AFSA® Protecting Credit Since 1916
American Financial Services Association

June 1, 2020

Hon. Kathleen Kraninger
Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Request for Information to Assist the Taskforce on Federal Consumer Financial Law, Docket No. CFPB-2020-0013

Dear Director Kraninger:

The American Financial Services Association (AFSA)[1] strongly supports the creation of the taskforce on federal consumer financial law (Taskforce) by the Consumer Financial Protection Bureau (CFPB of Bureau). We are pleased with this opportunity to respond to the Bureau's Request for Information (RFI) to assist the Taskforce and provide our recommendations for harmonizing, modernizing, and updating the federal consumer financial laws.

This letter focuses on: (1) consumer demand for installment loans, (2) how an "all-in" APR harms consumers, (3) suggestions for modernizing consumer finance statutes and regulations, and (4) federal and state coordination.

I. Consumer Demand for Installment Loans

For over a hundred years, traditional installment lenders have been serving American consumers. Installment lenders work with borrowers to better understand their needs and walk them through the loan process, rather than merely determining how much they want to borrow. Traditional installment loans are plain vanilla products with defined interest rates and payment schedules that do not include prepayment penalties or balloon payments. More importantly, installment lenders have brick and mortar locations on Main Streets across America.

Traditional installment lenders have shown time and time again that they are particularly well-suited to meet the lending needs of many consumers. On the other hand, banks may not be inclined to offer installment loans to many of the consumers that borrow from traditional installment lenders due to regulatory and underwriting costs, particularly if an interest rate cap of 36 percent or lower is set. Even so, Congress and financial services regulators in Washington have been proposing legislation or encouraging policies that would induce banks to offer a variety of consumer loans that they currently cannot or choose not to offer.

Traditional installment lenders—particularly those accustomed to serving consumers with little credit or less than stellar credit—have demonstrated that they are in a much better position to help these unbanked or underbanked consumers meet their credit needs. Yet they suffer from the misperception of being lumped in with predatory

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

lenders by some advocacy groups that do not understand the significant differences among the types of lenders or the economics of lending.

While banks are important, the Bureau must recognize that when it to comes to enabling financial liquidity for consumers during their time of need, consumers have routinely turned to traditional installment lenders since the turn of the last century. At times of economic turmoil, access to financial services, particularly for the most vulnerable who do not have banking relationships, is essential to minimizing hardship and setting the stage for eventual recovery. The Taskforce should recognize the vital role installment lenders play as it grapples with policy issues relating to consumer credit.

The Taskforce should study the role that traditional installment lenders play in the American economy and the lives of American consumers. The Taskforce could model its research on the 1972 Report of the National Commission on Consumer Finance (1972 Report), which remains the most in-depth study of installment lending in the United States. The Report was the work of a commission established in 1968 by the Consumer Credit Protection Act (CCPA).

The CCPA established the commission to conduct original research and to provide Congress with recommendations relating to consumer credit regulation. The 1972 Report contained original empirical data, information, and analyses—all of which undergird the 1972 Report's final recommendations. The data, findings, and recommendations from the commission were made public, and its 1972 Report led to significant legislative and regulatory developments in consumer finance.

It is particularly appropriate for the Taskforce to look back to the 1972 Report and update its findings because the creation of the Taskforce was inspired by the 1968 commission. The federal government has not performed such a thorough study of consumer lending since the 1972 Report. Almost 50 years later, the time is ripe to reexamine the 1972 Report and update it for the current era.

We suggest that the Taskforce consider studying and analyzing:

- *The important, socioeconomic role that installment lending plays in a free-market economy.* More specifically, the Taskforce should define the portion of consumers seeking access to traditional installment loans, determine where branches are located, delineate the size of the market, and the alternatives that consumers turn to when installment loans are not available.

- *The difference between consumer loan products, such as payday loans, traditional installment loans, and products offered by new, online fintech companies.*

- *The cost to lenders of providing traditional installment loans.* More precisely, the Taskforce could examine the relationship between loan size and cost (which includes the operating cost of making a loan and collecting payments, losses from defaults, and the cost of borrowed and equity capital). Interestingly, the 1972 Report showed that the cost to servicing borrowers is quite high.

- *Whether high APRs are a sign of unfair or predatory loans.* AFSA posits that using APR as a marker for whether an installment loan is a predatory loan is misleading. APR is a regulatory tool required by the Truth in Lending Act (TILA) which annualizes the interest rate of a loan, even if the term is only a few weeks. The rate a loan carries is principally a function of the size and length of a loan. The bigger and longer the loan, the lower the APR, and vice versa. Thus, the APR on a 30-year mortgage of $500,000 is obviously going to be lower than on a two-week $200 payday loan. The rate on a typical installment loan will naturally fall somewhere in between those.

- *The effects of state rate caps.* The Taskforce could consider the questions: (1) Do rate caps affect the price and amount of the different types of consumer credit; (2) Do the state-imposed restrictions on other credit terms imposed by many states affect the price and amount of consumer installment credit; (3) When legal rate ceilings are higher, do creditors accept more credit risks; and (4) Do differences among legal remedies allowed by state laws affect the price and/or amount of consumer installment credit? AFSA believes that undue regulation, such as state rate caps, limits credit availability, harming consumers who need the credit the most by forcing them to either borrow more money for a longer term or turn to illegal sources.

  The 1972 Report authors studied the impact on credit availability under a rate cap (Maine) and no rate cap (Texas). The Maine study found that the rate cap *increased* the average cost of a loan and forced borrowing from "lenders of last resort."[2]

  Other studies, with authors reaching similar conclusions, have been done throughout the years. As it looks to update the 1972 Report, the Taskforce members should repeat this study and examine the impact that rate caps have on credit availability.

- *Whether depository institutions are willing or able to make small-dollar loans on a wide-scale basis, not just for direct deposit customers.* In 2009, the FDIC conducted a small-dollar loan pilot program.[3] The pilot program demonstrated that banks cannot offer small-dollar loans profitably—even though they borrow money to lend at rates dramatically lower than traditional installment lenders.

  Banks are unable to make small-dollar loans at a 36 percent APR cap because of: (1) the limited amount of interest earned due to the declining principal balance from amortization, and (2) the fixed costs of underwriting, collecting, and managing an amortizing small-dollar loan. Despite the positive headline of the FDIC's report on the pilot, the FDIC concluded, "However, given the small size of SDLs [small-dollar loans] and to a lesser extent NSDLs [nearly small-dollar loans], the interest and fees generated are not always sufficient to achieve robust short-term profitability. Rather, most pilot bankers sought to generate long-term profitability through volume and by using small-dollar loans to cross-sell additional products."[4]

  Non-interest income is also a key component of sustainability and profitability for any financial institution. This is particularly true for traditional installment lenders because their yields and margins are so tight. The non-interest income generated by loan fees and voluntary protection products help traditional installment lenders maintain their stability so that they may continue to serve the credit needs of consumers.

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[2] Those "lenders of last resort" evaded the law with a scheme in which loans were passed from one lender to another to avoid the rate cap.

[3] Miller, Rae-Ann, Susan Burhouse, Luke Reynolds, and Aileen G. Sampson. *A Template for Success: The FDIC's Small-Dollar Loan Pilot Program.* FDIC Quarterly 2010, Volume 4, No. 2.
Available at https://www.fdic.gov/bank/analytical/quarterly/2010-vol4-2/fdic-quarterly-vol4no2-smalldollar.pdf.

[4] *Id., p. 32*

- *The detrimental impact debt settlement companies (DSCs) have on consumers.* DSCs are for-profit companies that work with indebted consumers and attempt to settle their debts for less than the amount owed. DSCs advise and instruct consumers to cease contact and stop making payments to their creditors. The strategic default that consumers are encouraged to engage in has a detrimental effect on consumer credit profiles and the financial stability of consumers. During the negotiation phase consumers are instructed to pay money into a trust account with the hope of affecting a settlement with those funds in the future. The average time to reach a settlement under the DSC plan is three to six months. The average DSC program is 36 months.

  With no reporting structure, creditors are often first informed of DSC involvement when the power of attorney and "cease and desist" letter are received. Creditors are left with few options to contact consumers engaged with DSCs and are often unable to communicate using other forms of remediation for consumers that may be available. While DSC activity has been associated with delinquent consumers in the past, the industry is now shifting its marketing to attract current consumers. Between 2012 and 2017, the amount of debt enrolled with DSCs grew from $1.7 billion to $12 billion. It is currently estimated five – seven million consumers are engaged with DSCs.

  During the settlement negotiation period, the reported late payment activity causes the credit score to drop an average of 60-100 points for those engaged with DSCs. Not all creditors work with DSCs, leaving some debts outside of the proposed plan. The negative payment activity also exposes consumers to unnecessary accrual of interest, late fees, and penalties depending on the credit product, as well as increased exposure to collection suits and instances of bankruptcy. DSC program efficacy is problematic with only 50 percent of accounts being successfully negotiated to settlement; and of those where settlement is reached, only 50-55 percent of consumers successfully completing the DSC program.

  Consumers that fail to complete the program are left in a worse position than before they engaged the companies due to fees paid and compounded the damage to their credit profile. Consumers are not able to engage in traditional credit counseling or debt management because they lack the necessary liquidity due to fees paid to DSCs or funds abandoned under the DSC plan.

  DSCs operate in an unregulated and unsupervised environment. AFSA encourages the Taskforce to look for ways that DSCs could be supervised and regulated, whether it is a larger participant rule or a new regulation.

Studying these points will provide valuable information about the state of consumer lending in the United States today.

II. How an "All-in" APR Harms Consumers

AFSA supports the current Regulation Z calculation and disclosure of the APR as a meaningful measure to compare the cost of credit for loans of similar sizes and duration. While we do not believe that APRs are always a measure of the true cost of a loan or how expensive a loan is, TILA APRs are still a good way of comparing the cost of different credit products. APR is a defined and well-understood term under TILA that has been the standard measure for comparing credit products for decades. The purpose of a TILA APR is to promote the informed use of credit and to provide consumers with an "apples to apples" comparison between the cost of different credit products.

In recent years, there has been a trend away from a TILA APR to an "all-in" APR. An "all-in" APR includes the cost of voluntary protection products that are unrelated to the cost of credit and are not comparable from credit product to credit product in the APR calculation. This concept was codified in the Military Lending Act, which introduced the "Military APR" or "MAPR." The MAPR includes the cost of goods, services, or insurance that are unrelated to the cost of credit, and which are not comparable from credit product to credit product. "All-in" APRs modeled after the MAPR have been introduced in various states. The CFPB proposed using an "all-in" APR in its Payday, Vehicle Title, and Certain High-Cost Installment Loan rule. Of course, the Bureau ultimately decided against using an "all-in" APR in the final rule.

APR is valid only for comparing comparable credit transactions and relates only to the cost of the credit. APR has never, ever, been associated with the cost of goods, services, or insurance. This is why, in TILA, the cost of voluntary protection products, like credit insurance, are expressly excluded from the finance charge if the creditor provides the consumer with certain written disclosures, and hence excluded from the APR.

An "all-in" APR calculation undermines TILA. For nearly 50 years, TILA has provided a standard for calculating APR, ensuring that all references to APR are consistent and require little interpretation. This allows consumers to draw conclusions as to the comparative costs of similar loan products. It also ensures consistency in disclosures relating to voluntary protection products. TILA benefits consumers by ensuring a single uniform disclosure of the cost of credit as well as any voluntary protection products.

The Taskforce should confirm that five decades of jurisprudence and regulatory guidance have led to confidence in the term "APR"—what it means, what is included, and what is not included in its calculation. The Taskforce should recommend against using an "all-in" APR because it is not useful to add the cost of voluntary products as a "cost of credit" by inclusion in APR.

III. Suggestions for Modernizing Consumer Finance Statutes and Regulations

With the ever-increasing speed of technology, regulations often fail to keep up with changes in the consumer financial markets. Many of these statutes were passed decades ago. In some cases, the implementing regulations have been updated, while in others they are untouched. Even where they have changed, it may be time for another look.

In particular, the Taskforce could review: the Fair Credit Reporting Act (FCRA) and Regulation V, the payment provisions of the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (Payday Rule), the Gramm-Leach-Bliley Act (GLBA) and Regulation P, Electronic Signatures in Global and National Commerce Act (ESIGN) and Regulation E, the Telephone Consumer Protection Act (TCPA), the Equal Credit Opportunity Act (ECOA) and Regulation B, and the requirements for home equity plans under Regulation Z.

- *Fair Credit Reporting Act and Regulation V.* The FCRA requires consumer reporting agencies (CRAs) to follow reasonable procedures to assure the maximum possible accuracy. It requires the CRAs to disclose to a consumer the contents of a consumer's file. It contains procedures for consumers to dispute the accuracy of information in the CRAs' files. And, it requires notification when information from these files contributed to a user's adverse action. In addition, the FCRA's implementing Regulation V requires that data furnishers implement and maintain reasonable written policies and procedures concerning the accuracy of the data they furnish.

AFSA believes it is time for the CFPB to simplify and clarify Regulation V. In particular, the Taskforce should recommend that the CFPB address the exponential increase in FCRA credit dispute abuses that lack factual basis for the dispute and merely attempt to do no more than improve a credit score. Often these complaints are submitted repeatedly, with little or no difference. These meritless, frivolous, and/or repeated disputes take up resources that would be better devoted to addressing consumer complaints with merit or to other areas of customer service. Perhaps the Taskforce could consider a safe harbor for good-faith, reasonable reporting.

The Taskforce should also recommend that the CFPB address the issue of FCRA identity theft claim requirements when a reasonable investigation must be conducted, even though a reasonable likelihood of identity theft has not been asserted. In addition, the Taskforce should recommend that the CFPB review FCRA bankruptcy reporting. It may be appropriate to establish safe harbors for both of these provisions.

- *Payment Provisions of the Payday Rule*. The Payday Rule's payment provisions impose two types of requirements regarding certain lenders' repeated attempts to withdraw payments from consumers' accounts after prior attempts have failed due to insufficient funds. First, where two consecutive withdrawal attempts have failed due to insufficient funds, the Payday Rule prohibits a lender from attempting another withdrawal from the same account unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. Second, a lender is required to provide a written notice before its first attempt to withdraw payment for a covered loan from a consumer's account and before subsequent attempts that deviate from scheduled amounts or dates or that involve a different payment channel than the prior attempt. The Payday Rule also requires a lender to provide a consumer rights notice if two consecutive attempts to withdraw payment have failed due to insufficient funds in a consumer's account. These disclosures are intended to protect consumers from repeated withdrawal attempts, but they severely limit consumers' payment flexibility, which harm consumers, not lenders.

  For example, if a consumer enrolled in a recurring remotely created check (RCC) program has authorized RCCs to be processed on the 10th of each month, and the consumer calls the lender on the 9th of the month and requests that the RCC for that month be processed on the 11th instead, the lender, as the Rule is currently written, would have to deny the consumer's request because there is insufficient time (three or six days is required) to issue an Unusual Payment Withdrawal Notice. Without this clarification, lenders would be required to wait three or six days before initiating the transfer—which may well cause the consumer to incur late fees. Alternatively, if the consumer assumed the payment had been withdrawn, to use funds in the account that would then cause a bounced payment to the lender and would incur NSF fees with the consumer's bank and creditor.

  Similarly, a consumer who is enrolled in a recurring debit card payment program would not be afforded the discretion to log into her online account and adjust the payment schedule to suit her current situation because the lender would be forced to limit the consumer's flexibility to make changes to the payment schedule due to the time delays for notices (three or six days), which must be factored into any changes. This is inconvenient and even harmful to consumers who need the flexibility to customize payment schedules in accordance with their expected cash flow and could result in late payments, late fees, and possibly NSF fees.

In another example, a consumer who calls a branch office on the 5th to inform the lender that she will be working on an offshore drilling rig for the next three weeks will not be able to change her payment schedule. Currently, knowing that her payment is due on the 7th but that she will be working on the rig on the 7th, she would be able to ask the lender to set up a post-dated ACH payment to occur on the 7th. Under the Rule, the lender would have to deny her request because there would not be sufficient time to present the consumer with the three- or six-day notice under the Rule. Therefore, the consumer would have to either pay early (which may not be an option for many consumers who live paycheck to paycheck) or pay late and incur a late fee.

In its examination of installment loans, the Taskforce should also consider how the payment provisions of the Payday Rule will affect consumers who rely on installment loans.

- *GLBA and Regulation P*. In August 2018, the CFPB finalized a rule that updated Regulation P to implement a December 2015 statutory amendment to the Gramm-Leach-Bliley Act. The rule provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to consumers. To qualify for this exception, a financial institution must not share nonpublic personal information about consumers except as described in certain statutory exceptions. In addition, the rule requires that the financial institution must not have changed its policies and practices with regard to disclosing nonpublic personal information from those that the institution disclosed in the most recent privacy notice it sent to consumers.

  While some financial institutions no longer have to mail privacy notices each year, many that still meet those conditions must continue doing so. AFSA recommends that the Taskforce study the effectiveness of the annual privacy notice disclosure requirements. Our research shows that consumers do not read these notices and the mailing wastes of millions of dollars and tons paper.

  It would be useful if the Taskforce proposed other methods of disclosing this information, perhaps posting it online where consumers could easily read it. To find out what a financial institution's privacy policy is, we doubt that any consumer is pulling a mailed statement they received out of a file folder from a cabinet in the den. Chances are that consumers will simply Google "Willow Bank privacy policy" and easily find the desired information online.

- *ESIGN and Regulation E*. ESIGN became law in 2000, validating signing contracts and documents online, with the intention of streamlining business operations, acknowledging technological advances, and eliminating paper burdens for consumers. However, time has shown that changes are needed to ESIGN to better serve both consumers and financial institutions.

  Similar to the annual privacy notice, the Taskforce should consider whether the ESIGN statement is helpful to consumers. We believe that in this electronic age, it has outlived its usefulness and should be eliminated. At a minimum, the antiquated statements concerning hardware/software requirements and/or the reasonable demonstration standard should be eliminated.

  The Taskforce should pay particular attention to the TILA disclosure timing interplay with ESIGN in a three-party transaction conducted at the seller's place of business (such as auto financing transaction). TILA requires that consumers receive the disclosures in a form they can keep prior to consummation and because the transaction is taking place on the dealers' computer, they cannot be provided electronically to the consumers, so the dealers typically print them for consumers. Then, consumers and dealers go through the closing process and the dealers again print a copy of the now completed contracts for the consumers. Thus, consumers receive two paper copies of the contracts.

Additionally, some laws still require that an "original" document be returned to a consumer. For example, some state lending laws require a lender to return the "original" promissory note or loan agreement to a borrower when a loan is paid off and stamp the document "paid" or "canceled." In the context of electronic documents, the concept of an "original" document is problematic and antiquated. The "original" may exist solely in computer memory or RAM and is destroyed when a "copy" is saved to a hard drive. The concern should be on the integrity of the information and its accurate reproduction, not with its originality. ESIGN should be modernized to clarify that if a federal or state law requires that an "original" document be provided that an accurate electronic copy of the document satisfy the requirement.

- *The TCPA*. While the Federal Communications Commission (FCC) has the authority to issue rules under the TCPA, the CFPB has a role to play and the Taskforce could look at how the CFPB could work with the FCC to better serve consumers and financial institutions.

  The issue here is that the TCPA prohibits calls to cell phones using an autodialer without the prior express consent of the caller. While that sounds easy, it is complicated by the broadly-defined terms "autodialer" and "consent." The FCC's rules define an autodialer as a device with the capacity "to store or produce telephone numbers to be called, using a random or sequential number generator" and "to dial such numbers." This broad interpretation has led to a substantial increase in frivolous litigation that costs financial institutions millions of dollars without benefit to any consumers except that litigant and her lawyer. On average, consumers receive just a few dollars from TCPA class actions, but plaintiffs' attorneys walk away with millions. Moreover, jurisdictional splits result in a lack of consistency.

  In addition, disagreement over what constitutes consent and revocation of consent also results in frivolous and voluminous litigation, usually only benefitting attorneys. There is a split in jurisdictions as to whether a consumer has the right to unilaterally revoke consent. Requiring revocation in writing could resolve that jurisdictional divide.

  This litigation can have a chilling effect on the willingness of financial institutions to call their customers, meaning that customers may not get important information about fraud, loan modification opportunities, branch closures, etc.

  The CFPB recently sent a letter to the FCC in response to a petition[5] asking for certain calls made during the COVID-19 pandemic to be declared as emergency calls and exempted from the TCPA restrictions. We encourage the CFPB to continue this kind of outreach to the FCC to explain why financial institutions need to call their customers, the benefit of these calls, and the harm that can occur to consumers when these calls are not made.

  While not under the TCPA, we also recommend that the Taskforce look at ways in which the CFPB can help the FCC deal with "call-blocking" As the FCC grapples with eliminating or reducing the number of

[5] Petition for Expedited Declaratory Ruling, Clarification, or Waiver Filed by the American Bankers Association et al., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (Mar. 30, 2020). Available at: https://www.afsaonline.org/Portals/0/ABA_JointTrades_Petition_Emergency_Purposes_Exception_2020_03_30_final.pdf

illegal robocalls, calls from legitimate businesses, including AFSA members, are caught in the crosshairs. Calls from financial institutions to their customers are getting blocked. As with the TCPA, we hope the CFPB will work with the FCC to ensure that these necessary calls get through to the consumers who need them.

- *ECOA and Regulation B.* AFSA continues to support ECOA, which prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the CCPA.

  The RFI brings up the issue of disparate impact under ECOA. The disparate impact doctrine establishes liability for a facially neutral policy or practice that might result in a discriminatory effect, even absent any discriminatory intent. In March 2013, the Bureau released CFPB Bulletin 2013-01, entitled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act." Bulletin 2013-01 stated the CFPB would apply a disparate impact analysis and provided guidance on how indirect motor vehicle lenders could avoid disparate impact violations of ECOA and Regulation B.

  On May 21, 2018, the President signed a joint resolution passed by Congress disapproving the CFPB Bulletin 2013-01. Consistent with the joint resolution, the Bulletin now has no force or effect. As a result of the joint resolution, the CFPB is estopped from issuing a substantially similar rule, which has no specific new legislative authorization.

  In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*,[6] the Supreme Court held that disparate-impact claims were cognizable under the Fair Housing Act (FHA). In its decision, the Court reasoned that laws "must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose." The Supreme Court has not been asked to rule on whether disparate impact claims are legally cognizable under ECOA. AFSA believes that ECOA does not include text referring "to the consequences of actions" taken by a creditor and therefore disparate impact claims are not cognizable under ECOA, based on the Supreme Court's reasoning in *Inclusive Communities*. The Taskforce could review the CFPB's interpretive authority in this area and explain the difference between FHA and ECOA, as well as the limits of the CFPB's authority.

  In addition to reviewing disparate impact under ECOA, the Taskforce could use this opportunity to consider updating the notices required by ECOA.

  For example, the Bureau should address the ECOA adverse action notice inefficiency in three-party transactions where the seller/dealer is the original creditor and each finance source to whom they offer the contract is also a creditor. Because no one knows what ultimately happens at each of the multiple financing sources from which a seller/dealer solicits extensions of credit to a consumer, all financing sources send adverse action notices in many instances. This is unnecessary and probably confusing to consumers who receive an unexpected influx of adverse action notices from financing sources they do not recognize.

  Similarly, it would be helpful for the Bureau to issue guidance on what ECOA and FCRA notices should be sent in situations where a consumer submits a single application to a lender for multiple products (*e.g.*

[6] 135 S. Ct. 2507 (2015).

unsecured loan, auto loan, credit card, *etc.*) but the consumer may only choose one product. ECOA and FCRA outline which notices need to be provided when an application is for a specific product: Risk-based Pricing Notices, Credit Score Disclosure Notices, Notices of Incompleteness, Counteroffer Notices, or Adverse Action Notices. They do not provide clarity on what would be required if an application is for multiple products, but the consumer can only walk away with one of those products. Sending several notices could confuse the applicant on the status of their application.

For example, a consumer applies for a loan with a lender and provides his income and debts to see if he qualifies for an unsecured loan, auto loan, or credit card. Then, the lender tells him that he is prequalified for an unsecured loan or a credit card, but not an auto loan. Based on existing ECOA and FCRA requirements, a lender may send three notices: a credit score disclosure notice for the unsecured loan offer, a credit score disclosure notice for the credit card offer (if decision was made using a different CRA), and an adverse action notice for the auto loan. Getting three notices in response to one credit application could confuse the consumer.

Finally, for both ECOA and FCRA notices, it would be helpful for the CFPB to address the issue of applications for credit that are deemed incomplete. Such notice is required to be sent within 30 days from receiving an incomplete application, resulting in many engaged applicants receiving a written notice that is stale by the time the consumer receives it. The CFPB should consider having fewer formal requirements and allow for alternative communication methods, like calling, online chat messaging, or logging in to an online account. This change would allow lenders to inform the applicant what is needed in a timely manner allowing them to complete the desired transaction.

- *Regulation Z – Requirements for Home Equity Plans.* As with other statues and regulations, this is an opportunity to review the disclosures required under 12 CFR 1026.40. The regulation states that disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

  AFSA members have read that to mean that if a consumer comes in person to a branch and completes an application in any way (online or written), then they must give the consumer the disclosures. However, if the application is taken by phone or mail, the disclosures can be sent within three days.

  Regulation Z should allow for sending the disclosures within three days for in-person applications as it really does not differ from a phone or mail application. It is costly to keep updated printed applications in each branch and they are sent either electronically directly to the consumer or sent to the branch to be printed and given to the consumer.

We appreciate the Taskforce's willingness to review these statutes and regulations to make them work better for consumers and financial institutions in this modern era.

We also take this opportunity to emphasize that the CFPB should take a bright line approach to regulation. In the RFI, the Bureau notes that some stakeholders favor regulations with specific requirements, which draw bright lines for a financial institution's compliance obligations but can apply a one-size-fit-all approach. Others favor "principle-based" regulations, which can provide a financial institution with flexibility but can create compliance uncertainty. We believe that the CFPB should promulgate rules with clear definitions and parameters rather than using enforcement actions as a vehicle to expound upon rules.

IV. Federal and State Coordination

AFSA is a strong advocate of increased federal and state coordination. As the RFI notes, the Bureau is one of a myriad of federal agencies with supervision or enforcement responsibilities over financial institutions. Having more than one agency can increase the resources devoted to supervision and enforcement, but it also increases the burdens on regulated entities and on the costs to consumers. It also sometimes results in conflicting positions between governmental agencies.

There should be consistent overlap between federal and state exams. One way to increase cooperation would be to develop a template for all examiners to use with standard data requests. If a state or federal agency needed additional information, it could document why that information was needed and request the desired data. This would greatly reduce the number of hours spent on complying with substantially similar requests. This extra time could go towards implementing a better, more robust compliance program. It would also assist the examiners in comparisons and review of material provided.

In addition to exams, financial institutions that are regulated at the state and federal level often face conflicts in complying with the two. Nevada SB311 is an example of a state law that conflicts with federal law. It is impossible for financial institutions subject to federal law to comply with SB 311 because it requires that creditors deem an applicant with no credit history to have the credit history of a spouse or former spouse that was established during the marriage. This requires creditors to consider credit bureau information relating to third parties, which is legally impermissible under the FCRA and ECOA, both of which preempt SB 311. Worse still, even if this law were not independently preempted by both the FCRA and the ECOA, the information necessary for compliance with the law is not legally accessible from the CRAs. Perhaps the Taskforce could recommend that the Bureau develop a forum for the public to bring conflicts of law to its attention, so that the CFPB can address these inconsistencies.

We also emphasize that the CFPB should not take a position that is contrary to state law. For example, if a state law allows financial institutions to charge for a return of personal property, *e.g.*, a car that had been repossessed, the CFPB should not take the position that doing so is an unfair, deceptive, or abusive act or practice. If the Bureau firmly believes that the state law allows for an unfair, deceptive, or abusive act or practice, then the CFPB should promulgate a rule that outlaws the act or practice and preempts the offending state law.

Along the same lines, the Bureau asks in the RFI whether it would be desirable to have a uniform national standard for data breach obligations. The answer is a resounding "yes" —that is, as long as the standard was preemptive. If not, it would be overly burdensome.

A review of the inconsistencies between federal and state law and opportunities for increased coordination by the Taskforce would be very valuable contribution to regulatory efficiency and clarity.

V. Conclusion

AFSA appreciates the opportunity to provide recommendations to the Taskforce. We look forward to reading the report that the Taskforce produces. We hope that the Taskforce's report includes an examination of traditional installment lending, a review of how an "all-in" APR harms consumers, a comprehensive list of recommendations for modernizing consumer financial laws and regulations, and suggestions for increased federal and state coordination.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association