

Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552



June 2, 2020

Briefing memorandum for the Director

Taskforce Meeting on Data Security/Privacy

DATE	Tuesday, June 2, 2020
TIME	3:00 pm – 3:30 pm Eastern
LOCATION	WebEx
PARTICIPANTS	Matt Cameron, Taskforce Staff Director Todd Zywicki, Taskforce Chair Howard Beales, Taskforce Member Nathaniel Weber, Taskforce Chief of Staff Ashlie Tarpley, Taskforce Senior Counsel Teri Alexander, Office of Strategy Senior Analyst Jennifer McClean, Office of Strategy Detailee
STAFF CONTACT	Matt Cameron, Taskforce Staff Director, x [Redacted]
POLICY ASSOCIATE	Andrew Duke, Policy Associate Director, CEEA, x [Redacted]
DIRECTOR APPROVAL	Delicia Hand, Deputy Associate Director, CEEA, x [Redacted]

Andrew Duke

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Objective

The primary objective of this meeting is to provide you with a status update related to the Taskforce on Federal Consumer Financial Law's Report, specifically, Volume 1, Chapter XI Data Security and Privacy.

Timing Considerations

The Taskforce milestone schedule states that first drafts of Volume 1 of its final report will be completed by June 19, 2020.

Background

The Taskforce on Federal Consumer Financial Law intends to generate a two-volume report that will (1) examine the existing legal and regulatory environment facing consumers and financial services providers; and (2) report its recommendations for ways to improve and strengthen consumer financial laws and regulations, including recommendations for resolving conflicting requirements or inconsistencies, reducing unwarranted regulatory burdens in light of market or technological developments, improving consumer understanding of markets and products, and identifying gaps in knowledge that should be addressed through future Bureau research.

During the April 30, 2020 Monthly Check-in with the Taskforce Chair and Staff Director, you requested a follow-up meeting to discuss Volume 1, Chapter XI on Data Security and Privacy in more detail as the Office of Strategy is also conducting a research effort about the Bureau's posture towards cybersecurity oversight and compliance at regulated entities. This briefing, which will follow the outline provided in **Tab 2**, is designed to share with you current thinking about the chapter's content and obtain feedback on the direction of the report. Staff leading the Office of Strategy effort will also participate in the meeting as it may inform the scope and direction of their work. By jointly discussing the Taskforce outline, the Bureau will ensure minimal duplication of effort.

Taskforce Progress - Data Privacy and Security

The Taskforce report Volume 1, Chapter XI is titled, "Data Privacy and Security". The focus of the chapter is presented in this outline:

Data Privacy and Security

- a. Transaction Costs Economics
 - Transactions are costly and these costs of closing a deal can impede commerce. Decisions about security/privacy are part of transaction costs in today's economy. Reducing transaction costs can both improve security and make consumers and markets better off.

- b. Failure of the Disclosure Based Approach to Protect Privacy
 - The current regulatory emphasis on disclosures through privacy policies has distracted from the original privacy protection goals of the disclosures. With the focus on the goal of privacy protection, regulators should consider adopting substantive regulations to prohibit or avoid harmful consequences stemming from misuse of consumer data.
- c. Information Sharing Benefits
 - The use of private consumer information can enhance the consumer experience, prevent misconduct, and ultimately improve data security/privacy practices. Secondary uses of shared information originally collected for other purposes is an important building block of fraud control tools.
- d. Costs of Information Sharing
 - There is a downside to the free flow and wide availability of personal consumer information if it increases the risk that information is compromised. And while many people value protecting their personal information, most willingly give up privacy to gain even a small benefit.
- e. Information Security - Fortress Mentality/Data Based Triangulation
 - Traditional barriers used to protect consumer data have never been so vulnerable. It may be time to abandon the fortress model and use traditionally protected private information in multi-factor security systems.
- f. Deliberations on tradeoffs and considerations of potential recommendations will begin the week of June 14, 2020.

Key Points to Make

Thank the attendees on their hard work and proactive coordination

- Let the attendees know you are pleased that they have already met to begin coordinating Taskforce and Office of Strategy efforts and encourage them to remain in contact throughout their work.

- Ask them how they are feeling about the work ahead and if there is any additional support needed to fulfill their missions.

Remind the teams about how their two efforts differ

- Remind them that the scope of the Taskforce work is to analyze and recommend ways to improve and strengthen consumer financial laws and the implementing regulations, and that the Office of Strategy was invited to observe the discussion that might ultimately inform the scope and outputs of a short-term analysis of the Bureau's current authorities.
- Inquire as to what recommendations each team has at the outset of their work, and what questions they are still examining that will help them develop additional recommendations.

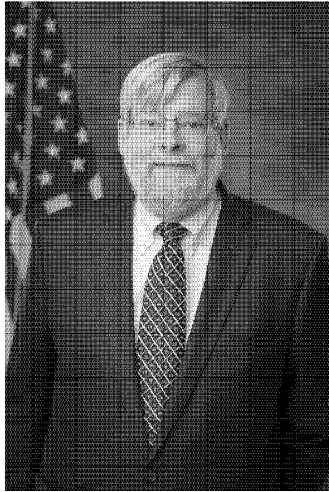
Attachments

Tab 1: Taskforce Member Howard Beales Bio

Tab 2: Data Security and Privacy Briefing Agenda

Tab 3: Taskforce Report Chapter Outlines

Tab 4: Taskforce Key Points Document.



Dr. J. Howard Beales III taught in the School of Business at the George Washington University, from 1988 through 2019. From 2001 through 2004, he was the Director of the Bureau of Consumer Protection at the Federal Trade Commission (FTC). As Director, he was instrumental in establishing the national Do Not Call Registry, obtained the largest redress orders in FTC history and attacked high volume frauds. From 1977 to 1987, Dr. Beales served as a staff economist and in various positions in the Bureau of Consumer Protection at the FTC. In 1987-88, he was a Branch Chief in the Office of Information and Regulatory Affairs. He received his Ph.D. in economics from the University of Chicago in 1978, after graduating magna cum laude from Georgetown University in 1972.

Date: Tuesday, June 2, 2020
Subject: Taskforce Director Briefing Agenda

INVITEES:

Matt Cameron; Todd Zywicki; Howard Beales; Nathaniel Weber; Ashlie Tarpley; Teri Alexander; Jennifer McClean

AGENDA:

1. Greetings (Matt Cameron)
 - a) Thank everyone for making time for the meeting, especially our partners in Strategy
 - b) Allow everyone to introduce themselves
 - c) Share purpose of meeting – to discuss the status of the Data Privacy and Security Chapter of the Taskforce report and obtain feedback on the chapter’s direction
 - d) Ask Director Kraninger if she has anything to share
 - e) Ask the group if Matt missed anything
2. Overview of Meeting Agenda and Materials (Matt Cameron)
 - a) State what will be reviewed – we will review the Data Privacy and Security Chapter outline and briefly discuss how it fits into the report
 - b) Point out materials everyone received – 1) Director’s briefing memo; 2) Taskforce Report Chapter Outlines; 3) Taskforce Key Points document; 4) a bio for Taskforce member Howard Beales
3. Overview of Taskforce Report and Data Privacy and Security Chapter (Matt Cameron)
 - a) Discuss how report will be structured into two volumes:
 - (1) Volume 1 – provide historical overview of consumer financial laws and assess the current state of those laws
 - (2) Volume 2 – recommendations to improve and strengthen consumer financial protection laws
 - b) The first drafts of volume 1 will be reviewed by the Taskforce June 14th-19th
 - c) Provide high-level overview of Privacy and Security chapter outline topics:
 - (1) Transaction Costs and Economics
 - (2) Failure of the Disclosure Based Approach to Privacy
 - (3) Cost of Information Sharing
 - (4) Approaches to Information Security
 - d) Turn the meeting over to Howard to walk through the outline
4. Discussion of Data Privacy and Security Chapter Outline (Howard Beales)

- a) Summary of overarching ideas/principles the Taskforce intends to convey in the chapter
 - (1) Data privacy essential to consumer financial protection
 - (2) Importance highlighted by Europe's General Data Protection Regulation, the California Consumer Privacy Act, information aggregators and information sharing
- b) Discuss evolution of chapter topics – Evolution is based on Howard's research findings and professional experience (i.e. tenure at FTC)
- c) Discussion of Chapter outline included in Director's Briefing Memo

5. Open Discussion Concerning Direction of Data Privacy and Security Chapter (All)

General Notes

- 1) TBD
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Meeting Actions Items

- 1) TBD

Volume 1: Detailed Outline

I. Introduction (Tom)

- a. History of Consumer Financial Protection Reform Efforts
 - i. Early History: The Russell-Sage Foundation
 - ii. The National Commission on Consumer Finance
- b. The scope of the Taskforce report
- c. Summary of the Taskforce Findings and Recommendation
- d. Appendix: Recommendations of the NCCF in 1972

Status: First draft completed by TAD, Reviewed by TZ and returned for somewhat minor edits. This chapter will be a work in progress as the Report develops.

II. Extent and Growth of Consumer Credit (Tom)

- a. Development of consumer credit economy
- b. Consumer Credit Growth
- c. Consumer Credit Growth and Means of Repayment
- d. Distribution of Consumer Credit Within the Population
- e. Measurements of Consumer Credit

Status: First draft completed by TAD, Reviewed by TZ and returned for minor edits.

III. Demand for Consumer Credit (Tom, Todd)

- a. Neoclassical Economic Theory of Consumer Credit Demand
 - i. Life-cycle model
 - ii. Time-shifting of consumption model
 - iii. Evidence
- b. Behavioral Economics Theory of Consumer Credit Usage

Status: First draft completed by TAD, Reviewed by TZ and returned for major edits

IV. Supply of Consumer Credit (Greg & Tom)

- a. Intermediation
- b. Costs of lending
- c. Revenues
- d. Breakeven APRs
- e. Price & competition

Status: First Draft completed by TD and to be sent to TZ soon

V. Small Dollar (Greg, Tom, Todd, & Howard)

- a. There is no solution
- b. Juster and Shay: Credit rationing
- c. Lifecycle model
- d. Cycle of "Debt"/ "Debt Trap"
- e. History: Competition & Regulatory Segmentation

Status: First draft completed and TD making final edits before sending to TZ

- VI. Information and Disclosure (**Howard**)
 - a. Costs of Information and imperfect information
 - b. Markets for information
 - i. Consumer Credit Cards (e.g., creditcards.com)
 - c. Information asymmetry
 - d. Transaction costs
 - e. TILA
 - i. Reduced costs of shopping

Status: First draft complete and sent to TZ for edits, this will eventually be renumbered as Chapter 7

- VII. Consumer Credit Regulator Principles (**Todd**)
 - a. History of consumer financial protection
 - i. State regulation: Substantive regulation
 - ii. Federal regulation: Disclosure regulation
 - iii. Dodd-Frank
 - b. Three-legged stool (competition, common law, regulation)
 - c. Rise of Federal Presence
 - d. Sources of market failure
 - i. Information asymmetry
 - ii. Market power/markets where consumers don't choose
 - 1. Debt Collection
 - 2. Credit Reporting Agencies
 - 3. Mortgage Servicers
 - iii. Externalities
 - e. Evaluating Regulation
 - f. Measuring regulation

Status: First draft in progress and to be completed by end of month

- VIII. Competition (**Bill**)
 - a. Competition value
 - b. Regulatory segmentation
 - c. Dodd-Frank (adverse impact → promoting consolidation)
 - i. Competition promoted product improvement and innovation
 - d. FinTech / New competitive landscape
 - e. Competition/innovation
 - i. Walmart

Status: First draft in progress and goal of completion by end of month

IX. Innovation **(Bill)**

- a. FinTech: Potential & Risk
- b. Open banking
- c. Regulatory Framework
 - i. Flexible regulatory framework for innovation
- d. Principled v. Prescriptive
 - i. Cooperative Regulator
 - 1. Potential for partnering between regulatory and trade for market improvements
 - 2. Tech sprints
 - ii. Regulatory sandbox
- e. Regulatory modernization
- f. Alternative data

Status: First draft in progress

X. Financial Inclusion **(Todd)**

- a. Importance and why it matters
- b. Market incentives to expand access
 - i. Credit scoring
 - ii. Competition
- c. Regulations Expand Access: Equal Credit Opportunity Act
- d. Regulations that block access

Status: Draft to start once chapter 7 is complete

XI. Privacy and Data Security **(Howard)**

- a. Use of data
 - i. Costs and benefits
- b. Price discrimination (virtues and concerns)
- c. Data breaches
- d. Payment security
- e. Fortress mentality/Big Data
- f. General Data Protection Regulation (GDPR)
- g. Alternative data: Secondary uses of data
- h. Credit Reporting

Status: Preliminary research and preparing memo for distribution in advance of meeting with Director Kraninger

XII. Financial Literacy and Education **(Greg and Todd)**

- a. What consumers should know
- b. Heuristics
- c. Savings
- d. Effectiveness

Status: Draft to start once chapter 4 is complete

XIII. Regulatory Modernization Framework **(All, to be fleshed out more)**

- a. Interagency
 - i. Current state: Considerations of overlaps & gaps, overlap, gaps
- b. Federalism
- c. Competitive mandate
- d. Regulations as code/Tech Sprint/Sandboxes
- e. Assessment

Status: Outlining and information gathering continues

Taskforce on Federal Consumer Financial Law

Key points

Key Point 1: The Taskforce on Federal Consumer Financial Law (Taskforce) will examine the existing legal and regulatory environment facing consumers and financial services providers.

- The Taskforce expects to take one full year in order to produce new research and analysis of Federal consumer financial laws in the United States, focusing specifically on:
 - harmonizing, modernizing, and updating Federal consumer financial laws, including implementing regulations;
 - analyzing ways to improve consumer understanding of markets and products; and
 - identifying potential conflicts or inconsistencies in existing regulations and guidance.

Key Point 2: The Taskforce will develop a report containing recommendations for ways to improve and strengthen consumer financial laws and regulations.

- The report will include an analysis of the eighteen enumerated consumer laws and their implementing regulations currently under the Bureau's jurisdiction.
- Report recommendations will seek to:
 - resolve conflicting requirements or inconsistencies in existing consumer financial laws and regulations;
 - reduce unwarranted regulatory burdens in light of market or technological developments;
 - improve consumer understanding of markets and products; and
 - identify gaps in knowledge that should be addressed through future Bureau research.

Key Point 3: The Taskforce is in part inspired by an earlier commission established by the Consumer Credit Protection Act (Act) in 1968.

- The Act established the National Commission on Consumer Finance (NCCF) to conduct original research and provide recommendations relating to the regulation of consumer credit.

- The commission's report contained original empirical data, information, and analyses—all of which undergird the report's final recommendations. The data, findings, and recommendations from the commission were all made public and the report led to significant legislative and regulatory developments in consumer finance.
- The establishment of the Bureau follows decades of growth and innovation in financial offerings and credit products available to consumers nationwide since the 1972 NCCF report. Similar to the NCCF, the Taskforce provides an opportunity to provide a new perspective on consumer financial law within the context of recent developments and current products in the United States consumer finance markets.

Recent Bureau actions or announcements

- On October 11, 2019, the Bureau announced its intent to form the Taskforce via press release. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-taskforce-federal-consumer-financial-law/>.
- On January 9, 2020, the Bureau announced the appointment of four members to the Taskforce via press release. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-membership-taskforce-federal-consumer-financial-law/>.
- On January 17, 2020, the Bureau announced the appointment of one additional member to the Taskforce via press release. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-additional-member-to-taskforce/>.
- On March 27, 2020, the Bureau issued a Request for Information to Assist the Taskforce on Federal Consumer Financial Law. The comment window is 60 days and closes on June 1, 2020. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rfi-to-assist-taskforce-on-federal-consumer-financial-protection-law/>.

Key Q&A

Q1: Why is there a lack of diversity in the Taskforce members? More specifically, why are there no consumer advocates on the Taskforce?

A1: The Bureau established and followed a robust selection process, which included a public application period. During the public application period, the Bureau received interest from 89 individuals and conducted 13 interviews. Those conducting interviews sought to identify individuals who were experts in consumer financial law and academics with diverse points of view, such as attorneys and economists with significant experience researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including

senior public or academic service. Based off the applicant pool of interested candidates, we believe the individuals selected will provide diverse perspectives, which will help the Bureau to protect consumers in the financial marketplace.

Q2: Are Taskforce members staff, and are you providing them with benefits? Additionally, are you concerned with conflicts of interest or did any members receive ethics waivers?

A2: Four Members of the Taskforce were appointed through the Bureau's expert hiring authority and are considered employees of the Bureau. One member was detailed to the Bureau under the Intergovernmental Personnel Act (IPA) and is considered a Bureau employee for purposes of the government ethics statutes and regulations. Taskforce members are scheduled to serve on an intermittent schedule and are paid at a set hourly rate. Taskforce members are not eligible to receive benefits, such as health care or retirement.

As Federal government employees, each member must comply with the conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. Two members of the Taskforce on Federal Consumer Financial Law have received an ethics waiver after the Bureau formally consulted with the Office of Government Ethics prior to the issuance of each of the waivers. The Office of Government Ethics did not object to the Bureau issuing these two waivers from the financial conflict of interest statute.

Q3: How do you foresee the Taskforce conducting a thorough review of all Federal Consumer Financial Laws given the one-year timeline and limitation on the number of days the Taskforce members are able to work?

A3: The Taskforce, as led by a Chair and a full time Staff Director, will allocate its time and resources efficiently and effectively and continually prioritize its work. Bureau resources and a core group of Bureau employees will assist in the development of the report.

Q4: Will the Taskforce make decisions about Bureau functions such as regulation, supervision, enforcement, or any Bureau action?

A4: No. The Taskforce is an independent body that exists within the Bureau structure but operates outside of normal Bureau processes. It will provide recommendations through a final report that will be considered by the Director. Recommendations from the Taskforce do not bind the Bureau and all final decisions rest with the Director.

Q5: Is this Taskforce a Federal Advisory Committee?

A5: No. The Taskforce is an intragovernmental committee and not subject to the Federal Advisory Committee Act (FACA).

Q6: How much will the Taskforce cost?

A6: The Taskforce is forecasted to cost between \$2.5 to \$3 million. Much of the projected expense is attributed to salaries for both Taskforce members, who serve on an intermittent schedule and are paid at a set hourly rate, and a support staff of about seven to eight full time employees.

Bureau timeline

10/11/2019: Bureau announced Taskforce and opened application window.

10/25/2019: Application window closed.

1/9/2020: Bureau publicly announced Taskforce members.

1/29-31/2020: Bureau orientation conducted for Taskforce members.

3/27/2020-6/1/2020: RFI to assist Taskforce is open for public comment.

11/24/2020: Initial draft of Taskforce report to be completed.

Statutory authority

- The Director established the Taskforce pursuant to the Bureau's executive and administrative powers under Sections 1013(a) and 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Factsheets & quick references

- [CFPB Announces Taskforce on Federal Consumer Financial Law](#)
- [CFPB Announces Membership of Taskforce on Federal Consumer Financial Law](#)
- [CFP Announces Additional Member of Taskforce on Federal Consumer Financial Law](#)
- [Consumer Financial Protection Bureau Issues Request for Information to Assist Taskforce on Federal Consumer Financial Protection Law](#)

Other recent activity

- **Not applicable**

Background

The Taskforce members are:

- Dr. J. Howard Beales, III, Emeritus Professor of Strategic Management and Public Policy at the George Washington University and former Director of the Bureau of Consumer Protection at the Federal Trade Commission;
- Dr. Thomas Durkin, Senior Economist (Retired) at the Federal Reserve Board;
- William MacLeod, partner at Kelley Drye & Warren, LLP, Immediate Past Chair of the Antitrust Section of the American Bar Association, and former Bureau Director at the U.S. Federal Trade Commission;
- L. Jean Noonan, Partner at Hudson Cook, former General Counsel at Farm Credit Administration, and former Associate Director the Bureau of Consumer Protection's Credit Practice at the Federal Trade Commission; and
- Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia Law School, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center.

Todd Zywicki is serving as the Chair of the Taskforce. Matt Cameron, Staff Director of the Office of Advisory Board and Councils, serves also as Staff Director of the Taskforce.