to complicate their own adverse action notices by meeting the requirements for the dealer, however.[31] Although some dealerships do not send adverse action notices when they know that the banks and finance companies that denied the application will do so, this is probably not in compliance with Regulation B. Other retail sellers struggle to provide the principal, specific reasons for denial because they do not know them. No law requires indirect creditors to share their reasons with the retail seller, and many finance sources decline to do so. Moreover, each creditor reviewing the consumer's application will have its own underwriting criteria and its own reasons for adverse action. For example, one creditor may have a minimum credit score threshold the consumer does not meet, while another creditor will accept that score but will not deny the application based on the consumer's payment-to-income ratio or excessive mileage on a used car. The retail creditor is often at a loss to describe accurately another creditor's reasons for denial. Its only accurate reason is that it was unable to find a finance source to buy the consumer's contract on acceptable terms.

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[30] FCRA sections 615(a), 609(f)(1) (15 U.S.C. §§ 1681(i)(a), 1681g).

[31] The commentary to 12 C.F.R. § 1002.9(g) requires a creditor giving an adverse action notice on behalf of another creditor (such as a retail seller) to give the name an address of each creditor and either: (a) disclose the applicant's right to a statement of reasons within 30 days, including the retail seller's phone number for making such a request and the right to have any reason given orally confirmed in writing; or to give the "primary reasons each creditor relied upon in taking the adverse action – clearly indicating which reasons relate to which creditor." 12 C.F.R. Part 1002, Supp. I, 9(g)-1.

The commentary to Regulation B's definition of "creditor" excuses from the adverse action requirement automobile dealers and others "who do not participate in credit decisions but who only accept applications and refer applicants to creditors, or select or offer to select creditors to whom credit requests can be made."[32] Although this comment may have been intended to excuse retail sellers from adverse action notice requirements, it does not do so when the retail seller is also the original creditor (as the retail seller is when extending credit on a retail installment contract) and not merely referring applicants to creditors.

The Bureau should amend Regulation B to clarify that, if an indirect creditor provides an adverse action notice to the consumer in this situation, the retail seller does not also need to provide one. This approach eliminates inefficiency and even potential misinformation, without reducing the accurate and useful information available to consumers.

Recommendations:

46. The Bureau should amend Regulation B to:

    a. Clarify that a reason for adverse action relating to an insufficient credit score meets the standard for a "principal, specific reason" when the creditor also provides the four or five "key factors" that kept the credit score from being higher, as required by the FCRA; and

    b. State that notification of adverse action is not required by a retail seller that does not make an underwriting decision and denies an application only because no third-party creditor agreed to purchase the contract, if each creditor taking adverse action complies with the adverse action notification requirements, directly or through a third party.

[32] 12 C.F.R. Part 1002, Supp. I, 2(*l*)-2.

Electronic Signature and Document Requirements

3 recommendations	1 Preamble	Status: Circulated

Eliminate antiquated ESIGN requirements
Provide guidance on "reasonable demonstration of access"
Address ESIGN requirements for TILA disclosures and ECOA AANs

It says this was circulated, but it is not stored in our SharePoint repository. Can anyone find this?

Emergency Authority

Like most industries, financial services can be disrupted during times of emergency – particularly in times of natural disaster. In these particularly acute periods, the Bureau should have the necessary flexibility to reduce barriers to recovery and access to financial services. The Bureau should also have the flexibility to shuffle its priorities in times of crises to meet acute needs, even if it means missing some statutory deadlines on projects unrelated to the emergency response.

During an emergency, it may become impracticable for creditors to comply with some the Bureau's regulations, potentially disrupting the supply of credit when it may be in high demand. To ensure that consumers have access to credit in times of emergency, the Bureau should adopt a rule of general applicability that will authorize it, respecting rules it has adopted or laws it can interpret, to suspend or modify specific provisions during a time of declared emergency when it determines that the emergency has made compliance impracticable. When invoking this authority, the Bureau should publicly announce its action, the scope and duration of the suspension or modification, and the basis for its determination of impracticability.

The Bureau could provide additional flexibility during an emergency if it were able to provide temporary relief from state regulations. For example, the Bureau has authority during a period of national pandemic to temporarily suspend the operation of state laws that require in-person real estate closings. The Bureau should explore the pre-emptive powers it has to identify additional temporary relief measures it could take in an emergency.   Congress should consider giving the Bureau additional preemption authority over state laws that hinder financial transactions in an emergency.

During an emergency, time is of the essence and administrative procedure can delay necessary services. Emergencies are often associated with periods of confusion and communication can be difficult. The Bureau should consider automatic policy responses (or automatic stabilizers) to the extent possible. Since such policies would be in place prior to an emergency, they can reduce uncertainty and reliance on emergency communications – and for these reasons, automatic policy responses are superior to ad hoc enforcement discretion. For example, whenever a state of emergency closes a courthouse, the time period requirement for information that can only be obtained from a courthouse should be automatically extended until the courthouse reopens or a reasonable time thereafter.

Recommendations:

xx. ***(xx) The Bureau should adopt a rule of general applicability that will authorize it, respecting rules it has adopted or laws it can interpret, to suspend or modify specific provisions during a time of declared emergency when it determines that the emergency has made compliance impracticable. When invoking this authority, the Bureau should publicly announce its action, the scope and duration of the suspension or modification, and the basis for its determination of impracticability.***

xxi. ***(xx) The Bureau should explore the preemptive powers it has over state regulations to identify ways it might provide additional relief from state laws hindering financial transactions in an emergency. Likewise, Congress should consider giving the Bureau additional preemption authority over such state laws.***

xxii. ***(xx) The Bureau should implement automatic policy responses that trigger during Presidentially declared disasters.***

Enforcement: Civil Penalty Recommendations (#12-14)

Congress has given the Bureau extraordinary powers to collect civil penalties. A "knowing" violation can result in a fine of $1 million per day (or per consumer affected). In the great majority of cases, the civil penalty assessed in a settlement is less than the maximum allowed by law, and it is usually far below the maximum allowed. But the answer to how the Bureau determined the exact lesser amount is often hard to discern. This uncertainty has costs and, of particular concern, can deter innovation, inclusion, and competition.

The Dodd-Frank Act contains a short list of mitigating factors, but the general nature of these factors makes it hard to know how the Bureau applies them, much less whether they are applied consistently. Other financial regulatory agencies have taken three actions to improve the consistently and transparency of civil penalty demands, which the Bureau has declined to adopt.

In order to bring greater predictability to enforcement actions and to make clear the Bureau's enforcement priorities, the Taskforce recommends that the Bureau adopt greater guidance on civil penalties and a "matrix" to indicate the factors to be considered, as other financial regulatory agencies have done.

The first is adopting the FFEIC Interagency Policy Regarding Assessment of Civil Money Penalties (1998 FFIEC Interagency Policy). The 1998 FFIEC Interagency Policy articulates 13 relevant factors that the agencies should consider in assessing civil penalties, which provide further guidance on the general statutory factors. The Bureau has declined to adopt the 1998 FFIEC Interagency Policy and states that considering these 13 factors is optional.

The second is a matrix of how, in concrete terms, the agency should weigh the mitigating and aggravating factors listed in the 1998 FFIEC Interagency Policy. The prudential regulators have long used matrices as guidance. The matrix ensures that these 13 factors are considered in civil penalty decisions and enhance consistency of decisions. But the prudential regulators note the matrix is not substituting a mathematical formula for sound judgment. Using a matrix will never produce perfect justice, and each case will have its own unique factors to consider. Nevertheless, providing greater guidance and predictability will advance the goals of fairness, predictability, and the rule of law.

Although the Bureau and the company may disagree on the number of violations or on which cell of the matrix should be applied to specific allegations, the matrix almost certainly would produce more consistent and transparent results. The Bureau has declined to adopt a matrix.

Third, the FDIC and OCC have published statements on how they will apply each of the factors in the 1998 FFIEC Interagency Policy as part of the public Examination Manual (FDIC), general Policies and Procedures Manual (OCC), or Supervision and Regulation Letters (Federal Reserve Board). In contrast, the Bureau's Enforcement Policies and Procedure Manual, which discusses its civil penalty policy and procedures, is a non-public document. Moreover, the Bureau's Enforcement Manual offers scant guidance on how to develop a civil penalty recommendation. The manual instructs the staff to include a recommended penalty or range in its memorandum seeking authority to settle or sue but does not ask the staff to explain why the recommended range is appropriate.

The Taskforce also notes that agencies have different civil penalty limits for violations of unfair, deceptive, or abusive acts or practices, which can give rise to real and perceived unfairness and uncertainty. The FTC lacks general authority to assess a civil penalty for an unfair or deceptive practice. The OCC and FDIC take similar approaches to each other regarding penalties. In contrast, the Bureau states that it might consider whether a proposed penalty would be comparable to a penalty assessed by other regulators, but staff should rely primarily on the statutory maximum.

The Taskforce sees no public policy benefit from these differences in methods and authorities for setting civil penalties based solely on the happenstance of the agency that brings the action. Congress should reconcile the civil penalty authorities for the prudential regulators, the Bureau, and the Federal Trade Commission. The lack of structure in ensuring consistent approaches to civil penalties is reminiscent of the disparity in sentencing by federal courts, which was address by Congress's creation of a bipartisan United States Sentencing Commission. The Taskforce believes that a formal entity similar to the Sentencing Commission is unnecessary in this context; instead, the CFPB is encouraged to follow the lead of the other financial regulators and adopt a similar matrix in coordination with those agencies.

We observe that a great imbalance exists in the statutory remedies available to the FTC and the Bureau for the same violation, with the Bureau holding the power to impose higher sanctions with fewer procedural hurdles and delay than the FTC. This imbalance can lead to pressure on one agency to defer to another, not based on the expertise of the agency, but rather which agency has mightier enforcement powers and the ability to impose heavier sanctions. Or the agencies may each bring coordinated actions, which the Taskforce does not favor because enforcement "double-teaming" a company squanders scarce enforcement resources.

Although the FTC can seek a civil penalty for unfair or deceptive acts and practices, it can do so only in the narrow circumstances established in Section 5(m)(1)(b) of the FTC Act[33]This section requires the Commission to first determine in an adjudicated administrative action that a practice is unfair or deceptive and to then put a different company on actual notice of the Commission's administrative determination before going to federal court to seek a civil penalty against the second company.[34] Because this procedural requires a specific finding that a particular practice is unfair or deceptive, and because many Commission decisions lack such findings, it has fallen into disuse..

The process for obtaining consumer restitution under Section 19 of the FTC Act is even more problematic. The FTC must first obtain a ruling in an administrative action and, after all judicial review is complete, litigate the violations a second time in federal district court, proving that the conduct was not only unfair or deceptive but also that a reasonable person would have known that the conduct was "dishonest or fraudulent."

To avoid the difficulties of Section 19, the FTC has used its authority under Section 13(b) to seek permanent injunctions that not only seek to bar unfair or deceptive practices but also to impose various kinds of monetary equitable relief, such as restitution and rescission of contracts, to remedy past violations. But the legality of this practice is currently under consideration by the Supreme Court and, as a result, it is in jeopardy.

[33] 15 USC 45(m)(1)(b).
[34] 15 USC § 57b.

As a result of this imbalance in powers between the CFPB and FTC, the Taskforce recommends that Congress act to make the system of civil remedies more consistent and coherent among the prudential financial regulators, the FTC, and the CFPB. The Taskforce's recommendation is contingent on the Supreme Court, when considering the Commission's authority under Section 13(b) this term, holding that the FTC's powers are not consistent with our recommendation below.

The agencies should be able to order consumer redress for any violation of law, including an unfair, deceptive, or (for the Bureau) abusive act or practice if the conduct is dishonest or fraudulent. The standard for a penalty should be higher. The FTC Act limits that agency, wisely, we believe, to seeking a civil penalty in situations where the company knew or should have known its conduct was illegal, such as a violation of a rule.[35] Similarly, the Commission can obtain consumer redress only for acts that are dishonest or fraudulent. We recommend that Congress, in reconciling the powers of the Bureau and the Commission, employ the dishonest-or-fraudulent standard for remedies amounting to a penalty, including the equitable relief of disgorgement.

Recommendations:

1. ***The Bureau should expressly adopt the 1998 FFIEC Interagency Policy Regarding Assessment of Civil Money Penalties. (#12)***

2. ***The Bureau should adopt and publish a civil penalty matrix based on the factors in 1998 FFIEC Interagency Policy and consistent with the matrices of the prudential regulators, together with public guidance to enforcement staff on how to apply the factors in the matrix. (#13)***

3. ***Congress should reconcile the civil penalty and consumer redress authorities of the prudential regulators, the Bureau, and the Federal Trade Commission, including giving the FTC statutory authority for obtaining consumer restitution for any unfair or deceptive act or practice that is dishonest or fraudulent and granting civil penalty authority to the Bureau and prudential regulators for unfair or deceptive acts and practices that are also dishonest or fraudulent or that violate another statute or regulation. (replacement for #12)***

Equal Access to Credit (#60-61, 76, 121)

The history of consumer credit and lending is fraught with discrimination on the basis of immutable human characteristics that have no place in the evaluation of creditworthiness. In the mid-

[35] 45 U.S.C. §45m(1).

1970s, Congress enacted and amended the Equal Credit Opportunity Act (ECOA)[36] to outlaw discrimination on nine prohibited bases. Per Regulation B, which implements the ECOA, they are "race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act."[37] The ECOA was a key victory in the push for civil rights in financial markets, along with the Fair Housing Act, the Community Reinvestment Act, and the Home Mortgage Disclosure Act.

However, the main antidiscrimination rules in Regulation B have remained largely unchanged since 1977, and what concerned Regulation B's drafters enough to be codified over forty years ago may be no longer relevant and may have unintended consequences. Initially conceived as a law to protect women from sex and marital status discrimination, the ECOA, in conjunction with other legal and social movements toward equality, has been largely successful in significantly reducing disparities in credit access between men and women. The Federal Reserve Board found in a report published in 2007 that credit scores vary little by sex, which strongly suggests that women and men have approximately the same access to credit.[38] It would be difficult for women to have the same average credit score as men if they experienced a meaningful difficulty in obtaining credit.

Now, as sex roles are destabilized and activities traditionally associated with being a woman are destigmatized, some of the specific requirements, prohibitions, and constraints laid out in the ECOA may be harmful or unnecessary. One such precaution that was useful in preventing discrimination at the time but has since become both obsolete and a hindrance to financial inclusion is the prohibition on considering whether an applicant has a telephone listing in their own name. Initially the ban was necessary because of the prevalence of husband-registered telephone lines in married households, but now mobile numbers are typically associated with an individual rather than a household. Since 2016, a majority of households have only cellphone service.[39] The ban may restrict a creditor's ability to consider alternative data that would benefit the consumer, such as the use of automated records of wireless phone numbers and the owner's name. As the utility of alternative data as a vehicle for economic inclusion continues to grow, we must be cognizant of the stifling effects of overly-prescriptive regulations that have not been modernized to reflect the world we live in today or future-proofed with a principles-based approach to adapt to the world of tomorrow.

In a similar vein, the Bureau should remove the requirement that creditor must consider the credit history of accounts in the name of a spouse for which the applicant is not contractually liable but is authorized to use. This was an important protection in 1977, when the credit history that married women helped build was typically listed only under their husband's name. This problem was compounded if the woman was widowed or divorced, because they often lost all access to the credit history at the time they most needed it. The risk of harm to an applicant of being penalized by a

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[36] 15 U.S.C. § 1691(a) (2018).
[37] 12 CFR §1002.1 (b)
[38] The Federal Reserve Board, Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit (August 2007), https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/performance.htm.
[39] National Center for Health Statistics, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July – December 2016 (May 2017), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf

spouse's poor credit or bankruptcy not involving the applicant and the risk to creditors of attributing a good credit history to those who have not earned it, such as minor children and strangers, is likely outweighed by the benefits of such a change because there is little evidence that married women now have difficulty in establishing credit in their own names.

The requirement in 12 CFR 1002.5(d)(2) to present a disclosure before asking about income from child support and similar sources is also outdated and cumbersome, causing unnecessary expense in processing applications for a protection that is no longer relevant for many women and parents. Choosing to provide income from child support does not necessarily reveal the applicant's marital status, because a child support payor and recipient may never have been married to each other, and the recipient, at the time of application, could have any marital status. Additionally, the ban on questions related to childbearing or childrearing plans should have an exception for credit intended to finance fertility treatments or other services for which childbearing plans are directly relevant, a market that barely existed in 1977.

Although civil rights legislation such as the ECOA have made great progress in advancing access to credit for many disadvantaged groups, not all vulnerable groups are explicitly protected. The ECOA does not include disability as a prohibited basis group, despite its inclusion in civil rights legislation regarding employment and in other credit granting such as the Fair Housing Act. The Americans with Disabilities Act (ADA) provides protections against unlawful discrimination on the basis of disability, but there is no entity examining financial institutions for compliance with it in any systematic way like is done with other prohibited basis groups. There is very little literature on the prevalence or severity of discrimination on the basis of disability in consumer credit markets, but that does not mean that it does not exist – people with disabilities have historically faced discrimination in many facets of life.

The Bureau should conduct research on the need for amending the ECOA to include disability as a prohibited basis group, and then potentially recommend its inclusion to Congress. Conducting this research first will allow us to understand the prevalence of discrimination, and follow-up research after including disability status will allow us to measure the effect of the law, something that was not done at the inception of the ECOA for other prohibited basis groups. Including disability as a prohibited basis will bring the ECOA in line with the Fair Housing Act, providing uniform protections to protected classes across the credit sphere. Research should look for holes in the ADA that Regulation B should fill, looking at issues around machine readability and other concerns raised by rapidly developing financial technology in addition to potential discrimination in underwriting and pricing.

One of the cornerstones of the Bureau's fair lending supervision and enforcement mission has been the evaluation of lenders using the standard of disparate impact to identify illegal disparities in outcomes for different protected groups. In 2015, the Supreme Court issued a ruling in *Texas Department of Housing and Community Affairs vs. Inclusive Communities* (*"Inclusive Communities"*) on the validity of disparate impact under the Fair Housing Act. The Supreme Court held that it is cognizable, but that claims using disparate impact place the burden on the plaintiff to establish that the defendant's policies cause the disparities in question.[40] The Department of Housing and Urban Development (HUD) has subsequently issued a final rule reinterpreting disparate impact significantly raising the bar for

[40] *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc.*, No. 13-1371, 576 U.S. (2015)

plaintiffs to bring a suit for housing discrimination, though this rule has been stayed by a federal district court. [41]

HUD's rule and the *Inclusive Communities* ruling are specifically related to the Fair Housing Act but raise broader concerns about the use of disparate impact in other applications of fair lending including ECOA actions by the Bureau. Perhaps anticipating these concerns and potential future challenges, in July of 2020 the Bureau published a Request for Information on several aspects of Regulation B including whether the Bureau should clarify its use of the disparate impact test for fair lending liability.[42] The Bureau should adopt or consider adopting an interpretive rule on disparate impact that minimizes the risk of concluding discrimination has occurred when the facts do not meet the *Inclusive Communities* standard, or failing to pursue discrimination that does meet the standard, due to a lack of certainty in how to apply it.

Recommendations:

[41] Mass. Fair Hous. Ctr. Inc. V. HUD (D. Mass., No. 1:20-cv-11765, preliminary injunction, Oct. 25, 2020).
[42] Bureau of Consumer Financial Protection, *Request for Information on the Equal Credit Opportunity Act and Regulation B*, CFPB, July 28, 2020, at 6, https://files.consumerfinance.gov/f/documents/cfpb_rfi_equal-credit-opportunity-act-regulation-b.pdf

60. The Bureau should modernize Regulation B in the following specific ways:

- ***The Bureau should delete the required disclosure before asking about income from child support and similar sources in 12 CFR 1002.5(d) (2).***
- ***The Bureau should eliminate the ban on questions about plans for childbearing in 12 CFR 1002.5(d)(3) or should provide for an exception for credit intended to finance fertility treatments or other services for which childbearing plans are directly relevant.***
- ***The Bureau should eliminate the prohibition on considering whether an applicant has a telephone listing in the applicant's name.***
- ***The Bureau should remove the requirement that creditor must consider the credit history of accounts in the name of a spouse for which the applicant is not contractually liable but is authorized to use.***
- ***The Bureau should revise the Commentary to Paragraph 7(d)(1) to allow an intent to apply jointly to be determined by the totality of the circumstances, including the completion of information designated for a "joint applicant" on an application and a signature on a line for a "joint applicant."***

61. The Bureau should adopt or consider adopting an interpretive rule on Disparate Impact that minimizes both false-positive and false-negative error in light of the Supreme Court's decision in Inclusive Communities.

121. Bureau should conduct research on the need for amending the ECOA to include disability as a prohibited basis group and then potentially recommend its inclusion to Congress.

FinTech Regulation (#52 and 75)

As detailed in Chapters 8, 9, and 10, innovation advances competition and in turn benefits consumers through greater choice, improved products, lower prices, and greater financial inclusion. Technology-enable financial services, or FinTech, is at the center of innovation today. FinTech companies provide or support a wide array of consumer financial services, including payments, savings, peer-to-peer lending, and financial management. By using digital technology, FinTech companies can provide these services in new ways, allowing consumers to transfer funds through mobile devices, automate savings decisions, obtain loans without stepping foot inside a bank, and receive credit decisions and budgeting recommendations that consider a vast amount of data.

Regulatory uncertainty and unnecessary regulatory costs threaten to inhibit FinTech-based innovation, however. In particular, non-bank FinTech companies engaged in payments, remittances, or lending services are generally subject to state law and must register or acquire a license from each state in which they operate. A company with a nationwide footprint thus may need 50 separate licenses and adjust its practices to conform with each state's laws. As a result, a non-bank FinTech lender would be subject to different maximum-allowable interest rates depending on the state, whereas a federally chartered bank providing the same service could charge the interest rate that its home state allows, regardless of the consumer's location. These costs, and the competitive disadvantages from a segmented regulatory regime, are significant.

Federal policymakers should address these regulatory hurdles and promote competition and innovation by enabling FinTech companies to operate nationwide. Specifically, following on the NCCF's recommendation that Congress create a federal consumer financial protection agency that could issue federal charters to non-bank finance companies, the Taskforce recommends that Congress authorize the Bureau to issue federal licenses to non-bank FinTech companies engaged in payments, remittances, or lending services. Licenses should provide that these institutions are governed by the regulations of their homes states, even when providing services to consumers located in other states, similar to the National Bank Act's treatment of federally chartered banks,

The Dodd-Frank Act created in the Bureau a unique agency well-situated to regulate entities engaged in interstate activities. And by making the Bureau the licensing agency, Congress would assure that consumer protection concerns are at the forefront. The Bureau could supervise licensed entities to ensure compliance with applicable federal and state laws, just as it already does with respect to many other bank and non-bank institutions.

Permitting non-bank FinTech companies to operate nationwide while subject to a single set of laws would ensure consistency, thus reducing unnecessary regulatory costs and promoting competition. It would also promote regulatory competition between states and ensure that states retain their role as laboratories of experimentation. Each state would have an incentive to establish workable consumer protection regulations to attract FinTech companies.

As an alternative to Bureau-issued licenses, Congress could clarify the OCC's authority to issue federal charters to non-bank FinTech companies. The OCC recently took steps to issue charters to such companies engaged in lending, and it has announced its intent to do the same with money transmitters. These efforts are subject to legal uncertainty, however, because of questions about whether a non-bank can engage in "banking" under the National Bank Act. If Congress elects not to authorize the Bureau to issue federal licenses, it should clarify the OCC's authority. This alternative option would ensure that FinTech companies operating nationwide companies are subject to a single set of laws. Moreover, the OCC has significant expertise in FinTech generally and in these services specifically, and it may be well-positioned to supervise non-bank FinTech companies who operate nationally.

Apart from licensing, the Bureau should consider the costs and benefits to consumers of preempting state law in specific cases where the potential for conflict can impede provision of valuable products and services, such as regulation of FinTech companies engaged in money transmission. For example, state laws governing money transmitters vary greatly, and in some cases impose significant barriers to market entry. It may be that consumers would benefit from greater competition and choice if the Bureau preempted certain of those state requirements.

Recommendations:

46. Congress should authorize the Bureau to issue licenses to non-depository institutions that provide lending, money transmission, payments services. Licenses should provide that these institutions are governed by the regulations of their homes states, even when providing services to consumers located in other states, similar to the National Bank Act's treatment of federally chartered banks. In the alternative, Congress should clarify that the OCC has the authority to issue charters to non-depository institutions engaged in lending, money transmissions, or payments services.

75. The Bureau should consider the benefits and costs of preempting state law in some specific cases where the potential for conflict can impede

provisions of valuable products and services, such as regulation of FinTech companies engaged in money transmission.

TF Member acknowledgement	Todd:	Jean:	Howard:	Bill:	Tom:
Please type "Approve," "Conditionally approve" (subject to specific edits), "Reject," or specific commentary (you may also use the Comment feature)					

Inclusion (24, 26, 53, 54, 55, 56, 59)

The concept of "Inclusion" is of great interest and relevance and was often commented upon by individuals and organizations interacting with the Taskforce during its public outreach efforts to help inform its work. Inclusion was one of the major themes of the Report of National Commission on Consumer Finance Report issued in 1972. Volume I, Chapter 10 of this Taskforce's Report is dedicated to the subject.

Inclusion is the ability of consumers to fully participate in the products and services offered by the financial system. Full access to products and services like savings and checking accounts, auto loans, student loans, and payment systems, helps consumers lead engaged financial lives efficiently, at low cost, and to their overall benefit. Consumers without access, unable to use financial products, obtain credit, or otherwise left out of the system can suffer as a result. They pay higher costs, are blocked from wealth creation tools such as mortgage loans used to obtain home ownership, and can find even the purchase of necessities more difficult.

Barriers to access can come in a variety of forms and often in far more nuanced ways than commonly-discussed outright discrimination. Barriers can and do originate from within the financial system and its regulations. Laws, regulations, and the natural forces of competition play a role in opening the financial system to all consumers including the underserved, although without special care laws and regulation, even those meant to enhance the consumer experience, can also produce unintended negative effects on inclusion and access. For example, rules can also produce excessive compliance costs, and can change financial risk and the profit profile of products and services, lessening provider access to markets, putting limits on where a provider can operate or with whom it can do business.

Competition between providers to attract consumers creates innovation in offerings and puts downward pressure on prices drawing neglected members of the consumer class into the mainstream financial system.

With these considerations in mind, the Taskforce proposes seven recommendations.

Recommendations:

24 All credit unions should have the ability to operate in underserved areas as needed.

Currently, only multiple common-bond chartered credit can serve underserved communities outside their common bond membership. NCUA should ask Congress to allow all credit union charter types to serve underserved areas as needed.

26 Formally implement the Dodd-Frank Act mandate to consider effects on inclusion, access, and choice

The Bureau should formally consider effects on inclusion, access, and choice in all its deliberations.

53 Research access to credit reporting system for recent immigrants

The Bureau should study how to facilitate creditor access to credit report information for recent immigrants.

54 Bureau Analyze the CARD Act and recommend amendment or repeal by Congress if it interferes with inclusion

The Bureau should conduct an analysis of all costs related to the CARD Act with special emphasis on costs that adversely affect risk management and its effect on inclusion. If analysis suggests that costs to inclusion may be greater than intended, Congress should consider amending it.

55 The Bureau should research Anti-Money-Laundering laws and Bank Secrecy Act effects on inclusion and access to credit

The Bureau should review research on the effects of Anti-Money-Laundering laws and the Bank Secrecy Act on access and inclusion, especially concerning remittances and other services used by immigrant populations. If necessary, conduct original research in this area.

56

Due to adverse impact on access to banking accounts, Congress should, subject to antitrust or other applicable laws, remove price controls on debit card transactions.

Need 57 and 58.Jeff – look for his email

59 Expand access to the payments system to non-bank providers

The Taskforce believes that promoting innovation in consumer payments could be a powerful vehicle for increasing financial inclusion and competition such as found in some other countries. The Taskforce recommends that the Bureau explore mechanisms, identify barriers, and make appropriate recommendations to Congress and other regulators, for expanding access to the payments system to non-bank providers while at the same time recognizing legitimate concerns about money laundering and financial solvency.

Regulatory Coordination

Financial institutions and other financial firms are regulated by many different Federal and State regulators. For instance, depository institutions are face consumer financial regulations from the Federal Reserve (the Fed), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), state-level banking regulators, and the CFPB.[43] Other nondepository entities that offer consumer financial products are regulated by state banking agencies, the Federal Trade Commission, and the CFPB[44]. With such a high level of regulatory overlap, the Bureau must effectively coordinate with its regulatory partners to minimize duplication of effort and avoid unnecessary cumulative costs on the industry.

Regulators should continue to identify and focus on opportunities to coordinate regulatory efforts. To ensure that regulation doesn't stifle promising innovation, the Bureau should work with other agencies to create a unified regulatory regime for new and innovative technologies providing services similar to banks. In coordinating with other agencies to avoid duplication and burdensome supervision and examination of covered entities, Federal regulators should evaluate whether Memorandums of Understanding could improve and formalize the responsibilities of the various agencies. Also, the

[43] For more information on the degree of regulatory overlap, see the Congressional Research Service's report "Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework" at https://fas.org/sgp/crs/misc/R44918.pdf
[44] Ibid.

Bureau should improve outreach to States in hopes of avoiding duplication and identifying opportunities to streamline regulation.

Automobile dealerships, like other retail sellers, typically offer financing to customers only if a third-party finance source agrees to purchase the contract after making a decision about the consumer's creditworthiness. For that reason, the third-party finance source is mostly or wholly responsible for the credit decision, even though the retail seller is the nominal creditor. When consumer concerns are focused on the retail seller, they typically relate to sales practices or product concerns rather than the financing. Because the FTC has jurisdiction over both unfair and deceptive sales practices and consumer credit extensions, oversight of retail sellers may be most efficiently handled by the FTC. The Taskforce believes there is no reason to treat auto dealers differently from other retail sellers, such as furniture or electronics sellers whose sales practices are regulated by the FTC. A distinction should be drawn between creditor and retailers who only handle the marketing and sales of a product, not the financing of the product. This parity in jurisdictional treatment could be accomplished by giving sole jurisdiction to the FTC or by giving shared jurisdiction to the FTC and the Bureau for the financial aspect of the transaction. The agencies could enter into an MOU to avoid duplicative enforcement.

Recommendations:

20. ***(92, 93, 95) The Bureau should continue to identify and focus on opportunities to coordinate regulatory efforts. The Bureau should evaluate whether Memorandums of Understanding may help formalize and clarify relationships with other agencies so that duplicative and burdensome supervision and examination can be avoided. The Bureau should continue to increase dialogue with state regulators to bridge knowledge gaps and streamline regulation.***

21. ***(90) The Bureau should work with other agencies to create a unified regulatory regime for new and innovative technologies providing services similar to banks***

xxiii. ***(77) The Bureau should work with the Federal Trade Commission to explore opportunities to streamline jurisdiction and enforcement of consumer financial protection regulation of third-party financing offered at automobile dealerships. Because the FTC has jurisdiction over both unfair and deceptive sales practices and consumer credit extensions, oversight of retail sellers may be most efficiently handled by the FTC. The agencies should consider an MOU to avoid duplicative effort.***

Regulatory Principles

To maximize the utility of the Bureau's regulations, it should rely on flexible principles-based regulations that protect consumers from harm while promoting access, inclusion, innovation, and competition; rather than detailed and specific regulations that can become quickly outdated, impose more costs than necessary, and foreclose innovative new approaches to protecting consumers. Regulations should be clear and easy to understand, and the Bureau should regularly issue regulatory guidance to clarify confusing language or resolve novel questions. In doing so, the Bureau should be careful that guidance documents do not create new law or policy and should subject significant guidance documents to notice and comment in the Federal Register. The Bureau should also use clear and consistent language, concepts, and terms and apply them consistently across the Bureau's functions (regulation, supervision, and enforcement) and regulations. To maintain a modern regulatory program that is simple and imposes no more burdens than necessary, the Bureau should build on its process of ongoing review of existing rules to identify regulations that can be simplified, streamlined, updated, or otherwise improved.

Highly detailed and specific regulations are inferior to more flexible principles-based standards for several reasons. Most regulated industries have some heterogeneity in business models, operating procedures, costs, and products, so one-size-fits-all standards are unlikely to maximize benefits net of costs. More flexible standards provide firms with the ability to develop more innovative solutions to problems that are more adaptable to changes in the industry. This may reduce the probability that a regulator has to rewrite the regulations when consumer preferences change, or innovative new products develop.

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Review of the stock of regulations is an important element in any regulatory program. In 2011, President Obama issued Executive Order 13563 “Improving Regulation and Regulatory Review,” requiring executive agencies to conduct retrospective analyses of existing regulations to identify rules that may be outdated or excessively burdensome.[45] Further, the 1994 Riegle Community Development and Regulatory Improvement Act required the banking agencies to conduct a systematic review of their regulations to “improve efficiency, reduce unnecessary costs, eliminate inconsistencies, eliminated outmoded and duplicative requirements, promote uniformity among the regulations and policies of the agencies, and reduce regulatory burden… .”[46] Section 1022(d) of the Dodd-Frank Act requires the Bureau to publish an assessment of its each of its significant regulatory actions within five years of finalization. Also, the Regulatory Flexibility Act requires the Bureau to review rules within ten years of publication to assess whether it had a “significant economic impact upon a substantial number of small entities.”[47]

As a young agency, the Bureau rightly prioritized its mandatory rulemakings and several high-priority discretionary rulemakings. Now, the Bureau should redouble its efforts to review existing regulations for opportunities to streamline and reduce costs. In addition to its existing practices for reviewing the existing stock of regulations, the Bureau should consider adopting some process to prompt review of existing regulations as questions arise. The Bureau should consider whether additional assessments of major regulations should be instituted at intervals beyond the five-year requirement in the DFA. The Bureau should consider processes to review regulations that the Bureau inherited and have not been recently amended. The Bureau should evaluate and streamline, as appropriate, the process by which questions that come through Supervision examinations, the Office of Regulations, the Office of Innovation, and other policy-interpretation areas of the Bureau are shared with other parts of the Bureau so that guidance can be consistent and shared publicly.

Recommendations:

[45] President Obama’s Executive Order 13563 (2011), “Improving Regulation and Regulatory Review,” can be accessed at https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review

[46] https://www.federalreserve.gov/boarddocs/rptcongress/Annual96/regsim.pdf

[47] See the Bureau’s [STRATEGIC PLAN] https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy20.pdf

22. (96 and 97) The Bureau should rethink overall approach to regulation, endorsing a principles-based regulation wherever possible, with sufficient flexibility for crises and change. Rules should be updatable, adaptable to developing threats, and periodically reviewed.

xxiv. (136) Regulations should use plain language and be easy to understand. The Bureau should apply concepts, terms, and guidance consistently across Bureau functions and activities.

xx. (xx) When necessary, the CFPB should clarify regulations with appropriate guidance. The CFPB should ensure that guidance documents do not create new policy and are published for notice and comment in the Federal Register.

xxi. (83 & 142) The Bureau should build upon its process of ongoing review of existing rules to identify regulations that may be outmoded, ineffective, insufficient, or excessively burdensome; and to modify, streamline, expand, or repeal them in accordance with what has been learned. The Bureau should consider adopting some process to prompt review of existing regulations as questions arise. The Bureau should consider whether additional assessments of major regulations should be instituted at intervals beyond the five-year requirement in the DFA. The Bureau should consider processes to review regulations that the Bureau inherited and have not been recently amended. The Bureau should evaluate and streamline, as appropriate, the process by which questions that come through Supervision examinations, the Office of Regulations, the Office of Innovation, and other policy-interpretation areas of the Bureau are shared with other parts of the Bureau so that guidance can be consistent and shared publicly.

Security and Privacy (#86 and #105)

Technology and the benefits and risks associated with it have pushed data privacy and security issues into the spotlight. The intense focus on these issues is likely to continue as our society innovates and deploys technology in ways to meet our needs. So too will the search for privacy solutions that balance the benefits derived from innovative uses of information with the need to prevent practices that may harm consumers.

Striking this balance serves both consumers and the financial services industry. Consumers have a need to guard against the misuse of their information. Financial services providers have an interest in providing products and services in a convenient way while maintaining the level of security consumers expect. They also require complete and accurate information to address information asymmetries and accurately assess risks and costs. Regulators should keep these considerations in mind when exercising their regulatory, supervisory, and enforcement authorities.

In the past, regulators have sought to address privacy and security concerns by implementing regulations that are overly reliant on disclosure requirements. The result has been a regulatory regime that has been largely ineffectual. Even regulations that have succeeded in restricting the use of data have failed to address potential harms to consumers efficiently, instead relying on consumers to protect themselves. Regulators should shift their focus to protecting consumers rather than data, identifying the potential adverse consequences for consumers from particular data use or misuse. In this regard, the Fair Credit Reporting Act is an appropriate model, restricting use of credit reporting data to a specified set of uses, with provisions designed to avoid the adverse consequences that can result from inaccuracies in credit reporting data. Privacy regulation based on controlling adverse consequences is discussed in more detail in Chapter 11. Determining how to draft regulations that prevent harmful outcomes without restricting beneficial uses of data is worthy of regulators' study and consideration.

There is little evidence that the current, disclosure-based approach to privacy regulation has worked. Indeed, privacy policies would seem to be the epitome of information overload, discussed in detail in Chapter 7.

Recommendations:

86. ***The Bureau should consider data privacy and cybersecurity risks as part of its regulatory mission. The Bureau should determine whether proposed regulatory, supervisory or enforcement actions pose data privacy or security risks and adopt substantive regulations or internal policies or procedures to prevent those harms. With respect to regulation, the Bureau should recognize and address, where possible, any potential anticompetitive effect of regulations as part of its rulemaking process.***

105. ***The Bureau should study the effectiveness of GLBA privacy notices to ensure that information is relayed in a manner that is useful manner to consumers. Additionally, the Bureau should consider allowing financial services providers to post current privacy notices online only given consumer's growing dependence on the internet and the dynamic, fast-changing nature of technological advances.***

Small Dollar Credit (#)

One of the most contentious yet important issues in consumer financial protection is the provision of small dollar credit to consumers. For consumers on the economic margins, small dollar credit can be a lifeline to get through turmoil caused by unplanned expenses, loss of income, or other liquidity shock. With this aid comes a heightened risk for lenders of default and larger operating costs, leading to higher interest rates and fees than mainstream credit products like personal loans or credit cards. Advocates champion small dollar credit as a necessary lifeline to keep many consumers above water and point out that small dollar lenders are the only ones willing to give credit to marginal borrowers on any terms. Critics say the interest rates are usurious, that consumers in dire straits do not understand or fully consider the consequences of a small dollar loan, and the business model for small dollar lenders, which relies on rolled over debt to make a profit, traps consumers in a cycle of debt and poverty. Undoubtedly some benefits and some harms occur, and the potential for great benefit and great harm exists. The research literature on the costs and benefits of small dollar loans is mixed. For substantial background and exploration of these questions on small dollar credit, see Chapter 5 of Volume I of this report.

Many of the reasons cited by customers of small-dollar loan products for using them are intractable or won't be swayed by anything the Taskforce can recommend here. One reason for using small dollar loan products is changing, however. Consumers take out payday loans ostensibly because they are expecting to have the money to cover their expense when their next paycheck or some other source of income is deposited in their account. Some portion of delays between when consumers know funds are coming in and when funds are deposited can be attributed to delays in the payment processing system, which is currently undergoing a transformation as advancements in financial technology focus on speeding up the payments system. Financial technology firms, traditional banks, and even the Federal Reserve are now focused on increasing the speed of payments processing, with a myriad of potential positive effects for consumer welfare. The Bureau should conduct research on whether or not delays in the processing system are causing the use of small dollar credit products and associated consumer harms.

As shown in Chapter 5 of Volume I of this report, cost structures matter. When states first sought to limit the amount of interest on a loan and define usury, the number many places settled on was 36% APR. However, whatever your beliefs on the *a priori* appropriateness of usury ceilings, changes to inflation, buying power, and the cost of credit have radically changed the meaning of 36% today. What once was considered a reasonable rate cap for a small dollar loan now prices many participants out of the market completely, not allowing consumers to get the amount they need in the time they need it. With these interest ceilings, consumers are unable to get loans to make investments that would be profitable over time. It is the Taskforce's view that whatever ceiling is set will price some people out of the market, and we urge states to exercise caution when setting interest rate caps and consider the negative impact on credit availability for vulnerable consumers when considering these caps.

In this vein, states should review and update or eliminate altogether antiquated and outdated usury laws, recognizing the high costs they impose by denying valuable services to consumers who need them. The NCCF conducted a comprehensive analysis of effective usury regulations and concluded that the right way to deal with this is through a policy that provided for competition, free entry to markets, and consumer information. This Taskforce has not found evidence from the intervening 50 years that changes the NCCF's conclusions, and so we recommend that States revisit existing usury regulations and update or eliminate them as appropriate.

As noted in the historical sections of Volume I, hundreds of years of study and experience have shown that usury laws interfere with credit availability, access to credit, and inclusion of marginalized groups in the marketplace. Prominent Truth in Lending statements explain exactly what the financing charge is for these small dollar loans, and evidence suggests that most customers know exactly what they are getting and how much it will cost them.

The Taskforce's Big Question is whether society believes consumer credit availability for everyone is a good idea or not. To ask if there should be government intervention in small dollar credit markets is a debate about societal ideals more than it is about economics, and it is too difficult a question for us to resolve. The 1972 NCCF report attempted to address the tradeoffs of such a question and was itself split on the answer.[48] The truth is that this is not solely an economic or legal analytical question and there is no satisfactory solution or recommendation that will satisfy everyone.

[48] NCCF report, p. 136, p. 229

Recommendations:

43. The Bureau should research how much small dollar credit use and potential associated consumer harms are caused by delays in payment processing.

108. States should update or eliminate usury laws, recognizing the high costs they impose by denying valuable services to consumers who need them.States should exercise caution when setting interest rate caps when implementing regulations on small dollar credit loans. States should carefully consider the negative impact on credit availability when considering further regulations. Preferably, interest rate caps should be eliminated entirely.

Supervision

4 recommendations	1 Preamble	Status: Jeff will update and circulate

Consider conducting automated or data-based examinations
Focus on compliance, not compliance systems
Supervisory consistency / appeal bill
Evaluate the efficacy of larger participant rules and change them if necessary