

Taskforce on Federal Consumer Financial Law

Competition Outline
Appendix: Dodd-Frank Act Citations

I. Introduction Competition and Financial Consumer Protection

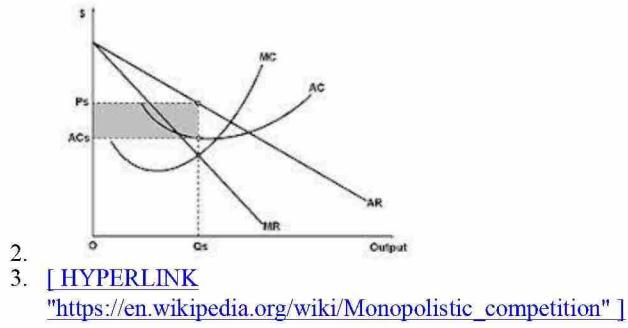
- a. Introduction – the laws regulating consumer credit presume competitive markets.
 - i. DFA
 1. Section 1021(a) (12 U.S.C. § 5511(a))—identifying the Bureau’s statutory purposes, including to ensure “that markets for consumer financial products and services are fair, transparent, and competitive.”
 2. Section 1021(b)(4) (12 U.S.C. § 5511(b)(4))—identifying five objectives for which the Bureau may exercise its authorities, including to ensure that “Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition.”
 - ii. Enumerated Statutes
 1. TILA, etc.
 - iii. Complementary Laws
 1. FTCA, etc.
- b. Long recognition of complementary roles of competition and consumer protection in market economy
 - i. NCCF – “Painful as competition may be for the participants, it provides the ultimate protection for most consumers. Coupled with the shopping information provided by [TILA], increased competition is favored by the Commission as the best means to assure that most consumers pay a fair price for their credit services.” (R 214)
 1. Low income consumers warrant special attention (R Ch. 10)
 - ii. NCCF – critical functions of lawmakers include:
 1. Promoting and maintaining competition among numerous sources of credit. Competition is the key ingredient “of a finance industry capable of providing an adequate supply of credit at reasonable rates”
 2. Assuring “access by *all* to these alternate sources” (emphasis in original)
 3. Preventing “excesses which the “system” may invoke against the borrower.” (NCCFR 2)
 - iii. General scholarship
 1. Credit Reports *Marquette National Bank*, and Entry, (Durkin, et al. CCAE 268-70)
 2. Usury and segmentation (CCAE 501-510 and sources cited)
 3. Highlight others

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II. Competition (Bill)

a. Competition values

- i. Classic consumer welfare: prices approximate costs
 - 1. Deadweight loss and excluded purchases in monopoly



- 2.
- 3. [\[HYPERLINK
"https://en.wikipedia.org/wiki/Monopolistic_competition"\]](https://en.wikipedia.org/wiki/Monopolistic_competition)

- ii. Dynamic interpretations: product improvement and innovation
 - iii. Discourages discrimination
 - iv. Encourages access
- b. Characteristics of competitive markets
 - i. Rivalry, numerosity
 - ii. Dynamism, entry, exit
 - iii. Information
 - 1. Note benefits of TILA, DFA, FTCA
 - iv. Customer sovereignty – found in satisfaction evidence
 - 1. Complaint comparisons – longitudinal and cross section
 - v. Greater access; less discrimination – compare across markets with different competitive characteristics

c. Threats to competitive markets

- i. Exclusion
 - 1. Private means
 - a. Unfair methods
 - b. Barriers
 - 2. Public means
 - a. Compliance costs
 - b. Regulatory segmentation
 - c. Prohibited products (e.g. usury)
 - d. Dodd-Frank? (adverse impacts?)
- ii. Combination
 - 1. Consolidation
 - 2. Collusion
- iii. Anticompetitive combination typically requires exclusion

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1. Entry can defeat cartels and anticompetitive combinations
- iv. History in credit markets: NCCF observations
 1. Be alert to collusion (NCCFR xxiii, 3, 138-39)
 2. Be alert to dominance and barriers (Id. 3, 138-39)
 3. Observations on discrimination – gender, origin, racial, etc.
 - a. NCCF found widespread evidence of gender but not racial discrimination (R 160)
 4. Note: Consider weaving above into each of the following segments or in the preceding overview, or both.
- d. Competition/innovation sector reviews
 - i. Deposits, payments and services
 1. Dynamism assessment
 - a. Sticky bank accounts
 - b. Unbanked populations
 - c. Disparate access
 2. Walmart entry attempts
 3. Lending
 - a. Mortgage lenders and servicers
 - i. 99% of post 2010 loans are current (RMRP 9/3/19)
 1. [RMRP cites CreditForecast.com [Subscription-only; DHH to obtain from Markets. We'll need to update this statistic in light of Covid-19.]]
 - ii. Unconcentrated 10-firm CR 40%. Nondepositaries at 60% of market. (Id. @ 2)
 1. [RMRP cites (i) Inside Mortgage Finance, Top 100 Lenders 2018 [Subscription-only; DHH to obtain updated version from Markets]; (ii) Urban Institute, Housing Finance at a Glance: A Monthly Chartbook (June 2019), [[HYPERLINK "https://www.urban.org/sites/default/files/publication/100454/june_chartbook_2019.pdf"](https://www.urban.org/sites/default/files/publication/100454/june_chartbook_2019.pdf)]
 1. [DHH to obtain updated version]]

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- 2% at end of 2008, but the percentage has since returned to pre-crisis levels.
2. Other Servicing Marketing Trends (pp. 54-56). Non-depository institutions have increased their share of servicing market and are 6 of the 10 largest services as of 2017, while some large banks have reduced their servicing portfolios in the last few years. **Largest 15 services increased their market share in 2007 and 2008, but it has since declined to roughly pre-crisis levels.**
3. Summary of the Rule's Effects on the Incidence of Foreclosure and Delinquencies. (pp. 90-91). “The statistical evidence indicates that the changes in foreclosures and recoveries coincide with the effective date of the Rule, rather than being the continuation of a pre-existing trend. However, an important limitation of these analyses is that they cannot distinguish between the effect of the Rule and the effect of any other events that occurred on or around January 2014. In particular, the GSE Streamlined Modification program was rolled out widely to servicers in January 2014, and the Bureau’s 2013 Ability-to-Repay/Qualified Mortgage Rule¹⁴⁵ became effective on the same day as the 2013 RESPA Servicing Rule. Moreover, this analysis of the overall effects of the Rule cannot distinguish between the effects of individual provisions of the Rule. Based on this analysis alone, it is possible for individual provisions to have contributed to all, some, or none of the overall change in foreclosures and recoveries, and it is even possible that some provisions had a detrimental effect on foreclosures and recoveries that was offset by positive effects from other provisions.” (p. 91)
- a. See also Overall Effects of the Rule on Incidence of Foreclosure (pp. 65-80). “This result indicates at a

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minimum that the timing of the effect shown in Table 1 lines up with the effective date of the Rule, although the model cannot rule out the possibility that some other policy change or other factor that took place in January 2014 contributed to the decline in the incidence of foreclosures. Still, given the substantial effects of specific provisions of the Rule on foreclosure outcomes described later in this report, it seems plausible that the Rule is an important driver of this effect.” (p. 80)

b. Overall Effects of the Rule on the Incidence of Recovery from Delinquency (pp. 81-90). “The figure shows that even after controlling for other factors in the model, there was a slight downward trend in the incidence of recovery around the effective date of the Rule. Following the effective date of the Rule, the incidence of recovery increased substantially, then began to trend upward somewhat. This result at a minimum indicates that the timing of the effect shown in Table 2 lines up with the effective date of the Rule, although the model cannot rule out the possibility that some other policy or other factor that took place in January 2014 contributed to the increase in the incidence of recovery.” (p. 90)

4. Effects of the Rule on Servicing Costs (pp. 100-111). [DHH: this section seems less helpful for our purposes because of data limitations.]
 - iv. CFPB, *ATR/QM Assessment Report* (2019), [
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<https://files.consumerfinance.gov/f/documents/cfp>

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b_ability-to-repay-qualified-mortgage_assessment-report.pdf⁴¹].

1. Mortgage Market Pre- and Post-Rule (pp. 69-79). Discusses changes in pricing and costs of different types of loans. Also concludes generally that: "While the above reported trends clearly establish that the revenues and expenses associated with originating mortgage loans have increased over the past decade, it is uncertain whether the increase or some part of it was caused by the ATR/QM Rule." (p. 79)
2. Effects of the General QM DTI Limit on Loan Performance (pp. 106-115). "Overall, the Rule appears to have reduced the share of mortgages originated with DTI over 43 percent, while potentially increasing the share originated with DTIs at or just below 43 percent. These patterns are studied in more detail in Chapter 5. Further, both above and below the DTI threshold of 43 percent, the improvement in performance of non-GSE loans relative to GSE loans provides some evidence that those loans that continue to be made under the General QM, other non-Temporary GSE QM, or non-QM ATR guidelines are underwritten in a way that reflects consumers' ability to repay." (p. 115)
3. Effects of the Rule on Access to Mortgage Credit and Cost of Credit (pp. 116-187). See in particular summary of findings on pp. 117-118.

b. Autos

- i. Delinquencies 2% @ 30, .67% @ 60⁴²
 1. Source: RMRP Auto 7/1/19, citing (i) Experian–Oliver Wyman Market Intelligence Report 2018 Q2, (ii) and Experian State of Automotive Finance Market 2018 Q2. [Subscription-only; DHH to obtain updated versions from Markets]
 - ii. Minority Borrowers Who Paid Higher Rates for Auto Loans Will Receive Up to \$21.9 Million⁴³

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- iii. i. WASHINGTON, D.C. - Today the Consumer Financial Protection Bureau (CFPB) and Department of Justice (DOJ) resolved an action with Toyota Motor Credit Corporation, under which Toyota Motor Credit will change its pricing and compensation system to substantially reduce dealer discretion and accompanying financial incentives to mark up interest rates. As part of today's order, Toyota Motor Credit is also required to pay up to \$21.9 million in restitution to thousands of African-American and Asian and Pacific Islander borrowers who paid higher interest rates than white borrowers for their auto loans, without regard to their creditworthiness, as a result of its past practices." [[HYPERLINK](https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-toyota-motor-credit-to-address-loan-pricing-policies-with-discriminatory-effects/) "<https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-toyota-motor-credit-to-address-loan-pricing-policies-with-discriminatory-effects/>"]
- iv. Economists studied the data: "In this paper we analyze negotiations for new cars, a \$340 billion industry in the United States in 2010. Our results suggest that search costs, incomplete information, and bargaining disutility have an economically significant effect in real-world negotiations: we estimate that relative to an uninformed consumer, a consumer with basic information about the seller's reservation price and his own outside options captures 15% of the average dealer margin from selling an automobile. We also find that a buyer's search cost and bargaining disutility have significant effects on bargaining outcomes. Finally, our results show that while search is common, there remains a substantial group of consumers who do not engage in any of the search behaviors we measure."
Economics of Auto Loans – Scott Morton, F., Silvia Risso, J. & Zettelmeyer, F. What Matters in a Price Negotiation: Evidence From the U.S. Auto Retailing Industry. Quant Mark Econ (2011) 9: 365. doi:10.1007/s11129-011-9108-1, available at

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["https://link.springer.com/article/10.1007/s11129-011-9108-1"](https://link.springer.com/article/10.1007/s11129-011-9108-1)]

c. Student

- i. Dominated by DOE – 92% (RMRP 9/5/19)
 1. [RMRP cited New York Fed data; DHH to obtain updated figures.]
- ii. 91+ day delinquencies 8-10% (Id.)
 1. [RMRP cited New York Fed data; DHH to obtain updated figures.]
- iii. Three RMR research papers (Id. @ n. 4,5)
 1. CFPB & DOE, *Private Student Loans* (2012) (report to Congress), [HYPERLINK "https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf"].
 2. CFPB, *Data Point: Final Student Loan Payments and Broader Household Borrowing* (2018), [HYPERLINK "https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_data-point_final-student-loan-payments-household-borrowing.pdf"].
 - a. 94% of borrowers repay student loans early, often with a large lump sum payment. Median lump sum payment equal to 55 times the monthly payment (implying that borrower pays off loan at least 55 months early) (p. 4)
 - b. Of 6% who repay student loans on schedule, large share put money formerly allocated to repaying student loans to repaying other debts (e.g., to another student loans or to credit card debt) (p. 4)
 3. CFPB, *Data Point: Student Loan Repayment* (2017), [HYPERLINK "https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_student-loan-repayment.pdf"].
- d. General - banks, finance companies, credit cards, installments,

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- i. NCCF concerned about regulatory protection of competitors, which could undermine competition (R 209)

- ii. Credit Card highly concentrated, with large tail of small providers (RMRP 11/20/18)

- iii. [RMRP has no cite for this proposition; DHH to obtain.]

iv. Check Biennial Reports

v. *[CFPB, The Consumer Credit Card Market (2019)]*

- 1. Delinquency and Charge-off (pp. 39-47). E.g., delinquency rates rose from 2016-2018. For general purpose cards, 1.5% delinquency rate is similar to pre-recession average. For private label cards, delinquency rates higher than at any point during the recession. (pp. 39-40). E.g., annualized charge-off rates are 5.7% for general purpose cards, and 10.5% for private label cards (pp. 46-47).

- 2. Total Cost of Credit (pp. 56-71). E.g., total cost of credit increased from 2016-2017, due primarily to interest rates.

- 3. Availability of Credit (pp. 72-98). E.g., 43% of applications submitted on mobile devices in 2016, up from less than 20% in 2015; mobile applications now surpass online applications (pp. 77-78). E.g., approval rates decreased since 2015 (pp. 80-84).

- vi. General purpose 5.6% annual W/O; Proprietary 8.4%) (Id. @ 2) [DHH: Per 2019 Card Act Report cited above, these rates are now 5.7% and 10.5%, respectively]

e. Short-term loans – overdrafts, payday

- i. RMRP on overdrafts (6/11/13; 7/31/14; 8/4/17) should be checked.

- ii. CFPB, *CFPB Study of Overdraft Programs: A White Paper of Initial Data Findings* (June 11, 2013), [\[HYPERLINK https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf\]](#).

- 1. Between 20% and 27% of accounts opened in 2011 had one or more overdraft or NSF

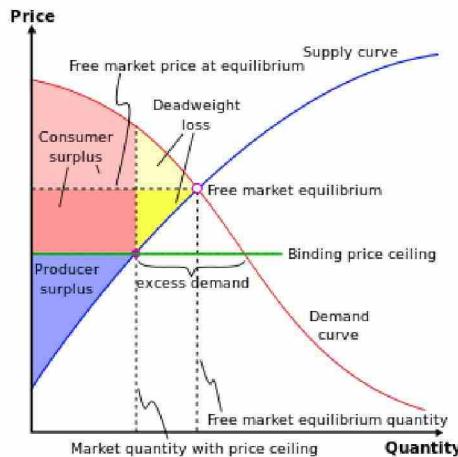
transaction. Of accounts with one or more such transaction, average fees were \$225 in 2011. (pp. 4-5)

2. Between 13.5% and 27.8% of accounts with at least one overdraft or NSF transaction had at least 10 such transactions. (p. 5).
 3. 6% of consumer accounts open during 2011 were involuntarily closed by banks. (p. 5)
 4. Consumers with 10 or more overdraft or NSF transactions in 2011 opted in to overdraft fees at a much higher rate (44.7%) than other consumers (15.2%). (p. 5)
 5. Bank's policies, such as regrading posting or holding funds, can affect whether a transaction causes an overdraft. (p. 5)
- iii. CFPB, *Data Point: Checking Account Overdraft*, (July 31, 2014), [[HYPERLINK
"https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf"](https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf)].
1. Overdraft and NSF fees constitute the majority of the total checking account fees that consumers incur. For consumers who opted in to such fees, they account for about 75 percent of the consumer's total checking account fees and average over \$250 per year. (p. 5)
 2. 8% of consumer accounts are responsible for nearly 75% of all overdraft fees. (p. 5)
 3. Opted-in accounts 3 times as likely to have more than 10 overdrafts per year, and incurred more than 7 times as many overdraft fees, as accounts that were not opted-in. (p. 5)
 4. The median amount of a debt-card transaction that causes an overdraft fee is \$24. The median amount of any transaction that causes an overdraft fee is \$50. (p. 5)
 5. Most consumers who overdraft bring their accounts positive quickly, with over half becoming positive within 3 days and 76% within one week. (p. 5)
- iv. CFPB, *Data Point: Frequent Overdrafters* (Aug. 4, 2017), [[HYPERLINK](#)

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"https://www.consumerfinance.gov/documents/5126/201708_cfpb_data-point_frequent-overdrafters.pdf". Example data findings:

1. Consumers with 10+ overdrafts or NSF fees in one year make up 9% of all accounts but 79% of all overdraft or NSF fees.
Consumers with 20+ overdrafts or NSF fees in one year make up 5% of all accounts but 63% of all overdraft or NSF fees. (p. 5)
 2. Consumers with 10+ overdrafts or NSF fees in one year are credit constrained: they have lower credit scores, are less likely to have a general-purpose credit card, and those with a general-purpose credit card have lower limits than other consumers. (p. 5)
 3. Account usage and characteristics vary for frequent overdrafters. E.g., 70% of frequent overdrafters have low-end-of-day balances, low or moderate credit scores, and low or moderate monthly deposits. But the remaining 30% have lower or higher such characteristics. (p. 6)
 4. Consumers who opt in to overdraft fees pay significantly more overdraft fees but incur only slightly more overdrafts than consumers who did not opt in. (p. 6).
- f. Online Debt sales – separate category?
 - i. Big share are payday
 - g. Anti-Usury enforcement and competitive effects,
 - i. Policies to promote competition “should be given the first priority, with adjustment of rate ceilings used as a complement to expand the availability of credit. As the development of workably competitive markets decreases the need for rate ceilings to combat market power in concentrated markets, such ceilings may be raised or removed.” (NCCFR 149)
 - ii. Adapt standard model to recognize variable costs of higher-risk loans. This is too simple:



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["https://en.wikipedia.org/wiki/Price_ceiling"](https://en.wikipedia.org/wiki/Price_ceiling)]

ii. Credit Ratings

1. Dominant provider FICO, used in 90% of transactions [RMR
 CRMP 7/15/19 @1]
 - i. [DHH to obtain new source. RMRP cites a Feb. 2018 press release that refers to a study, but the study does not appear to be available. See [HYPERLINK
[""\]\]](https://www.mercatoradvisorygroup.com/Press_Releases/FICO%C2%AE_Scores_Used_in_Over_90_of_Lending_Decisions_According_to_New_Stud/)
- b. Potential private and public barriers
 - i. “The Justice Department has opened an antitrust investigation into Fair Isaac Corp., the financial company whose credit scores underlie nearly all U.S. consumer credit decisions, according to information obtained by POLITICO.

The probe follows years of complaints from rivals about Fair Isaac's dominance, and comes amid efforts by Congress and financial regulators to inject more competition into the credit score market. Fair Isaac's FICO scores are a measure of risk that banks and credit card companies use to make lending decisions, and are used by Fannie Mae and Freddie Mac to determine creditworthiness of mortgage applicants.” [

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["https://www.politico.com/news/2020/03/13/justice-fair-isaac-antitrust-129204" \]](https://www.politico.com/news/2020/03/13/justice-fair-isaac-antitrust-129204)
- ii. "CFPB Orders TransUnion and Equifax to Pay for Deceiving Consumers in Marketing Credit Scores and Credit Products"
 Credit Reporting Companies Misstated the Cost and Usefulness of the Credit Scores and Products They Sold, Lured Consumers into Costly Recurring Payments" [\[HYPERLINK\]](#)
["https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-paying-deceiving-consumers-marketing-credit-scores-and-credit-products/" \]](https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-paying-deceiving-consumers-marketing-credit-scores-and-credit-products/)
- iii. Credit Reporting
 - 1. 11% adult population are "invisible" and another 8% too thin for reliable score. (RMR CRMP 7/15/19 @1)
 - a. [RMRP relies on CFPB, *Data Point: Credit Invisibles* (2015), at 6, [\[HYPERLINK\]](#)
["https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf" \]](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf)
 - 2. FCRA, FACTA effects
 - 3. NCCF concerned about regulatory barriers to information transmission; suggests consideration of charters (R 213)
 - 4. CCPA; GDPR
 - 5. Suppression effects – e.g. ban the box in 35 states.
- iv. Debt Collection
 - 1. FDCPA effects
 - a. Costs of compliance
 - b. See Romeo & Sandler, *The Effect of Debt Collection Laws on Access to Credit* (2018), examining the effects of recent state-level debt collection laws.
 - i. "We find that tightening of debt collection laws reduces access to credit and credit limits on average, but that the effect is very small in magnitude. For interest rates we find a tightly estimated zero effect. . . . [T]he effect of these debt collection restrictions is equivalent to an error that lowers consumers' credit scores by 8 points or less." (pp. 1-2)
 - 2. Industry consolidating (RMRP 8/28/19)
 - a. But very low concentration – (8K collectors).

Commented [MW(16): If they found no significant effect of tightening the laws, that could be important, to note. I've heard folks argue that if debt collection becomes too difficult, marginal borrowers could lose access.

- i. [RMRP cites Anna Amir, *Debt Collection Agencies in the US*, IBIS World (Dec. 2019)), for the proposition that the number of debt collection firms declined from 10,550 in 2012 to 8,377 in 2019. But the source is unavailable.]
- ii. See also CFPB, *Fair Debt Collection Practices Act: Annual Report 2020*, at 7 (Mar. 2020), [[HYPERLINK
"https://files.consumerfinance.gov/f/documents/cfp_b_fdcpa_annual-report-congress_03-2020.pdf"](https://files.consumerfinance.gov/f/documents/cfp_b_fdcpa_annual-report-congress_03-2020.pdf)] (stating that there are approximately 7,800 collection agencies).
- b. pros and cons
- c. CFPB or DOE measures compliance – review reports
 - i. CFPB, *Fair Debt Collection Practices Act: Annual Report 2020*, at 7 (Mar. 2020), [[HYPERLINK
"https://files.consumerfinance.gov/f/documents/cfp_b_fdcpa_annual-report-congress_03-2020.pdf"](https://files.consumerfinance.gov/f/documents/cfp_b_fdcpa_annual-report-congress_03-2020.pdf)].
 - 1. Financial services debts comprised 37% of debt-collection revenue in 2019. (Id. 8.)
 - 2. “From January 1, 2019, through December 31, 2019, the Bureau received approximately 75,200 debt collection complaints—a decrease of approximately 8% compared to 2018.” Approximately 45% of complaints concerned “attempts to collect a debt not owed.” (Id. 13-14)
 - 3. In 2019, Bureau opened three new enforcement matters and resolves two, and the FTC opened or resolved matters involving 25 defendants. (Id. 24-25)
 - v. FinTech (more on this, maybe all, in next chapter)
- e. Emerging competitive landscape (more on this, maybe all, in next chapter)
 - i. Prospects
 - ii. Impediments
- f. Conclusions & Recommendations

III. Innovation (**Bill**)

- a. History
 - i. Note examples covered in other chapters
- b. FinTech: Potential & Risk
 - i. Expanding access
 - ii. Wild west?

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Commented [MW(19R18): DOE issues reports (perhaps just to the collectors, but I believe to the public) on how well their contractors comply. It's worth a look on the DOE website.

- c. Open banking
 - i. "Google is planning to break into banking with new checking account offerings" Gregory Magana Nov 14, 2019, 11:05 AM
 - ii. "...We think legacy banks are unlikely to feel the sting from Google in these early days — and that Google's bank partners will likely stand to benefit from the tie-up. Incumbent banks have huge customer bases and a wealth of expertise in navigating the regulatory complexities of the banking sector, which big tech companies like Google lack — hence its partnerships with incumbents." [[HYPERLINK](https://www.businessinsider.com/google-will-begin-offering-checking-accounts-2019-11) <https://www.businessinsider.com/google-will-begin-offering-checking-accounts-2019-11>]
 - iii. Walmart redux?
- d. Artificial Intelligence
 - i. FICO found 95% reduction in hours to build new credit models (RMR IAP 7/17/19 @ 2)
 - ii. Used to protect security (Id. @ 3)
- e. Dynamic Disclosure
 - i. **A lot of research on pros and cons, including Craswell** (Interactive information / Market Intelligence Spotlight 11/18)
 - ii.
- f. Data Aggregators
 - i. Relatively small # of providers – perhaps eight. (RMRP 7/12/19)
- g. Regulatory Framework
 - i. Flexible regulatory framework for innovation
- h. Principled v. Prescriptive
 - i. Cooperative Regulator
 - 1. Potential for partnering between regulatory and trade for market improvements
 - 2. Tech sprints
 - ii. Regulatory sandbox
- i. Regulatory modernization
- j. Alternative data
- k. Conclusions & Recommendations

IV. Appendix

I. Summary of Statutory References to Competition and Efficiency

- The DFA mentions “competition” in four places:
 - Section 1021(a) (12 U.S.C. § 5511(a))—identifying the Bureau’s statutory purposes, including to ensure “that markets for consumer financial products and services are fair, transparent, and competitive.”
 - Section 1021(b)(4) (12 U.S.C. § 5511(b)(4))—identifying five objectives for which the Bureau may exercise its authorities, including to ensure that “Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition.”
 - Section 1031(c) (12 U.S.C. § 5531(c))—stating that the Bureau may not declare an act or practice to be unfair unless it has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury and that “such substantial injury is not outweighed by countervailing benefits to consumers or to competition.”
 - Section 1100(f)(2) (12 U.S.C. § 5107(f)(2))—identifying factors that the Bureau must consider when promulgating rules to implement the SAFE Act, including “the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.”
- The DFA mentions “efficient” markets, regulations, or enforcement in three places:
 - Section 1021(b)(5) (12 U.S.C. § 5511(b)(5))—identifying five objectives for which the Bureau may exercise its authorities, including to ensure that “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”
 - Section 1013(c) (12 U.S.C. § 5493(c))—identifying the functions of the Bureau’s Office of Fair Lending and Equal Opportunity, which include “coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws.”
 - Section 1013(g)(3)(E) (12 U.S.C. § 5493(g)(3)(E))—identifying the duties of the Bureau’s Office of Financial Protection for Older Americans, including to “coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement.”

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- At least three of the eighteen enumerated consumer laws identify ensuring competition or efficiency as among their purposes:
 - FCRA section 602(a)(1) (15 U.S.C. § 1681(a)(1))—listing Congressional findings, including that, “Inaccurate credit reports directly impair the efficiency of the banking system.”
 - FDCPA section 802(e) (15 U.S.C. § 1692(e))—identifying the FDCPA’s purposes, including “to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.”
 - TILA section 102(a) (15 U.S.C. § 1601(a))—listing Congressional findings, including that, “The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.”
- By comparison, the FTC Act explicitly prohibits unfair methods of competition:
 - Section 5 (15 U.S.C. § 45)—prohibiting unfair methods of competition and empowering and directing the FTC to prevent persons from using unfair methods of competition.

II. Statutory Text

- Below are the relevant statutory provisions from the Dodd-Frank Act, FCRA, FDCPA, TILA, and FTC Act.
- References to competition are highlighted in yellow.
- References to efficiency are highlighted in blue.

Dodd-Frank Act

DFA section 1021 (12 U.S.C. § 5511). Purpose, objectives, and functions.

(a) Purpose. The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

(b) Objectives. The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

- (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
- (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
- (4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
- (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

DFA section 1031(c) (12 USC 5531(c)). Prohibiting unfair, deceptive, or abusive acts or practices.

...

(c) Unfairness.—

(1) In General. The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

- (A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and
- (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) Consideration of Public Policies. In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

DFA section 1100 (12 U.S.C. § 5107). Bureau of Consumer Financial Protection backup authority to establish loan originator licensing system.

...

(f) Regulation Authority.—

(1) In General. The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

(2) Considerations. In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.

DFA section 1013 (12 U.S.C. § 5493). Administration.

...

(c) Office of Fair Lending and Equal Opportunity.—

(1) Establishment. The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) Functions. The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

...

(g) Office of Financial Protection for Older Americans.—

(3) Duties. The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

- (i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;
 - (ii) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and
 - (iii) methods in which a senior can verify a financial advisor's credentials;
- (D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—
- (i) protecting themselves from unfair, deceptive, and abusive practices;
 - (ii) long-term savings; and
 - (iii) planning for retirement and long-term care;
- (E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and
- (F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

Fair Credit Reporting Act

FCRA section 602 (15 U.S.C. § 1681). Congressional findings and statement of purpose.

- (a) **Accuracy and fairness of credit reporting.** The Congress makes the following findings:
- (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.
 - (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
 - (3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
 - (4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

Fair Debt Collection Practices Act

FDCPA section 802 (15 U.S.C. § 1692). Congressional findings and declaration of purpose.

- (a) **Abusive practices.** There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute

to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws. Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods. Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce. Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes. It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

Truth In Lending Act

TILA section 102 (15 U.S.C. § 1601). Congressional findings and declaration of purpose.

(a) Informed use of credit. The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) Terms of personal property leases. The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this subchapter to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

Federal Trade Commission Act

FTC Act section 5 (15 U.S.C. § 45). Unfair methods of competition unlawful; prevention by Commission.

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade.

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of Title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. § 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)—

(A) For purposes of subsection (a) of this section, the term “unfair or deceptive acts or practices” includes such acts or practices involving foreign commerce that--

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

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