Scope of the Task Force Report

The Taskforce is still determining the scope of the report, but below is a working conceptual framework that will evolve as the Members continue their research. Additional detail on each of these sections is provided in pages 2-5.

Volume 1: **Background, History, Policy, and Economics**

1) Introduction
2) History of Consumer Credit
3) Why Consumer Use Credit & How the Government Can Help
4) Consumer Credit Regulation
5) Production Cost of Credit & Regulation
6) Financial Inclusion
7) Small Dollar Credit
8) Competition
9) Disclosure
10) Innovation
11) Privacy and Data Security
12) Financial Literacy & Education
13) Financial Regulatory Jurisdiction

Volume 2: **Analysis and Recommendations**

1) Recommendations to Congress for Legislative Reform
2) Recommendations to CFPB Director Kraninger
3) Recommendations for research

We anticipate the Taskforce Report to consist of two volumes: A first volume that explores certain important conceptual ideas that will animate the report and a second volume that focuses on particular recommendations.

Volume 1: Background, History, Policy, and Economics

Importantly, as noted above, when the CFPB established this Task Force on Consumer Financial Law, it promised "research and legal analysis ... focusing specifically on harmonizing, modernizing, and updating the enumerated consumer credit laws – and their implementing regulations." This purview is similar to how Congress focused the attention of the earlier National Commission on Consumer Finance. Consequently, at the outset, it is appropriate to define consumer credit that is the subject of most of this Task Force report and to say something about its importance. With this clearly in mind, it is useful then to summarize here the scope and structure of the report that follows.

We adopt the Federal Reserve Board's widely used definition of consumer credit in its monthly statistical release G19 as "credit extended to individuals, excluding loans secured by real estate." As outlined further in this monthly statistical release, this includes credit provided by depository institutions, finance companies (including "payday" loan companies), credit unions, federal government (student loans), nonprofit and educational institutions, nonfinancial businesses (primarily retail stores and dealers), and holders of securitized assets. Consumer credit holdings consist of both revolving credit and nonrevolving credit extended by these institutions. Student loans and motor-vehicle loans fall within this definition, but not the huge mortgage-lending sector. Real-estate lending is certainly worth study and many academic and government agency studies have done so, but this area of finance is mostly not the subject here.

By itself, the consumer credit sector of finance is huge. From a base of about $6.8 billion at the end of 1945 and its wartime restrictions, domestic consumer credit outstanding grew to more than $100 billion at the time of the NCCF and to more than $4 trillion today. Big numbers are not necessarily indicative of big problems, but there can be no question that the amount of outstanding domestic consumer credit today is huge. (Overall expansion and growth in inflation-adjusted terms is discussed in the following chapter.) This is more than enough subject matter for a report to be constructed within one year, and so mortgage credit that also involves many questions about underlying housing assets remains outside the focus area.

Chapter 2 begins the core of the Task Force's examination of consumer credit with a brief historical review of credit use by consumers and its regulation. It then turns to examination of the subject of corresponding chapter in the NCCF's *Report*, namely "Development and Structure of Consumer Credit." This section of Chapter 2 examines long-term growth of consumer credit use to shed some light on the question often asked whether consumer credit simply has grown too much for too long.

Chapter 3 then looks at two keys question: 1) why consumers would use credit in the first place, and 2) what elements of government action can help them make good choices? Necessarily, this review examines the reasoning of neoclassical economics in this area as well as newer theories associated with the term "behavioral economics." This chapter looks at empirical findings about how and why consumers use consumer credit. This discussion leads to review of rationales for regulation found in the next chapter. It turns out that government policies often can be helpful but there also are limits.

And so Chapter 4 discusses consumer-credit regulation. After briefly examining the intellectual history of regulation in this area, this chapter reviews some aspects of historical experience. Regulatory areas and tools for consumer credit are discussed and specific regulatory regime areas are enumerated. Necessarily, this chapter must circle back to the begged question, whether the whole of the current overlapping regulatory edifice is really needed, now a century into its construction. As with consumers' demand for credit where there can be overextensions, there also can be overextensions of regulation.

Chapter 5 then examines production costs, both for credit and regulation. In both cases, the goal should be the efficiency: best outcome at least cost, the proverbial "bang for the buck" criterion. Production costs are an important part of consumer lending and require a close look, as do regulatory costs. Costs that are too high for regulated prices also deserve a look. This outcome produces the phenomenon of credit rationing.

Chapter 6 examines financial inclusion, including the growth of access to consumer credit over time and the reasons that explain that. First, it is a story of technology, especially the development of credit bureaus and credit scoring, which has made possible underwriting through the collection and analysis of information about consumers that has enabled financial service providers to reach traditionally excluded consumers. This has harnessed the force of competitive markets for the benefit of consumers. Second, it is a story of enlightened public policy that sustained these developments and knocked down many of the regulatory barriers—especially usury laws—that had resulted in the exclusion of many consumers from access to mainstream financial products. Third, it is a story of regulatory interventions that served to knock down traditional barriers that had resulted in the exclusion of some consumers from access to financial products. We will then examine today's regulatory and legislative landscape to consider barriers that exist to inclusion.

Next, Chapter 7 reviews small dollar credit in detail, the province where credit rationing is most likely to take place. How to provide small amounts of credit at low prices has been controversial throughout recorded history, and the present is no exception. Modern institutions that provide small-dollar credit are examined at some length, as are the challenges of regulating in this area. After listing and brief description of the other remaining chapters in the next few paragraphs here, we return briefly to small-dollar credit in the final subsection of this chapter titled "The Big Question." We focus particularly on the traditional Juster-Shay rationing model of consumer credit and examine the empirical support for that model.

Chapter 8 focuses on competition, the underlying theme of the NCCF in 1972. This chapter examines in more detail the economic theories of competition, what competition can do for consumers as they use consumer credit, and how competition interacts with regulation in consumer-credit markets today.

Chapter 9 examines disclosure as a consumer protection and how it might enhance or make simpler other sorts of protection. Certainly disclosure of relevant information is important for making consumer-credit markets more competitive, as also discussed at considerable length by the NCCF in 1972.

Chapter 10 looks at innovation. Not only does innovation generate new products and new ways of doing things; it also generates new divisions. Some observers embrace modernism and change as the hallmark of progress and advancement. Others emphasize the inability or slowness of some market participants to adapt that constantly requires control of the pace of change. Pretty quickly this leads to debate over the need for change in regulatory regime itself. This chapter reviews new manifestations of this phenomenon for consumer credit, focusing on fintechs.

At a minimum, change produces questions of choice and the related need for information. The Economics of Information produced a whole new branch of economics in the 1960s, and it became an intellectual underpinning of the first federal foray into federal consumer protection regulation with the Truth in Lending Act of 1968.[1] Chapter 9 looks in more detail at the interaction of information and choice with special attention to disclosures as consumer protections.

Chapter 11 focuses on a new area of concern as technology has unfolded: privacy and data security. Privacy concerns arise not only from data breaches but also from uses of personal data found to be inappropriate. Recently, the beginnings of large-scale regulation in this area begun at the state level raise questions of a new set of inconsistencies across jurisdictions. Poorly designed privacy regulation, however, can present substantial unintended consequences, particularly with respect to dampening innovation and inclusion for those with fewer choices and traditionally excluded from the financial system.

Chapter 12 examines financial literacy and education.

Chapter 13 reviews the jurisdictional questions already mentioned: With so many federal and state regulatory bodies functioning in the consumer-credit area simultaneously, are they interacting efficiently? Have we built the best way of doing things, and are there areas for rationalization or improvement?

Volume 2: Analysis and Recommendations

We foresee three sets of recommendations coming out of the report: (1) Recommendations to Congress for legislative reform, (2) Recommendations to CFPB Director Kraninger for steps the Bureau could take through internal reforms to regulations and the like or in its relations with other agencies (such as through MOUs), and (3) Recommendations for research and the development of new knowledge and understanding about consumer credit.

[1]Federal controls on consumer credit during World War II, the late 1940s, and during the Korean War (Regulation W) were for economic stabilization and inflation-prevention purposes.

The findings, conclusions, and recommendations in Volume 2 of the report will grow out of the analysis presented in Volume 1 of the report with an eye toward addressing particular discrete issues involving the efficiency and modernization of the federal consumer financial protection regime.

At this point we are withholding judgment on the precise organizational structure of the form of the recommendations. Some of the recommendations might be organized around modernization of particular of the CFPB's particular statutes. Others might be organized around conceptual ideas (such as disclosure or innovation) that cut across multiple statutes.

In order to build a factual foundation for this section of the Report we are developing RFI's and meeting with stakeholders to take input into their observations about the current regulatory framework and recommended improvements thereto.

The division of analysis between Volume 1 and Volume 2 is highly flexible at this point and will take firmer shape as matters develop.