

BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2020-XXXX]

Request for Information Regarding Taskforce on Federal Consumer Financial Law

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Taskforce on Federal Consumer Financial Law (Taskforce) with recommendations on harmonizing, modernizing, and updating the federal consumer financial laws, as well as identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2020-XXXX, by any of the following methods:

- Electronic: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2018-0015 in the subject line of the message.
- Mail: Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- Hand Delivery/Courier: Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question on which you are commenting at the top of each response (you do not need to answer all questions). Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G St NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern standard time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Commented [WN(2R1)]: Make Times New Roman double space

Commented [WN(3)]: Do we add Taskforce email?

Nat Weber, Chief of Staff, Taskforce on Federal Consumer Financial Law, at [Redacted], or Matt Cameron, Staff Director, Taskforce on Federal Consumer Financial Law. If you require this document in an alternative electronic format, please contact [Redacted]

SUPPLEMENTARY INFORMATION:

The Director of the Bureau established the Taskforce pursuant to the executive and administrative powers conferred on the Bureau by sections 1013(a) and 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Taskforce is charged with (1) examining the existing legal and regulatory environment facing consumers and providers of consumer financial products and services; and (2) reporting its recommendations for ways to improve and strengthen federal consumer financial laws, 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 services, and identifying gaps in knowledge that the Bureau should address through future research. Where possible and within time constraints, the Taskforce's report may include recommendations relating to the 18 enumerated consumer laws and titles X and XIV of the Dodd-Frank Act, including those provisions relating to unfair, deceptive, or abusive acts or practices.

The Taskforce is inspired in part by an earlier commission established by the Consumer Credit Protection Act (Act) in 1968. In addition to various changes to consumer law generally, the Act established a national commission to conduct original research and provide Congress with 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.

OVERVIEW OF THIS REQUEST FOR INFORMATION:

The Bureau's Taskforce is considering what recommendations might promote the welfare of consumers in their involvement with providers of consumer financial products and services. In general, consumers benefit from markets characterized by robust competition, which can offer attractive choices and fair prices. In addition, the terms of the services must be clear, so that consumers can make informed choices and must be free of unfair, deceptive, and abusive acts or practices. We are seeking information from all interested parties on which markets are functioning well and which might benefit from changes that could materially increase consumer welfare. To that end, we ask a series of questions about various consumer financial services, with a special interest on these markets:

- Bank accounts (checking or savings)
- Credit cards
- Credit repair
- Credit reporting
- Debt collection by collection agencies
- Debt collection by creditors (in-house)
- Debt settlement

- Educational lending
- Educational loan servicing
- Money services (money transfers and electronic payments)
- Mortgage servicing
- Prepaid cards
- Residential mortgages
- Small dollar loans (installment, payday, title loans)
- Vehicle financing (credit or lease)

Commented [WN(4)]: Should we call this student loans?

Which markets are functioning well, and which are not functioning as well? We The Taskforce recognize that all changes is not cost-free in law create at least some costs and that not every change provides equal benefit. Consumers may benefit more from changes in laws governing certain markets than they would from changes in laws governing markets that already offer. When consumers have a wide selection of products and services that meet their financial needs, offer competitive prices, and have clear and truthful information about the price and features of the service, they may benefit less from changes in laws and regulations that attempt to improve the market or prevent abuses. Every statutory or regulatory change creates at least some cost—and often considerable cost—as both consumers and industry adjust to new rules and bear the cost of change.

For that reason, the Taskforce we are most interested in learning where changes would be most worth the cost. In other words, we The Taskforce encourages interested parties to provide feedback hope to hear from stakeholders about the markets or services in for which a change in the rules would provide the greatest marginal benefit considering the marginal costs.

Commented [WN(6)]: Control find “we” and replace with TF

The Regulations

These questions focus on the regulations the Bureau writes, supervises, and enforces. We encourage commenters to include specific examples in their responses, are especially welcome.

1. Are there gaps in consumer protections that should be filled by strengthening the Bureau’s regulations? What type of protection is needed (e.g., additional disclosures, substantive requirements)? How should the costs and benefits of the proposed changes be evaluated?
2. Where would clarified regulations benefit the market for consumer financial products and services from increased clarity? Uncertainty increases compliance costs and litigation risk without benefitting consumers. Explain the lack of clarity and how the regulatory language should be made clearer/clarified.
3. Where have regulations failed to keep up with rapid changes in consumer financial services markets? Are regulatory changes needed to address new products and services and the way consumers obtain them? Are there regulations that have outlived their usefulness? Are there new regulations that might be needed?
4. Some creditors and consumer advocates favor federal regulations with have specific requirements, which draw bright lines for a company’s compliance obligations (e.g., Regulation Z’s disclosure requirements). Others federal regulations employ a favor “principle-based” approach regulations, which allow companies to tailor their compliance practices to their particular size and complexity but may be more difficult to enforce (e.g., the Gramm-Leach-

Bliley Act's implementing regulation for safeguarding consumer information, which requires "safeguards appropriate to the size and complexity" of the financial institution), are less likely to become. Is one of these regulatory approaches generally more likely to lead to outdated regulations in an evolving industry and to have unintended adverse consequences? If the answer depends on the particular circumstances or market, please describe which circumstances or markets would benefit from which regulatory approach. Federal regulations currently employ both approaches (e.g., the highly technical disclosure rules of Regulation Z and the Gramm Leach Bliley Act's implementing guidance for safeguarding consumer information, which requires "safeguards appropriate to the size and complexity" of the financial institution).

Expanding Access

These questions explore problems with financial inclusion.

1. Millions of U.S. households lack a bank account. Should the Bureau promote greater access to banking services and, if so, how? Are alternatives to deposit accounts, such as prepaid cards and peer-to-peer electronic payments, sufficient when compared with traditional banking models? What are the consumer satisfaction rates with these alternative products? Are consumers content with alternatives to deposit accounts, such as prepaid cards and peer-to-peer electronic payments?
2. A clear need for short-term, small-dollar credit exists, but it is a costly product for the lender to deliver and has been associated with unfair, deceptive, or abusive acts or practices. What impediments exist for expanding access to short-term, small-dollar loans at affordable rates and on fair terms? What role do state laws have in promoting or limiting access to small loans? Is the annual percentage rate is often useful to assess the affordability of long-term credit; is it a meaningful measure for a very short-term loan? If not, what other measures might be more useful to determine whether the terms of short-term, small-dollar are affordable and fair, and to help consumers in understanding the cost of short-term credit?
3. Some creditors are supplementing or replacing traditional methods of underwriting, such as using income, debts, credit history, and stability factors, and employing "alternative data." Some types of alternative data expand the sources of financial information, such as payment histories for rent, utilities, and other consumer obligations, and other types of alternative data have little in common with traditional information. Should the Bureau require that alternative data factors have a logical relationship with creditworthiness or other legitimate business considerations? Does it matter whether the use of alternative data increases access to credit to those who would not be approved by traditional underwriting?
4. The Supreme Court has validated the use of the disparate impact theory under the Fair Housing Act, but the Court cautioned that the theory can be abused by plaintiffs. Creditors complain that the standard significantly increases compliance costs and legal risk, because accurately determining the disparate impact (especially for nonmortgage credit where monitoring information is not collected), proving the business justification with hard data, and assessing whether any of a potentially infinite number of alternative criteria would meet the creditor's need just as well but be less discriminatory in its net effects. Should the Bureau continue to employ the disparate impact theory in its supervision and enforcement, pending any guidance from the Supreme Court on its application under the ECOA? If so, how should the Bureau

Commented [WN(8R7)]: Yes, let's use a Bureau reg

Commented [WN(9)]: MC: This seems like a statement of fact without any reference to research behind it. Might be helpful to say something like, "According to a recent study by the (Bureau or FRB or OCC, etc), XX million of U.S. households lack a bank account and/or access to traditional banking services."

Commented [WN(10R9)]: Recommend we do not say this or we cite this. Greg E. can provide citation.

Commented [WN(12R11)]: Need to acknowledge potential downside of product. Nat to consult Greg on how to re-draft question.

Commented [WN(13)]: Suggest rewriting as the question is rather leading.

implement the Supreme Court's cautionary language in upholding theory under the Fair Housing Act? Should properly designed credit scoring models be presumed to meet the business-justification standard?

Federal and State Coordination

The Bureau is only one of many federal agencies with supervision and/or enforcement responsibilities for financial institutions. Having more than one agency can increase the resources devoted to supervision and enforcement, but it can also increase the burden on the company (and costs to its customers) and may result in conflicting positions among governmental agencies. These questions focus on the costs and benefits of this overlap.

1. Should the federal banking regulators modify their memoranda of understanding to provide that the Bureau will have sole (or primary) responsibility for examining for and enforcing the consumer financial protection laws for institutions within the Bureau's jurisdiction? Should the prudential regulators refer to the Bureau for enforcement any consumer financial protection violations they discover in a safety-and-soundness examination? Would having a single source of authority enhance consumer welfare or detract from it?
2. How should federal agencies without supervision authority coordinate with the Bureau (e.g., the Federal Trade Commission and Department of Justice)? Should these agencies cede to the Bureau responsibility for enforcing the consumer financial protection laws for the entities within the Bureau's jurisdiction?
3. State regulators typically examine or audit financial institution's compliance with state law, but they can also bring cases under the federal consumer financial protection laws. Once the Bureau has decided to bring an enforcement action, the Bureau may invite states to join in the action. Are consumers and financial institutions helped or harmed by overlapping enforcement powers?

Consumer Data

Possible issues:

- Data security
- Privacy and appropriate use
- Accuracy

Authority: 12 U.S.C. 5511(c).

Commented [WN(15)]: I would recommend we discuss this question with Jean to see how we can reframe or modify. The lead in for this question gives the appearance that 1) the Taskforce already has a view of this issue, 2) the Taskforce may weigh in on the Bureau's supervision and enforcement work – which if they do, we may need more clarify from the Director if this is the Director she wants them to go in.

It may be advisable to delete this question or draft an alternative question about ECOA.

Commented [WN(16)]: Have we missed nonbanks in this section, specifically as they relate to state bank supervisors

Commented [WN(17)]: We may want to ask a question to help us quantify the impact of both federal and state regulations on a small financial entity. For example, "Given the jurisdictional overlap between state and federal regulators on the consumer financial market, are there quantifiable examples of how this overlap has led to an increased cost for compliance for small financial institutions, such as community banks and credit unions?"

Commented [WN(18)]: There are examples of overlapping authority. Could we ask what are the costs and benefits of overlapping regulatory authority?