Consumer Financial Protection Bureau

Taskforce on Federal Consumer Financial Law Listening Session

September 28, 2020
4:00p m to 5:00 pm Eastern

Organization: Federal Reserve Board (FRB)

CFPB Participants: Todd Zywicki, Tom Durkin, Jean Noonan, Cheryl Parker-Rose, Nat Weber, Alex Nongard, Jeff Magliato

FDIC Participants: Michael Gibson Director of Supervision and Regulation, Eric Belsky Director of Consumer and Community Affairs

Purpose: On Monday, September 28, 2020, Three Taskforce members met remotely via WebEx with two officials of the FRB as part of the Taskforce's commitment to engage with external stakeholders to gain insights regarding the financial service industry and financial consumer protection laws. The group discussed opportunities to improve, strengthen, and modernize consumer financial protection laws.

Discussion:

1) Introductions and Opening

Taskforce Chair conducted opening remarks and introduced members. FRB representatives introduced themselves. The Director of Consumer and Community Affairs deals with consumer protection issues. The Director of Supervision and Regulation handles matters of safety and soundness.

2) Consumer Information and Education (*see discussion prompts*)

- During the late 1960's and 1970's and with the Truth and Lending Act and other laws the idea that consumers need information to make financial decisions took root. Thus, was born the concept of disclosures.
- Disclosures are central to the effort to provide consumers with relevant information for financial transactions. Getting disclosures right is not easy, timing and content are issues.

- The current Financial Literary Commission has 20 member agencies. The large number of participants shows the sizable amount of interested parties with responsibilities and interest in the work of information disclosure.
- Consumers are getting transaction information on-line and at the point of sale. Disclosure thinking needs to consider this reality.
- Two views of disclosures: principle based (financial institutions decide the form and content within a disclosure) and prescriptive based (regulators decide the form and content within a disclosure). These issues are now assessed within the discipline of behavioral economics. How people process information is relevant so there is an argument for less information and less choice for the consumer. Consumers get confused when bombarded with too much information. The answer on what and how much to put in a disclosure is not yet clear to the financial regulators. Example: fees may not be deemed relevant to a consumer because the consumer, rightly or wrongly, has no intention of incurring fees at any time during the life of a relationship at the time the consumer enters the deal – so should a disclosure discuss fees?
- FRB is not known to be conducting a direct study on disclosures but this does not mean that somewhere within the federal bank system someone is not engaged in such an analysis.
- FRB considers disclosure issues, including artificial intelligence ideas, in its work.
- Many people get kicked out of the on-line lending application process due to fraud concerns because risk models designed for AML and BSA purposes are not able to deal with new different data. FDIC may have put out a request for information on this issue.

3) On Competition and Innovation (*see discussion prompts*)

- FRB put out a statement encouraging the use of alternative data to make credit decisions. Banks often ask questions about this issue.
- Use of alternative data offers opportunity to increase access to credit without increasing loan losses
- Three forms of alternative data exist, behavioral data, payment data, cash flow data.
- Behavioral data needs to show proper correlation to risk to avoid fair lending risks
- Charles River has a study that seems reliable and shows cash flow data is useful
- Innovators are not as familiar with the regulatory regime as are traditional financial institutions. Clarity of rules is important to allow these innovators to contribute.
- FICO is working with cashflow data and it is having promising results
- It is thought that current FICO score formula is from the year 1993
- Cashflow seems as valid an input as credit score in regard to safety and soundness
- Payment data is problematic because there is limited data on rent payments (so many landlords, many small and outside the "reporting" structure, and there are laws limiting access to phone bill data.
- FRB thinks Philadelphia Federal Bank might have some studies about competitive effects of preferring one type of credit score over another.

- Treasury and FINCEN write the AML and BSA rules, FRB just looks for compliance with the rules. Inclusion is not an issue high on the Treasury and FINCEN radar.
- Banks think cost of AML is high, law enforcement thinks AML is not strong enough.
- Barriers to opening an account created by AML are not high, need an id.
- AML issues pushed banks to prefer known customer in the issuance of pandemic related PPP loans.
- Open banking to deal with the stickiness of bank accounts could play a role in competition but FRB not looked at the issue

4) Regulatory Modernization and Flexibility (*see discussion prompts*)

- Ownership of consumer's financial data is a CFPB issue as it has been framing ideas in this arena, one idea is how to protect privacy and ownership of information
- Bank's use third party vendors to compete with FinTech entities. FRB seeks establish standards to avoid regulatory issues in this new bank practice. FRB wants to allow banks to offer new services via third parties to make it possible for customers to stay with a bank but get a new service.
- For a consumer to move to a new bank is difficult due to administrative issues such as the need to maintain two bank accounts during the transition.
- FTC has guidance about disclosures in a digital environment
- Look at disclosure development with an eye toward the user interface (ex: consumer conducts business over the phone so how best to issue disclosure on a phone)

5) Potential recommendations:

1) Consider the clarity of rules, as this is important to allow innovators to contribute (item 3, bullet)
2) Require Treasury and FINCEN to consider consumer inclusion issues in its BSA and AML work (item 3, bullet 12).
3) Make rules to define the owner of a consumer's personal financial data (item 4, bullet 1)
4) Look to FTC for guidance in the development of disclosures for the new digital banking environment (item 4, bullet 4)

6) Potential Action Items:

1) Find out if Philadelphia federal bank has done any studies on the competitive effects of requiring use of one type of credit score over another.