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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2020-0013]

Request for Information to Assist the 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). The Taskforce is an independent body within the Bureau and reports to the Bureau's Director. The Taskforce is charged with developing 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 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2020-0013, by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email*: *2020-RFI-Taskforce@cfpb.gov*. Include Docket No. CFPB-2020-0013 in the subject line of the message.

- *Hand Delivery/Courier/Mail*: Comment Intake, Bureau of Consumer Financial Protection, 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: Nat Weber, Chief of Staff, or Matt Cameron, Staff Director, Taskforce on Federal Consumer Financial Law, at 202-435-7700. If you require this document in an alternative electronic format, please contact *CFPB_accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

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's recommendations may include actions that the Bureau could carry out using its current authorities and actions that would require legislation to implement.

The Taskforce is inspired in part by an earlier commission established in 1968 by the Consumer Credit Protection Act (Act). 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.

II. Requests for Information

The Taskforce is considering what recommendations might promote the welfare of consumers in connection with the market for consumer financial products and services. The Taskforce seeks input from the public at this time to help identify areas of consumer protection on which it should focus its research and analysis during the balance of its one-year appointment. This Request for Information will be one of multiple opportunities for the public to provide feedback directly to the Taskforce and thus to help inform its recommendations.

Congress created the Bureau to ensure 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."[1] 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 and practices.

The Taskforce is seeking information from interested parties on which areas of the consumer financial services markets are functioning well—that is, which areas are fair, transparent, and competitive—and which might benefit from regulatory changes that could facilitate competition and materially increase consumer welfare. To that end, this Request for Information asks a series of questions about the market for consumer financial products and services, with a special interest in the below markets (though respondents should feel free to suggest others):

- Automobile financing (credit or lease)
- Credit cards

[1] 12 U.S.C. 5511(a).

- Credit repair
- Consumer reporting
- Debt collection by third parties (collection agencies)
- Debt collection by creditors (in-house collections)
- Debt settlement
- Deposit accounts (checking or savings)
- Electronic payments
- Money transfers
- Mortgage origination and servicing
- Prepaid cards
- Small-dollar loans (installment, payday, vehicle title loans)
- Student loans and student loan servicing

As articulated more specifically in the questions below, the Taskforce is interested in information about how well financial markets are functioning for consumers. Efficient markets offer consumers a wide selection of products and services that meet their financial needs at competitive prices. Consumers can capture those benefits when they have truthful information about the prices and features of the products and services they seek. By contrast, markets that perform poorly are less likely to deliver products and services or offer them at prices commensurate with cost, risk, and other relevant considerations. Unfair, deceptive, and abusive acts and practices deprive consumers of the benefits that transparent and efficient markets can deliver. The Bureau, through its enforcement of laws and regulations prohibiting such behavior, strives to rid markets of these impediments. It is important, therefore, that the policies, laws, and rules effectively target the problems they are intended to address.

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 is most interested in learning where changes would be most worth the cost. In other words, the Taskforce hopes to hear from interested parties about the markets or services where a change in the rules would provide the greatest marginal benefits relative to the marginal costs.[2]

A. Expanding Access

These questions explore potential obstacles to financial inclusion.

1. Millions of U.S. households lack a bank account.[3] 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 to traditional banking products? What is the evidence regarding consumers' understanding of, and experience and satisfaction with, these products?
2. One important reason for access to a bank account is to facilitate transactions. To what extent is it necessary to tie transaction services to the banking system? To what extent could transaction services and the banking system exist independently, and would independent existence raise new consumer protection risks that regulators should consider? Would reducing clearance times impact the demand for alternative

[2] To the extent that a commenter's response to any of the questions below overlaps with its responses to the Bureau's Call for Evidence, the commenter may wish to incorporate by reference or elaborate on its prior submissions. *See* Bureau of Consumer Fin. Prot., *Call for Evidence* (Apr. 17, 2018), *https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence/*.

[3] Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2018 – May 2019* (June 5, 2019), *https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm*.

products, such as check cashing, small-dollar loans, and overdraft protection? If so, to what extent?

3. What steps could be taken to promote greater competition among providers of services such as payments, financial advisory services, and savings accounts? How do third-party applications, sometimes referred to as "open banking," affect the competition? To what extent do third-party applications raise new consumer protection risks that regulators should consider?
4. There is consumer demand for short-term, small-dollar credit. What impediments exist for expanding access to short-term, small-dollar loans and ensuring that this market is fair, transparent, and competitive? What has been the impact of State and Federal efforts to regulate such credit? Is the annual percentage rate a meaningful measure for a very short-term loan? If not, what other measures might be more useful to help consumers in understanding and assessing the cost of short-term credit?
5. Some creditors are supplementing or replacing traditional methods of underwriting (which often use income, debts, credit history, and stability factors) by employing "alternative data." Some types of alternative data clearly expand the sources of financial information, such as payment histories for rent, utilities, and other consumer obligations, and other types of alternative data appear to have little in common with traditional underwriting information. What role should the Bureau play in regulating the furnishing, reporting, and use of alternative data, and what should the Bureau consider in developing policy in this area? How should the Bureau consider alternative factors which creditors find helpful in predicting risk, but which may lack

an obvious relationship with creditworthiness or have differential impacts on some consumers or groups of consumers?

6. Should the Bureau clarify its position on disparate impact theory under the Equal Credit Opportunity Act? If so, what should be the Bureau's position?

B. Consumer Data

These questions explore current and future-looking topics regarding the protection and use of consumer data.

7. Both the Fair Credit Reporting Act (FCRA) and its implementing Regulation V and the Gramm-Leach-Bliley Act and its implementing Regulation P contain important protections of consumers' personal information. Are these protections sufficient? Why or why not? If not sufficient, what further protections should the Bureau or Congress consider? Are there obligations in these regulations or statutes that impose a burden not justified by the corresponding consumer benefit?
8. The FCRA requires consumer reporting agencies to "follow reasonable procedures to assure the maximum possible accuracy"; requires these agencies to disclose to a consumer the contents of the consumer's file; contains procedures for consumers to dispute the accuracy of information in these agencies' files; and requires notifications when information from these agencies' files has 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. Are these provisions designed to ensure accuracy sufficient? Why or why not? If not, what further protections should

the Bureau or Congress consider? Are there obligations in these laws that impose a burden not justified by the commensurate consumer benefit?

9. Most States have enacted laws that afford consumers certain protections in the event of a data breach. There is considerable variation among these laws, including the triggering events for coverage by the law and the requirements and remedies relating to a breach. Would Federal legislation, regulation, or guidance addressing data breaches be desirable? Why or why not? Would it be desirable to have a uniform national standard for data breach obligations? Why or why not?

10. Financial technology, or FinTech, companies often use consumer data to provide new or enhanced financial products and services, but this can raise concerns about consumers' ability to protect privacy and control the use of their data. With respect to consumer data, how best can the Bureau or Congress balance between facilitating FinTech innovations that increase consumer choice and ensuring consumer protection? Do any existing technologies or practices, such as zero-knowledge proofs, raise fewer consumer protection concerns or have the potential to help regulators resolve the balance between consumer choice and consumer protection?

C. The Regulations

These questions focus on the regulations the Bureau writes and enforces. Commenters are encouraged to include specific examples in their responses.

11. Are there gaps in consumer financial protections that should be filled by strengthening the Bureau's regulations? What type of protections are needed (*e.g.*, additional disclosures, substantive requirements)? How should the costs and benefits of the proposed changes be evaluated?

12. Uncertainty can increase compliance costs and litigation risk without benefitting consumers. Are there areas of significant ambiguity or inconsistency in the regulations? Where would regulations benefit significantly from increased clarity or harmonization—both with respect to the Bureau's regulations and with respect to overlap, duplication, or inconsistency with regulations issued by other Federal agencies? Please explain the lack of clarity and how the regulations should be clarified.
13. 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? Are there regulatory areas or specific regulations now sufficiently so overlapping as to be redundant?
14. Some stakeholders favor regulations with specific requirements, which draw bright lines for a company's compliance obligations but can apply a one-size-fit-all approach. Others favor "principle-based" regulations, which can provide a company with flexibility but can create compliance uncertainty. Federal regulations currently employ both approaches (*e.g.*, Regulation Z's highly specific disclosure rules, and Regulation V's requirement that data furnishers implement and maintain reasonable written policies and procedures concerning the accuracy of the data they furnish). Which approach is preferable, and does this depend on the industry, the statute, or other considerations? Please explain.

D. Federal and State Coordination

The Bureau is one of many Federal agencies with supervision or enforcement responsibilities with respect to 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.

15. With respect to institutions and laws currently within the Bureau's jurisdiction, the Bureau's supervision or enforcement authority may be exclusive or shared with other regulators, depending on the institution or law in question. Have the agencies been cooperating appropriately in areas of shared jurisdiction, and are there ways in which their cooperation could be improved? Is more clarity needed about how the agencies are cooperating in areas of shared jurisdiction? Do the Bureau and other agencies act jointly in appropriate circumstances?
16. Are changes to the shared-jurisdiction framework desirable (*e.g.*, by legislation)? In what way? For instance, would it be beneficial to assign to one agency sole (or primary) responsibility for supervising or enforcing some or all the consumer financial protection laws? Would having a single source of authority enhance or detract from competition and consumer welfare? What are the costs and benefits of overlapping enforcement jurisdiction for nonbank creditors?
17. State financial regulators typically examine a financial institution's compliance with State law, but they can also bring cases under certain Federal consumer financial protection laws. For example, a State may initiate its own action to enforce the Dodd-Frank Act and certain enumerated consumer laws. In addition, once the Bureau has decided to bring an enforcement action, the Bureau may invite States to join in

the action. What are the costs and benefits to consumers and financial institutions of overlapping enforcement powers?

18. Given the jurisdictional overlap between State and Federal regulators on consumer financial markets, are there quantifiable examples of whether this overlap has led to disproportionate compliance costs for small financial institutions, such as community banks or credit unions?

E. Improving Consumer Protection

These questions address overall performance of consumer protection.

19. Which markets for consumer financial products or services are functioning well—that is, which markets are fair, transparent, and competitive? Which markets might benefit from regulatory changes that could facilitate competition and materially increase consumer welfare?
20. What types of disclosures regarding consumer financial products or services are effective and what types are not? Could the content, timing, or other aspects of disclosures be improved and, if so, how?
21. How should the Bureau determine an appropriate remedy for a law violation, considering the need to correct and deter violations without creating adverse effects on competition and other unintended consequences?
22. What is the optimal mix of regulation, enforcement, supervision, and consumer financial education for achieving the Bureau's consumer protection goals?
23. How can we best assess the efficacy of the Federal consumer financial protections in achieving their goals?

Dated: March 27, 2020.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

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