Economic Policy Program

Financial Regulatory Reform Initiative

The Consumer Financial Protection Bureau: Measuring the Progress of a New Agency

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BIPARTISAN POLICY CENTER

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ABOUT THE FINANCIAL REGULATORY REFORM INITIATIVE

The Financial Regulatory Reform Initiative (FRRI) is co-chaired by Martin Baily and Phillip Swagel. Composed of five task forces, FRRI's goal is to conduct an analysis of Dodd-Frank to determine what is and what is not working along with recommendations to improve the system.

DISCLAIMER

AUTHORSHIP

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Executive Summary

For almost a year, the Financial Regulatory Reform Initiative's Consumer Protection Task Force has conducted an in-depth review and analysis of the Consumer Financial Protection Bureau (CFPB, or Bureau). The mandate of this new agency is to ensure consumer financial products and services and the markets for those products and services are fair, transparent, and competitive. This paper measures the agency's actions against its mandate. It analyzes the start-up and operational challenges the Bureau has faced and the critical choices it has made. Throughout this process, the Task Force met with leading consumer advocates, federal and state bank regulators and their staffs, and regulated industry participants in the bank and nonbank space. The Task Force also met with staff of the CFPB itself. To guide its work and to ensure consistency, the Task Force developed a common set of questions for each interview, which may be found in Appendix B. This paper draws on those interviews, the Task Force's own experiences, and a careful analysis of the actions and stated goals of the Bureau to examine the CFPB's activities and performance.

In this report, the Task Force lists more than 30 specific findings and recommendations for the Bureau, Congress, and others to consider adopting. The key recommendations are detailed below. The Task Force also found several overarching trends or patterns, which emerged when considering both successful and problematic actions taken by the Bureau. Perhaps the most significant trend the Task Force discovered was that when the Bureau operated in a transparent, open, and iterative manner, repeatedly seeking input from all stakeholders throughout a process, the results were generally positive. However, when the Bureau made unilateral decisions, rolled out initiatives, rules, or processes as a result of a more closed, internal deliberation process, the results were far more likely to be problematic. Sometimes the Bureau went back, sought input, and improved the end result. Sometimes it did not.

For example, the QM and remittance transfer rule-makings demonstrated a thoughtful approach to fostering strong consumer protections while still addressing concerns expressed by stakeholders. In addition, when the CFPB inherited primary rule-making authority for Regulation Z ability-to-pay requirements, it reversed a decision of the Federal Reserve Board to impose an independent ability-to-repay requirement for consumers of all ages. The original decision was having an adverse impact on stay-at-home and military spouses. The CFPB was able to address this issue as well as stakeholder concerns throughout the process.

Measuring success in consumer protection is inherently difficult. However, despite the challenge, it is important to identify key metrics to gauge progress and encourage course corrections. Alternatively, it is difficult to evaluate that for which the Bureau does not provide metrics. The mission of the CFPB is clear, but the measurements to determine success are not. The Task Force therefore recommends that overarching performance metrics for the Bureau be created. Those metrics should be driven by considerations focused on both the Bureau's internal activities and the impact the CFPB has on consumers and the financial marketplace.

One of the primary goals of establishing the CFPB was to create a level playing field for all consumer financial products and services providers. To accomplish this, the CFPB was given jurisdiction to regulate and supervise nonbank providers of consumer financial services, including mortgage originators, brokers and servicers, private student lenders, and payday lenders. To date, however, the CFPB's oversight of these nonbank providers has been limited in scope. This is due, in large part, to the rule-writing obligations Congress mandated in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which have absorbed much of the Bureau's time and attention. Now that most of those mandates have been addressed, the CFPB should focus additional attention on this sector of the industry.

In addition, the CFPB should devote additional resources to the supervision of providers of nonbank financial products and services and be more transparent in their regulatory process. The Bureau should clearly identify the appropriate metrics for success in regulating this sector. Suggestions for metrics are found later in the paper. However, the Task Force stresses that the means to achieve these outcomes may differ between bank and nonbank firms.

It is not often that the nation witnesses the creation of a new federal agency, especially one that can impact the lives of all Americans. Therefore, it is the Task Force's hope that the findings and recommendations made in this paper can serve as a guide to the leadership of the CFPB and other stakeholders in consumer protection—including consumer groups, industry representatives, and other regulators. Regardless of whether one supported the creation of the Bureau or not, everyone should want it to function as well as possible.

Below are some of the most significant findings and recommendations in the report. Hopefully they will lead to a robust discussion within the Bureau, Congress, other regulatory agencies, and the broader stakeholder community. Improving the functionality of the Bureau is the primary goal. These findings represent a consensus package of recommendations, which, if fully adopted, would improve the state of consumer protection, increase the efficiency and effectiveness of the financial services industry, and improve the quality of regulation.

Guidance vs. Rule-Making

- The CFPB, like other regulatory agencies, needs the ability to employ a balance of rule-making, guidance, examination, and enforcement to administer proper and timely consumer financial protections. When issuing substantive guidance, the Task Force recommends the CFPB seek greater input from a diverse group of interested parties, including both consumer groups and regulated entities. A "notice-and-comment like" procedure would be beneficial for those impacted by any guidance and would help protect the CFPB from legal challenges.

Supervisory and Examination Process

- The Task Force recommends that the Bureau adopt an official policy establishing timelines for formally closing out examinations of both banks and nonbanks. The Task Force recommends that the CFPB make every effort to provide prompt feedback to entities the CFPB examines and to close out these examinations in a timely manner.
- The Bureau's goal to create regulatory consistency by ensuring that CFPB staff across the country set consistent ratings, interpretations, and classifications is worthy of praise. The Task Force recommends that the CFPB ensure it achieves that goal by the end of 2014.
- The CFPB should devote additional resources to the supervision of providers of nonbank financial products and services and be more transparent in the process. In addition, the Bureau should clearly identify the appropriate metrics for success in regulating nonbank providers of financial products and services.
- The CFPB's management and leadership should focus substantial time and energy on improving official communications with covered entities and partner regulatory agencies about their exam process. The CFPB should commit to launching a new major initiative to recruit, train, retain, and further develop high-quality supervisory and examination staff.
- The Bureau should rethink policy decisions to involve enforcement staff in supervisory processes. The Task Force believes that any organizational benefits envisioned from that policy are outweighed by the more visible drawback of creating a barrier to forthright communication.

Data Requests and Collection

- The Task Force recommends the Bureau:
    - Require coordination among its various divisions when requesting data from any institution.
    - Provide a statement of intended use with each data request.
    - Take every step possible to ensure that no breach of data occurs. This extends both to data that the Bureau collects directly, as well as to all data collected and used by outside vendors.

Consumer Complaint Portal

- The Task Force recommends that the Bureau continue to inform consumers of their ability to use the portal to address mistakes and to better align resources to handle the resulting increase in activity.
- The CFPB should better categorize consumer complaints received and published to benefit both consumers and the marketplace as a whole. The Task Force recommends two categories: (1) complaints that have received no review, marked with a clear disclaimer that the CFPB has not reviewed the accuracy of those complaints, and (2) complaints that have been sufficiently reviewed by either the Bureau or regulated entities to ensure accuracy prior to publication.

Civil Penalty Fund

- The Task Force has significant concerns about the unique civil penalty fund that the Bureau controls. There are a number of ways that these concerns could be remedied. One is by limiting the Fund to only dispensing amounts necessary and appropriate for consumer redress, with any additional civil money penalties paid to the U.S. Treasury. This is similar to how other financial regulators use penalty funds. To address potential indirect injuries, the Civil Penalty Fund could be used to give harmed consumers additional funds—for example, 125 percent of the actual redress, rather than use of additional penalty amounts for the CFPB's own purposes.
- Alternatively, if funds in excess of redress are to be retained and used by the CFPB, the Bureau should more clearly delineate how such funds are to be used to advance consumer education, and then an oversight mechanism could be established to confirm that the funds are distributed in the delineated manner and that they achieve the intended results.
- The Task Force recommends that the Bureau restart its efforts to utilize Civil Penalty Fund resources to support a new financial services coaching program, beginning with consultation and collaboration with external stakeholders to help define the goals and scope of the effort. The Task Force is concerned that the program may not have the desired meaningful impact without collaboration on the project's design and implementation from key stakeholders including other federal agencies, industry participants and consumer groups that regularly work with veterans and economically underserved consumers.

CFPB Consultation with Other Agencies

- The Task Force recommends that the Bureau and prudential regulators work together more closely to better integrate the Bureau's product-based approach and schedule with the standard regulatory structure of bank regulators. This could entail more promptly closing out product-based exams instead of waiting to close out entire institution-based exams.

- The Task Force recommends that the CFPB take full advantage of the consultation process with other agencies. However, if prudential regulators identify consumer protection issues, they should refer them to the CFPB and defer to the Bureau's authority on such issues.

CFPB's Authority to Cover Lending Activities of Auto-Dealers

- The Task Force believes the Bureau should be able to regulate auto financing directly, rather than being forced to indirectly attempt to regulate the car's financing terms through the interactions of auto-dealers with financial services providers. Thus, the Task Force calls on Congress to consider legislation to explicitly prescribe CFPB authority to regulate similar transactions in a similar fashion, regardless of whether they occur in an auto dealership. In the interim, the Task Force recommends the CFPB take the next step and propose a formal rule-making on indirect auto lending, to gather input and ideas from external stakeholders and consider policy options to address issues of discrimination. The outcome should be to prevent any discriminatory pricing, without causing a shift of these products to the unregulated sector.

CFPB Funding and Accountability

- The Task Force recognizes that the Dodd-Frank Act placed the CFPB as part of the Federal Reserve for budgetary purposes. Therefore, the Task Force believes that the Federal Reserve Board should satisfy its obligations to fund the Bureau, under the Dodd-Frank Act, in a manner consistent with the way the Federal Reserve funds itself. The Task Force recommends that the Federal Reserve and the CFPB resolve any funding ambiguity and publicly affirm their interpretations of how the Bureau would be funded in the event that the Federal Reserve was to incur an annual operating loss.

- The Task Force recommends that CFPB have an inspector general with full investigative and reporting powers.

Performance Metrics

- The Task Force recommends that the Bureau develop and publish performance metrics as soon as possible—and set the goal of achieving them by 2020. Detailing specific measurable goals will help improve the Bureau's ability to succeed, as well as increase its accountability. The metrics should focus on both the Bureau's internal activities and the impact the CFPB has on consumers and the financial marketplace.

- The Task Force recommends that through this process, the Bureau develop and publish metrics for determining when the restriction of access to credit is part of an intended regulatory response (such as reducing the availability of credit cards with high credit lines for college students or applicants under the age of 21) and when it has an unintended consequence (such as restricting access to responsible products for college students who are trying to build a credit history).

External Metrics

- The Task Force recommends that the CFPB develop metrics to measure its success in the marketplace around the following five key questions:
    - Are there quality, safe products available in both the bank and nonbank space?
    - Is the CFPB identifying and responding promptly to problems in both the bank and nonbank space?
    - Does the Bureau engage consumers in a meaningful way? For example, specific metrics should track its regulatory and outreach efforts to growing minority populations.
    - Is the CFPB collaborating effectively with other regulators in both the bank and nonbank space, to ensure a high level of consumer protection?
    - Is there a healthy amount of quality product innovation in the financial services marketplace the Bureau regulates?
- The Task Force recommends that the CFPB measure success as it relates to consumer behavior by finding demonstrable evidence of improved consumer decision-making with regard to consumer products. In so doing, the Bureau should consider the following four questions:
    - Are industry participants able to develop new and alternative products that can find broader market adoption to provide consumers additional value and opportunities to access quality credit?
    - Are product disclosures appropriately clear and understandable? Are these disclosures reaching consumers, particularly in low-income communities?
    - How does the Bureau identify and monitor products that may be problematic for certain consumers while potentially beneficial for others (specifically, looking at the growth and spread of these products in communities, which otherwise may lack alternatives)?
    - How to identify products that exist because of a lack of information—or lack of alternatives—for consumers? Has the Bureau worked with consumer groups

and industry to identify obstacles to innovation that would create alternative products that meet this demand?

Internal Metrics

- The Task Force recommends the Bureau develop, track, and publish statistics to measure the following:
    - The timeliness of its own examination schedules, particularly with respect to the time it takes to close exams.
    - Regulatory actions, including rule-making, guidance, and enforcement to achieve and measure a stable balance of responses, even though the measures taken may differ between banks and nonbanks.
    - Staff turnover, with a specific goal to become consistent with that of the federal prudential regulators by 2020.
    - Diversity of Bureau staff in greater detail. This should include statistics about senior Bureau staff and a breakdown by major divisions of the Bureau (supervision, enforcement, data, external affairs, etc.).

Introduction

This paper reviews the key actions and decisions that the newly created Consumer Financial Protection Bureau (CFPB, or Bureau) has undertaken since it was first created by law three years ago. The mandate of this new agency is to ensure consumer financial products and services and the markets for those products and services are fair, transparent, and competitive. This paper measures the agency's actions against its mandate. It analyzes the start-up and operational challenges the Bureau has faced and the critical choices that the Bureau has made.

The CFPB was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). The decision to create the Bureau and consequently transfer many of the consumer protection responsibilities from existing financial regulators was controversial. However, the financial crisis demonstrated a need for heightened attention to consumer financial products, as fundamental flaws in the regulation of consumer financial protection, especially the regulation of mortgage products, contributed to the depth of that crisis.

The creation of a freestanding federal consumer financial regulator had support from Administrations of both parties. In 2008, just as the financial crisis was emerging, the Bush administration's treasury secretary, Henry M. Paulson, released *Blueprint for a Modernized Financial Regulatory Structure*, an outline for financial reform that called for the creation of an independent Conduct of Business Regulatory Agency. Subsequently, the Obama administration issued its own white paper on financial reform that endorsed the creation of a Consumer Financial Protection Agency. That proposal was ultimately incorporated in the Dodd-Frank Act.

It is not often that the nation witnesses the creation of a new federal agency, especially one that can impact the lives of all Americans. Therefore, the Task Force hopes that the findings and recommendations made in this paper can serve as a guide to the leadership of the CFPB and other stakeholders in consumer protection—including consumer groups, industry representatives, and other regulators. Regardless of whether one supported the creation of the Bureau or not, everyone should want it to function as well as possible. Effectively enabling the provision in the Dodd-Frank Act that calls for greater consumer financial protection and the responsible extension of credit is a necessary element for economic growth.

Focus of Consumer Protection Task Force

The Financial Regulatory Reform Initiative's Consumer Protection Task Force (Task Force) has reviewed the work of the newly created CFPB in an effort to discern what it has done well and where it could improve, as well as metrics with which to judge the Bureau's future success or failure. **The Task Force believes the primary objective of the Bureau should be: to ensure that consumers have sufficient information to make decisions about financial products and services, while providing protection from unfair, deceptive, and abusive practices; yet safeguarding access to a full range of products and services**.

The Task Force has examined the structure and powers of the CFPB, as well as the scope of the CFPB's authority and how the CFPB has used that authority to date. The Task Force also has considered the relationships among the CFPB and the federal and state banking and financial regulators with whom the Bureau must work.

Throughout this nearly yearlong process, the Task Force met with leading consumer advocates, federal and state bank regulators and their staffs, and regulated industry participants in the bank and nonbank space. The Task Force also met with staff of the CFPB itself. To guide its work and to ensure consistency, the Task Force developed a common set of questions for each interview, which may be found in Appendix B. This paper draws on those interviews to examine the CFPB's initial activities, as well as its operational structure. To help readers comb through the alphabet soup of acronyms, a summary has been compiled in Appendix A.

The first section discusses regulatory efforts, including a study of the three major substantive rules the Bureau has issued so far: the residential mortgage market rule (qualified mortgage, or QM), as required by Sections 1411 and 1412 of the Dodd-Frank Act; the remittance transfer market rule; and the rule amending Regulation Z's independent ability-to-pay standards for credit cards. The Task Force also examines when the Bureau has used guidance instead of rule-making. One important common theme among these rule-writing successes is that the Bureau operated using an open, transparent process. The CFPB repeatedly considered additional facts and was willing to revise and reconsider rules as additional information was made available.

The Task Force then examines other critical activities in which the CFPB has engaged, such as examinations, supervision of nonbanks, data collection, and consumer complaints. The Task Force also looks at the Bureau's level of transparency, as well as funding and accountability structures. Interspersed are suggested operational changes that the CFPB could implement, without new legislation, to enhance consumer protections and provide needed consistency to its interpretations of important consumer financial services laws.

The paper concludes with ideas regarding proper long-term metrics for success by which the Bureau could be judged. In comparison with the Federal Deposit Insurance Corporation (FDIC), which is 80 years old; the Federal Reserve, which is 100 years old; and the Office of the Comptroller of the Currency (OCC), which is 150 years old, the Bureau is too new for the Task Force to draw any firm conclusions about its performance. However, like the other federal regulators, it is the Task Force's expectation that the CFPB will exist for some time. To make sure that the Bureau lives up to the ideals and aspirations that were behind its creation, it is essential that strong metrics are established to determine its success or failure.

Special thanks to those connected with BPC's Financial Regulatory Reform Initiative who helped inform and guide us through this process, especially: co-chairs Martin Baily and Phillip Swagel; BPC staff Aaron Klein, Shaun Kern, and Justin Schardin; and senior advisors Jim Sivon and Greg Wilson. The Task Force also benefited from the contributions and assistance of Bibi Hidalgo, Matt Janiga, and Tim Gallivan.

History of the CFPB

Overview of the Economic Crisis

If done well and created with everyone's best interests in mind, financial products are a key to achieving the American dream. However, with the failures in the credit markets in 2007 and of major investment banks, commercial banks, and government-sponsored housing enterprises (GSEs) in 2008, the United States found itself in a financial crisis of a degree not experienced since the Great Depression, and Americans across the country were deeply impacted. While the crisis manifested itself as a swift and dramatic collapse of the capital markets, certain factors relating to consumer lending contributed to the root cause of the crisis. First and foremost were practices in the mortgage lending industry that contributed to the creation and explosion of a series of mortgage-backed securities that ultimately became toxic financial products. This included a proliferation of mortgages that originated from suspect underwriting practices and were fundamentally predatory in nature. These predatory products contributed to an even broader housing price bubble in which even good mortgages often went underwater and tended to default. Nevertheless, problematic mortgage products were at the root of the seizure of the financial markets and the failure of large and systemically interconnected investment and commercial banks. As a result, when Congress began debating the legislative response to the financial crisis, consumer protection issues were front and center.

Impact on Consumers

All Americans were impacted by the financial crisis, both directly and indirectly. Unemployment skyrocketed to 10 percent. The residential real-estate market fell nationally for the first time since the Depression, and in many cities and states, home values fell by 40 percent or more.[1] Household savings fell sharply, with the stock market losing half its value at one point. While the loss of wealth was felt by almost everyone, it was particularly severe in communities of color. According to a study by the Pew Research Center, from 2005 to 2009 there was a dramatic loss of wealth within the Hispanic and African American communities, with inflation-adjusted median wealth falling by 66 percent among Hispanic households and 53 percent among African American households.[2] By comparison, the drop in wealth was around 16 percent among white households. The additional loss of wealth in minority households further widened the gap in financial assets that decades of bipartisan policies had been attempting to reduce.

Similar to the cause of the financial crisis, problematic mortgage lending was a main driver of the loss of wealth in minority communities. For example, Countrywide Financial allegedly overcharged more than 200,000 Hispanic and African American borrowers.[3] Approximately 10,000 of these borrowers were sold subprime mortgages even though they qualified for prime rates. If an African American borrower obtained a mortgage through a Countrywide-affiliated broker, he or she was more than twice as likely to receive a subprime loan compared with a similarly situated white borrower. While this data is focused on Countrywide, these trends may well have been prevalent among other mortgage companies. In some markets, African American borrowers were more than eight times as likely to get a subprime loan.[4] Ultimately, Bank of America, which purchased Countrywide, settled a Justice Department discrimination claim for these Countrywide violations for $335 million.

The problems in consumer protection were not unique to the mortgage market. Significant concerns regarding inadequate consumer protection for credit cards led to congressional action resulting in the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009. Additional concerns were raised about financial products and practices that largely escaped federal regulation, such as payday lending, which led to calls for an expansion of federal regulation. Congress determined that regulation diffused among the many federal bank regulators, state financial product regulators, and the Federal Trade Commission (FTC) had proved ineffective and that action was necessary.

The Dodd-Frank Act and the Creation of the CFPB

Following the crisis, many consumer groups, industry experts, and policymakers concluded that the federal government lacked adequate oversight and enforcement mechanisms to effectively regulate the country's banking and nonbanking systems. Many also argued that failures in consumer financial protection reflected uneven standards applied by federal and state regulators, allowing some financial services providers to structure their businesses so as to be regulated by the least restrictive government authority. Prior to the crisis, consumer protection regulatory authority was shared among multiple regulatory agencies, including the Board of Governors of the Federal Reserve System (Federal Reserve Board), the OCC, and the FTC. As a result, no single federal agency had consumer protection as its top priority.

To remedy this situation, Congress enacted legislation. On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).[5] The Dodd-Frank Act mandated a substantial reorganization of existing consumer financial protections into a new federal agency named the Consumer Financial Protection Bureau. The CFPB was given authority to administer nearly all federal consumer financial protection laws and granted new authorities to supervise financial institutions, prohibit certain practices, and write a single set of regulations that the entire financial industry would have to follow. The Dodd-Frank Act further expanded protections for consumers, including the creation of a new prohibition against abusive acts or practices. In addition, the CFPB was granted supervision and enforcement authority over payday lenders, private student-loan providers, and other nonbank larger financial market participants. A small number of financial products were excluded from the CFPB's purview, including those offered by insurance companies and auto-dealers. The CFPB was given the authority to identify those nonbank entities that constituted larger participants in particular financial services markets. This was a significant expansion of regulation at the federal level. Previously, the provision of these specialized types of financial services was regulated almost entirely at the state level or by banking regulators when the services were conducted through an insured depository institution. For a list of some of the CFPB's new authorities, see Appendix C to this report.

The Birth of the Bureau

The creation of a new federal regulatory agency is extremely challenging. The CFPB is an amalgamation of new consumer protection powers and existing authorities and responsibilities transferred from seven different federal agencies.[6] The law established a transitional path for the Bureau whereby existing authorities were transferred first and then additional powers went into effect. The Bureau was housed in the Treasury Department during its original start-up phase, although like other independent federal regulators (such as the OCC, which is still technically a bureau of Treasury), the CFPB was given substantial independence. Signifying this unique position, the Bureau's first leader, Elizabeth Warren, was given two titles—special assistant to the president and special advisor to the treasury secretary.

The CFPB officially opened its doors in July of 2011, one year after it was created through the Dodd-Frank Act. The Bureau has since transitioned from the Treasury Department to become part of the Federal Reserve System. Although functionally independent from the Federal Reserve System, the CFPB receives its funding from the Federal Reserve subject to a statutory cap. The Bureau hired 1,073 people over a 17-month period. When Warren departed, Raj Date was installed to lead until a new director could be confirmed. President Obama nominated the Bureau's assistant director for enforcement, Richard Cordray, to be director on July 18, 2011, almost a full year after the passage of the Dodd-Frank Act. The president installed him as director through a recess appointment on January 4, 2012. He was subsequently confirmed by Congress on July 17, 2013—two years after his nomination.

Despite all the transitions, the CFPB leadership has made strides in standing up a new federal consumer regulatory agency and has done well in meeting an ambitious timetable for the regulatory work set in the Dodd-Frank Act. For comparison, the Securities and Exchange Commission has missed about half of its Dodd-Frank Act rule-writing deadlines. Some of the Bureau's more significant deadlines can be found in Graph 1 below.

Graph 1. Significant CFPB Deadlines

SIGNIFICANT CFPB DEADLINES
Final rules on certain parts of the "Remittance Rule" governing disclosure and other rules surrounding transfers of funds to foreign countries were required by January 21, 2012. The CFPB released the final rule on January 20, 2012 and has since amended it.
An initial rule determining which non-depository institutions should be considered "larger participants" of "other markets" was required by July 21, 2012. The CFPB released the final rule on July 20, 2012.
A proposed rule on consolidating mortgage loan disclosure forms was required by July 21, 2012. The CFPB released a proposed rule on July 9, 2012. The final rule is still pending as of this publication.
Rules covering lenders' obligations to assess borrowers' abilities to repay mortgage loans, including certain protections from liability for qualified mortgages (QMs), were due by January 21, 2013. The CFPB released a final rule on January 10, 2013.
Rules on mortgage origination and servicing practices, including loan-originator compensation and restrictions on high-cost loans, were due by January 21, 2013. The CFPB released the final rule on January 20, 2013.

Rule-Making

Although it is difficult to draw firm conclusions about the Bureau's performance and regulatory record without the benefit of more time and experience, the CFPB has engaged in certain regulatory actions that enable an initial assessment of its performance. For example, the QM and remittance transfer rule-makings demonstrated a thoughtful approach to fostering strong consumer protections while still addressing concerns expressed by stakeholders. In addition, when the CFPB inherited primary rule-making authority for Regulation Z ability-to-pay requirements, it reversed a decision of the Federal Reserve Board to impose an independent ability-to-repay requirement for consumers of all ages. The original decision was having an adverse impact on stay-at-home and military spouses. The CFPB was able to address this issue, as well as stakeholder concerns, throughout the process.

Guidance vs. Rule-Making

In general, when the CFPB has used not only its own research, but also an open process that enables broad and deep input, the quality of decision-making has been good; this is evidenced by the three rule-makings discussed below. However, when the Bureau has used a closed-door process to issue guidance and has not broadly gathered input from stakeholders, quality has suffered. Sometimes, it has been able to remedy those mistakes later on in the process. However, these mistakes could be avoided if the Bureau uses a more public and transparent process. Importantly, an open process can be adopted without significantly delaying the guidance.

Timeliness of intervention to protect consumers is no small matter. In some cases, the stakes may be high for low- to moderate-income consumers, especially in communities of color, which are often targets of aggressive, and even predatory, lending practices. Official rule-making takes time. Each year that goes by without remedy increases and magnifies the potential harm to a group of consumers that may have been a target of a financial product.

Although guidance may be easier for a regulator to issue than a rule, since guidance may avoid the full formal notice-and-comment period mandated by the Administrative Procedure Act (APA), guidance issued without input from consumers and marketplace participants can be ineffective and often does not provide the clarity needed for covered entities to effectively comply, leading to adverse results for both consumers and covered entities.

All stakeholders, including regulated entities, would benefit substantially if the CFPB emphasized rule-making rather than guidance and consent orders. That said, the core of the issue appears to be the extent to which covered entities and consumer groups are given advance notice of the CFPB's intention to publish guidance and the opportunity to provide sufficient input into the Bureau's deliberations before final guidance or rules are promulgated. In fact, both consumer groups and covered entities consistently commented on the importance of transparency and the opportunity to comment. There also is agreement that, within the nonbank area where there are a vast number of entities, enforcement actions may be a more appropriate tool to use to advance timely and effective consumer protection, since it simply may not be possible to supervise and examine all of them.

The CFPB, like other regulatory agencies, needs the ability to employ a balance of rule-writing, guidance, examination, and enforcement to administer proper and timely consumer financial protections. Nevertheless, the Task Force recommends the CFPB seek greater input from a diverse group of interested parties, including both consumer groups and regulated entities, before the issuance of substantive guidance. A "notice-and-comment like" procedure would be beneficial for those impacted by guidance and also would help protect the CFPB from legal challenges that unsolicited guidance can invite if issued without the benefit of comment.[7]

Qualified Mortgage Rule-Making

Reacting to the problems in the mortgage market detailed above, the Dodd-Frank Act required the establishment of a QM standard by January 2013 and provided that rigid statutory requirements would become effective if regulators failed to meet the rule-writing deadline.[8] The goal was to create a mortgage product that did not contain risky features, such as interest-only payments. These new products would fall within a safe harbor for lending institutions from other mortgage regulatory requirements stipulated in the Dodd-Frank Act.

With the CFPB still months away from opening its doors, the Federal Reserve Board took the lead in drafting and proposing a rule to implement the Dodd-Frank Act's new mortgage requirements.[9] Approximately 18,000 comment letters were filed in response to the proposed rule, including letters from members of Congress, consumer groups, trade associations, industry participants, and individual consumers. The CFPB gained responsibility for considering and responding to these comments in July 2011 as part of the Dodd-Frank Act's broad regulatory transfer to the CFPB.[10] Despite having limited time to address the many stated concerns, the Bureau nonetheless developed a workable standard for one of the country's most important and complex consumer financial services markets.[11]

Throughout the rule-writing process, the CFPB listened to concerns expressed by industry participants and consumer groups, and also relied on multiple additional sources of industry and marketplace data to inform its rule-making process. After receiving additional data on residential mortgages, the CFPB reopened the comment process on the proposed rule to allow consumer groups and industry participants to offer further input.[12] The CFPB issued its final rule on January 10, 2013, but has continued to respond to concerns expressed by industry participants.[13] To further assist in its adoption, shortly after publication of the final rule, the CFPB released an implementation plan to provide industry participants with more clarity, and it has indicated that additional compliance guidance materials are forthcoming.[14] Similarly, on April 10, 2013, the CFPB issued a compliance guide to help smaller financial institutions comply with the final QM rule and mortgage ability-to-pay requirements.[15] While many experts believe that final judgment on the effectiveness of this rule must be determined over time, the CFPB has received generally high marks for an approach seen as open, driven by data and research, and focused on practical application in the mortgage market.

Remittance Transfer Rule-Making

Prior to the Dodd-Frank Act, there was little rule-making in the nonbank space and no federal framework for regulating remittance transfers from people residing or working in the United States to people located in foreign countries. This meant there was no uniform federal disclosure or dispute-resolution framework for remittances, like that which exists for credit card transactions under the Truth in Lending Act (TILA) and electronic fund transfers under the Electronic Fund Transfer Act (EFTA).[16] However, Section 1073 of the Dodd-Frank Act changed this by including remittance transfers under the EFTA and directing the Federal Reserve to begin, and then the CFPB to finalize, consumer protections for the remittance transfer marketplace no later than 18 months after the Dodd-Frank Act was signed into law.[17] This required the CFPB to focus on a unique consumer segment that is often overlooked and that is important to the success of the U.S. economy. Similar to the QM rule, the remittance transfer rule-making process began with the Federal Reserve Board, which previously had authority over the EFTA. Once the CFPB was established, authority transferred—as did the process for finalizing the rule. The Bureau initially issued a final remittance transfer rule on January 20, 2012,[18] while concurrently issuing a proposal for a safe harbor for complying with the rule's many requirements.[19]

For example, in addressing concerns of small banks and credit unions, which do not regularly offer remittance transfers, the CFPB created an exemption from the rule's requirements for smaller institutions that do not initiate more than 100 remittance transfers in a calendar year.[20] In May 2013, the CFPB further clarified the remittance rule's final requirements as they relate to recipient institution fees and local taxes, revised the error-resolution procedures to address sender error, and provided additional time to comply with the rule modifications.[21] These final clarifications removed a long-standing concern of many remittance transfer providers regarding requirements for the disclosure of foreign taxes, a proposal that had originated in the rule-making process at the Federal Reserve Board. The inclusion of disclosure requirements for foreign taxes in the initial proposal is one of the examples where the process could have been improved by greater public input earlier in the process. Eventually, however, this issue was rectified by substantial input from stakeholders. While the final rules are not yet effective, consumer protections already have increased as remittance transfer providers have started implementing reforms to come into compliance with the rule's final requirements. Again, while final judgment on the CFPB's efforts on the remittance transfer rule must await full implementation, the CFPB demonstrated flexibility, a willingness to hear concerns, and an ability to make revisions and corrections to initial proposals—and even to "final" rules—to address practical issues in the marketplace.

Credit Card Ability-to-Pay Rule-Making

When enacting the CARD Act of 2009, several members of Congress expressed concern about the number of credit card applications received by persons under the age of 21. Members of Congress recalled how their own minor children received preapproved offers for credit cards, even though these children rarely have the means to repay credit card companies for debt they accumulate—and, in any event, no ability to enter into legally binding credit card agreements. In response to broad concerns about the credit card offers received by consumers under the age of 21, Congress required card-issuers to verify an underage consumer's independent ability to pay his or her monthly credit obligations.[22]

Though the CARD Act only required that card-issuers consider whether card-holders under 21 had the ability to independently repay their debt, the Federal Reserve Board proposed expanding this independent ability-to-pay requirement so that it applied to consumers of all ages. In response, members of Congress, card-issuers, retailers, trade associations, and even some individual consumers expressed concern that such an expansion of the CARD Act's ability-to-pay requirement would reduce access to credit, particularly for military spouses and other married spouses who do not work outside the home. Despite these concerns, the Federal Reserve Board promulgated ability-to-pay provisions, which required a card-issuer to consider a consumer's independent ability to make the required payments on a credit card account, regardless of the consumer's age.[23]

The Federal Reserve Board's amendment to Regulation Z was met with immediate criticism. For example, the group MomsRising highlighted the rule's consequences for stay-at-home spouses who would not be able to obtain credit under the amended standard without the co-signature of a working spouse.[24] Shortly after the Federal Reserve Board finalized this rule, the CFPB inherited primary rule-making authority for TILA, the statute under which this rule was created. Much to its credit, the CFPB revisited this issue and published a proposed rule to amend the Regulation Z ability-to-pay requirements on November 7, 2012.[25] Specifically, the CFPB proposed to eliminate the independent ability-to-pay requirement as it applied to those consumers age 21 and older, and replace it with an assessment of whether the consumer had a reasonable expectation of access to income or assets that could be used to satisfy monthly credit card obligations. To further insure that it issued an understandable rule, the CFPB made clear in its additional commentary that an issuer may consider *any* income or assets to which an applicant has a reasonable expectation of access, and even provided concrete examples of what would constitute an expectation of access.

After receiving a significant number of comment letters in support of the amended standard, the CFPB published a final version of its proposed rule in April 2013.[26] In response to comments from both industry members and consumer organizations, the final rule expands access to credit for spouses, partners, and family members, while preserving the CARD Act's protections for younger consumers by retaining the independent ability-to-pay standard for applicants under the age of 21. The CFPB's final rule also clarifies that card-issuers would not be at risk for a fair-lending violation by treating adult and underage consumers differently, as that treatment is required by TILA and its implementation in Regulation Z; in other words, the clear congressional mandate for more protection in TILA trumps the issue of different treatment based on age under the Equal Credit Opportunity Act (ECOA).

In this rule-writing effort, the CFPB again balanced concerns from industry participants and those from consumer groups, and the Bureau demonstrated sensitivity to concerns about consumer protection rule-making that threatened to restrict access to credit for protected populations without adversely impacting the credit card marketplace.

Examinations and Data

Supervisory and Examination Process

While attempting to distinguish between perceived shortcomings that should fairly be attributed to the newness of the agency and systematic decisions affirmatively made and implemented by the CFPB, the Task Force has identified several concerns expressed about the CFPB's supervisory and examination processes. The Task Force's concerns fall into three main areas: (1) predictability and timeliness with respect to the examination process, (2) focus of exams and ability to coordinate with other regulatory examination efforts, and (3) consistency in the quality of staff conducting examinations.

Predictability and timeliness with respect to the examination process. The Task Force appreciates that the Bureau has publicly released important examination-related material, such as their supervision and examination manual.[27] Unfortunately, ineffective communication from the CFPB about the examination process, the content of exams, and the beginning, middle, and conclusion of exams has confused many entities under the CFPB's authority. In addition, there may be structural problems regarding the Bureau's ability to close out or finalize exams. Multiple participants whom the Task Force interviewed in both the bank and nonbank sectors indicated that the CFPB has not been able to end their exam process, or to provide final, written guidance or communication on how they have performed.

While it is understandable that the Bureau would want to centralize its exam process and make sure that the appropriate amount of level-setting is occurring so that similar practices are graded similarly, the Bureau needs to significantly improve this process. It is difficult to tell whether that is the result of continuing start-up issues or whether it will become standard practice for the Bureau to leave examinations open-ended.

Closing examinations in a timely manner is critical for financial services providers, who can then take the final comments and evaluation from the Bureau and work to make the necessary improvements. This issue has not escaped the attention of Congress. For instance, the Protecting American Taxpayers and Homeowners (PATH) Act, introduced to the House Financial Services Committee in July 2013, contains a provision in Section 412 to set time limits on the completion of examinations by federal financial regulators. The Task Force takes no stance on whether such limits should be imposed, or whether this bill ultimately should be enacted. Should such a requirement be the will of Congress, however, it only makes sense to apply the same standards to the CFPB that are applied to other financial regulators. It is not immediately apparent that this is the case, at least with regard to the PATH Act.

The Task Force recommends that the Bureau adopt an official policy establishing timelines for formally closing out examinations of both banks and nonbanks. The Task Force recommends that the CFPB make every effort to provide prompt feedback to entities the CFPB examines and to close these examinations in a timely manner.

In this regard, the timeliness of the CFPB examination process influences the ability of other regulatory agencies to complete their examination work in a timely manner. For example, because the consumer compliance rating is a key component of both the safety and soundness rating and of the Community Reinvestment Act rating, other regulatory agencies responsible for those ratings may be unable to assign such ratings until the CFPB completes its examination work. Also, because the CFPB reportedly shares draft exam reports too late in the supervisory process, it is not possible for another agency to provide meaningful input. Another complaint with respect to timeliness is that the CFPB undergoes a lengthy process, and, when its findings are finally shared, the CFPB requires an examined covered institution to respond to the findings within an unrealistically compressed period of time. For all of these reasons, timely completion of regulatory examinations is imperative.

An additional concern in the start-up phase is that some regulated entities have suggested that they received different interpretations of laws and regulations by Bureau staff and, in particular, examination staff. While creating consistent interpretations of these laws and regulations is a difficult undertaking, it is an expressed priority of the Bureau, which the Task Force applauds. **The Bureau's goal to create regulatory consistency by ensuring that CFPB staff across the country set consistent ratings, interpretations, and classifications is worthy of praise. The Task Force recommends that the CFPB ensure it achieves that goal by the end of 2014.**

Focus of exams and ability to coordinate with other regulatory examination efforts. Federal banking regulators have historically applied a wide lens in examining a covered entity—looking at a broad range of business activities and providing feedback on the institution's overall policies, procedures, and controls. This examination process is generally followed up with supervisory letters that specify the issues that the regulatory agency has identified and is likely to revisit during the next exam, as well as areas where compliance is deemed satisfactory. The CFPB has taken a different approach by examining individual types of products or other single lines of business activity. This more narrow focus may explain some of the reasons for more lengthy examination processes where broader data is needed across the marketplace to assess the impact of an institution's financial product or service on consumers. While this change in focus may prove beneficial over time, unquestionably, the CFPB's decision to apply a more narrow focus has added complexity and some degree of misalignment with other regulatory agencies that must coordinate supervision over shared covered institutions.

To be clear, the Task Force is not criticizing the CFPB's approach of regulating on a product-by-product basis. However, in order to make this process work in coordination with the other federal regulators, the Bureau is going to have to make significant improvements in its communication of where it stands in the process. In addition, other federal regulators may be forced to move forward on their own examination schedules without the full value of the Bureau's examination into all aspects of the financial institution. The Task Force is concerned that this may result in gaps of regulation, or inconsistent regulatory approaches, although it is possible that this concern may be reduced over time. **The Task Force recommends that the Bureau and the bank regulators work together more closely to better integrate the Bureau's product-based approach and time schedule with the standard regulatory structure from the bank regulators. This could entail more promptly closing out product-based exams.**

Consistency in the quality of staff conducting examinations. There has been consistent feedback that the CFPB has experienced significant organizational challenges within the supervisory and examination staff. Two key observations: (1) recruitment practices and turnover have affected the staff and quality of supervision, and (2) policy decisions to include enforcement staff in the supervisory process have stunted the flow of information and limited the effectiveness of supervisory work.

The CFPB inherited staff from other regulatory bodies, including state bank supervisors, and those staff had expertise in various aspects of bank supervision, examination, and enforcement. However, there are still many CFPB staff members that lack such experience. Training and learning on the job has become crucial. Some covered entities complimented the professionalism and quality of staff, but, on balance, the feedback the Task Force received focused on inconsistency in quality and high turnover. Some have gone so far as to question how well the CFPB's staff really understands the specific financial markets they are supervising or the laws and regulations they are charged with overseeing. On the other hand, turnover at a new agency is to be expected, especially at an organization that has grown so rapidly. In addition, when federal regulation applies to products that were previously unregulated at the federal level (e.g., payday lending), it may be difficult to begin the process with seasoned examiners.

Inconsistent expertise and high turnover are reasonable challenges in any newly established organization that is required to build capacity quickly. The CFPB has shown some willingness to make organizational adjustments to better manage its responsibilities, but it would be beneficial for all stakeholders to consider further organizational adjustments. For example, the CFPB began with a separation between bank and nonbank supervision and has since combined those areas to more effectively manage the work. **Nevertheless, the CFPB's management and leadership should focus substantial time and energy on improving official communications with covered entities and partner regulatory agencies about their exam process. Moreover, the CFPB should commit to launching a new major initiative to recruit, train, retain, and further develop high-quality supervisory and examination staff.**

Another area of substantial concern relates to the involvement of enforcement staff in the CFPB's examination process and supervisory meetings. This is a sharp departure from the traditional practice of bank regulators. The original goal of involving both divisions apparently was to ensure that, apart from supervising covered institutions, the CFPB had the ability to mandate changes as well. Concerns have been raised that the inclusion of enforcement staff has had a chilling effect on the sharing of information with the CFPB. Although the CFPB has suggested that the inclusion of enforcement staff enables enforcement staff to better understand the institutions the CFPB supervises and the practices that the CFPB has been asked to regulate, the Task Force recommends that the Bureau reconsider this practice. The CFPB's Office of the Ombudsman has noted this issue and made its recommendations, including for the Bureau to "review implementation of the policy to have enforcement attorneys present at supervisory examinations. Until that review is complete, the Ombudsman recommended that the CFPB establish ways to clarify the enforcement attorney role in practice at the supervisory examination."[28] The Federal Reserve Board's Office of the Inspector General is also conducting a review of this practice, which is slated for completion in the third quarter of 2013.[29]

The Bureau should rethink policy decisions to involve enforcement staff in supervisory processes. The Task Force believes that any organizational benefits envisioned from that policy are outweighed by the more visible drawback of creating a barrier to forthright communication. Fundamentally, the goal of the Bureau is to improve regulation from the consumer's perspective. Enforcement authority is a necessary tool to accomplish that goal, but so are more informal processes that occur through the supervisory framework. The concern is that these more informal processes are unnecessarily impeded by the inclusion of enforcement personnel in the supervisory process.

Data Requests and Collection

The Bureau should have the flexibility to use examination data and other collected data for appropriate consumer protection purposes. The Task Force supports the CFPB's goal of being a data-driven agency. Some have suggested that the CFPB should use the information collected to provide more transparency in the consumer financial services marketplace and that, by highlighting good innovative products, the CFPB could keep such products from being crowded out of the market. Similarly, some compared the CFPB's current data-collection practices to the data-collection practices under the Home Mortgage Disclosure Act (HMDA). That said there is a concern that data-collection requests from the CFPB, to this point (particularly outside of the examination process), have been unwieldy, duplicative, and lacked a clearly stated purpose. Covered entities have described receiving multiple data requests from different parts of the Bureau. While it may be appropriate for the Bureau to ask for data, the CFPB must also recognize that such requests can impose real costs on covered entities. These costs relate both to the size of the data request and the size of the institution.

For example, some have complained that the CFPB will often request information that appears to be outside the scope of the agency's current supervisory and examination focus, and perhaps even outside the agency's jurisdiction, without providing an explanation for the request. Even though larger institutions are accustomed to providing data to regulators upon request, most previous banking agency data requests have been done on a sampling basis. The CFPB, on the other hand, has requested complete data, which can be intensive and create real cost issues for institutions. Of particular concern is when multiple requests come from various parts of the CFPB without apparent coordination.

Although the Task Force understands and supports the CFPB's desire to be a data-driven agency, the CFPB should consider ways to streamline its data requests by its various internal departments and consider ways to make more transparent the purpose of requests of data from covered entities. In other areas where the Bureau has operated with more coordination and transparency, it is has achieved success, such as in the successful rule-makings discussed earlier. Similar coordination and transparency should be implemented in the area of data collection as well. **Specifically, the Task Force recommends the Bureau require coordination among its various divisions when requesting data from any institution. The Task Force also recommends that the Bureau require that a statement of intended use be given with a data request.**

The scope of the Bureau's data-collection efforts has led to increasing concerns regarding the privacy of this information. The level of data collection, including personally identifiable financial information, is unclear. The Task Force notes that Section 1022(c)(9)(A) of the Dodd-Frank Act prohibits the collection of personally identifiable financial information by the Bureau. While the CFPB may not be associating names with each data set, it has been reported that unique identifiers are being attached so that the Bureau can track the same consumer's transactions over a prolonged period of time. In response to a Freedom of Information Act request, the CFPB recently released documents that provide further details of the Bureau's data-collection efforts.[30] One of these documents shows that the CFPB placed Experian on an IDIQ contract; however, it is not clear if there is an end-date or how many task orders have been placed.[31]

Some also express reservations about disclosing data that has a competitive value for fear that it might be disclosed publicly and then used by competitors; others express concern about the CFPB's ability to protect the vast amount of data it is receiving, particularly given the fact that the Office of the Inspector General (for both the Federal Reserve Board and the CFPB) has expressed concern about the CFPB's data-security procedures.[32] The inspector general's report found that, "The CFPB has not established a comprehensive information security strategy to guide the implementation of an agency-wide information security program."[33] However, the Bureau says that it recognizes this and that it has established a draft agency-wide information-security policy, and the CFPB has pledged to improve its data-security efforts.

These various comments underscore the complexity of the issues surrounding the CFPB's data-collection efforts. It is obvious that the CFPB should take all necessary steps to assure the confidentiality and security of data being requested and housed within the Bureau. Further, the Bureau should ensure that it does not collect personally identifiable financial information.

The establishment of trust between this new government entity, consumers, and industry representatives is of paramount importance. The security of data collected is a central part of that trust and of the reputation of the Bureau. Our examination did not identify any specific data-security issues. **However, given the significant downside to any data breach, the Task Force recommends that the Bureau take every step possible to ensure that no breach of data occurs. This extends both to data that the Bureau collects directly, as well as to all data collected and used by outside vendors.**

Consumer Relations

Consumer Complaint Portal

There is general agreement that a consumer complaint portal has benefits to fulfilling the mission of an agency charged with advancing consumer protection. For one, consumers can assist the federal government in identifying unfair, deceptive, or abusive acts or practices by reporting their experiences. At the same time, companies rely on reputation to succeed, and it is important to consider that a series of invalid complaints could damage an otherwise good reputation.[34] Recent research suggests that inaccurate or deceptive reviews are more prevalent than many expect.[35]

The CFPB's complaint database has caused concern among industry participants, because it creates an avenue for generating potential reputational risk. For example, a consumer may be upset with a rate increase at the end of his or her introductory credit card period and file a complaint through the CFPB's portal. Under the current complaint database construct, that complaint will show up in the public data even if the consumer's financial institution properly disclosed to the consumer that the rate would increase at the end of the introductory period. Although the financial institution is given 15 days to respond to the complaint, the complaint is still registered against the institution even if resolved in the institution's favor.[36] On the other hand, if a substantial number of people report that the same financial institution increased their rates at the end of an introductory period, it may be an indication that the institution's disclosure materials are unclear or possibly defective. In this case, the complaints provide the CFPB an opportunity to look further into a matter that could be causing unnecessary confusion or hardship for a significant number of consumers. As the CFPB notes, there already is a process of self-selection that takes place when someone takes the time to figure out the federal regulator of a given product or entity.

The Bureau has indicated that the complaint portal provides an opportunity for business entities to take corrective action; consequently, they have been reticent to place filters on information that is submitted and have suggested that they lack the bandwidth to verify the vast majority of complaints. From July 21, 2011 (the day the Bureau launched), to June 30, 2013, the Bureau received approximately 176,700 consumer complaints.[37] They only have been able to make substantive inquiries on about 20 percent of complaints received. The number of complaints could easily grow over time for several reasons. First, as the Bureau expands its authority over other products, more complaints may follow. For example, credit-reporting-agency files have been noted to have a significant number of inaccuracies. According to the FTC, for individuals with credit histories, at least 24 percent of credit reports contain some level of errors. There are hundreds of millions of credit files, and complaints regarding credit reports would overwhelm the existing consumer complaint system. However, addressing such inaccuracies would be beneficial for both consumers and the financial services system as a whole.

Second, as knowledge of the portal spreads, consumers may be more likely to use it. This can easily occur in a nonlinear fashion as complaints have the ability to go viral and generate significant traffic quickly in the digital age. Imagine if just 10 to 15 percent of consumers with an error on his or her credit file used the complaint portal. The system would be overwhelmed immediately. Nevertheless, the Bureau has decided to allocate substantial resources to provide a comprehensive toll-free phone response system, with a contract in place to allow representatives to respond to *other* consumer questions in 186 languages. This is an example of a potential opportunity to reallocate resources for the purpose of validating a larger volume of online complaints. **Thus, the Task Force recommends that the Bureau continue to inform consumers of their ability to use the portal to address mistakes, and that they do this in a gradual way, while better aligning resources to handle a substantial increase in activity and to verify complaints accordingly**. The Bureau has managed well the roll out and publicity of the portal to date. However, an allocation of additional resources and staff time would be valuable. It can only ensure a better outcome for all stakeholders.

The Task Force also recommends that the CFPB better categorize consumer complaints received and published to benefit both consumers and the marketplace as a whole. For example, the CFPB could place complaints into two categories: one category could be those that have received no review, marked with a clear disclaimer that the CFPB has not reviewed the accuracy of those complaints. A second could consist of complaints that have been sufficiently reviewed by either the Bureau or regulated entities to ensure accuracy prior to publication.

Civil Penalty Fund

The CFPB keeps the civil penalties it imposes on financial institutions in a newly established Consumer Financial Civil Penalty Fund[38] (Civil Penalty Fund, or the Fund), which is officially located in the Federal Reserve Bank of New York. The CFPB controls this Fund without any fiscal-year limitation, with the money in the fund available to the CFPB not only to repay consumers who are victims of consumer financial law violations, but also for consumer-education and financial-literacy programs.[39] The authority for the Bureau to keep excess penalty funds and use them for broad purposes is unparalleled among other financial regulators. While other financial regulators levy fines, amounts in excess of that which is used for consumer redress are returned to the Treasury's General Fund.

There is broadly shared recognition that the Fund can be a means of providing redress for consumers adversely affected by the policy and practice of covered entities. That being said, the CFPB's administration and use of funds that have accumulated in the Civil Penalty Fund beyond those necessary for consumer redress should be more specific and transparent. The Bureau's Civil Penalty Fund draws parallels to the civil penalty funds maintained by some state attorneys general, and some worry that state attorneys general who are funded by civil penalties have an incentive to rush to settlement or to push for penalties so as to receive much-needed resources, as opposed to exploring alternatives, such as pursuing comprehensive reforms of lenders' practices. The existence of such a civil penalty fund also could represent a conflict of interest for the CFPB, given its ability to use these funds for its own purposes.

There are a number of ways that these concerns could be remedied. One is by limiting the Fund to amounts necessary and appropriate for consumer redress, with any additional civil money penalties paid to the U.S. Treasury. This is generally the case with penalties imposed in enforcement actions by other agencies, including the FTC. Historically, redress has been limited to the amount of demonstrated consumer harm. However, consumers could suffer additional costs as a result of the improper activity. For example, if a family on a budget is being overcharged for an add-on product, they may miss payments on other bills, incurring late charges. If these charges were not part of the actual improper add-on fees they were subject to, the charges may not be considered in the calculation for redress. Additionally, there often is a time gap between when the problem occurred and when the financial institution pays a penalty. The consumer has lost the time value of those funds. **To address potential indirect injuries, the Civil Penalty Fund could be used to give harmed consumers additional funds—for example, 125 percent of the actual redress, rather than additional penalty amounts being used by the CFPB for its own purposes.**

Alternatively, if funds in excess of redress are to be retained and used by the CFPB, the Bureau should more clearly delineate how such funds are to be used to advance consumer education, and then an oversight mechanism could be established to confirm that the funds are distributed in the delineated manner and that they achieve the intended results.

On July 19, 2013, the CFPB put out its first public comments on uses of the fund beyond consumer redress. This statement highlighted the Bureau's commitment to assisting veterans, as well as "economically vulnerable" consumers, by providing "financial coaching services."[40] These are extremely large and different populations. As the CFPB itself notes, there are approximately a quarter of a million veterans and more than 100 million Americans whom it defines as "economically vulnerable." The size, scale, scope, and activities necessary to provide "financial coaching services" to both populations calls into question the appropriateness of the scope of the Bureau's proposal. At a minimum, it is imperative that the Bureau more clearly define the specific approach and target of this endeavor.

This notice and the accompanying solicitation do not provide comfort that the Bureau is moving forward in a transparent and coordinated manner. Specifically, the Bureau has not publicly sought input from veterans groups and other stakeholders. And, the Bureau does not appear to be coordinating these efforts with the Financial Literacy and Education Commission (FLEC). The FLEC is tasked under the Fair and Accurate Credit Transactions

(FACT) Act with coordinating the federal government's financial-literacy and education efforts. Comprising more than 20 agencies, including all of the federal financial regulators, the FLEC is tasked with improving financial-education efforts and eliminating duplication where it exists. The Dodd-Frank Act not only added the CFPB director to the FLEC, but also made that position the vice-chair of the effort. The treasury secretary is the chair. Currently, the CFPB has no plans to coordinate its use of funds in excess of redress through the FLEC, which raises significant concerns, including the potential for duplication of efforts or even inconsistent efforts. This is especially true in targeting veterans, who have relationships with the Veterans Affairs Department and other areas of the government.

To be clear, civil money penalties should be imposed where appropriate, and relief should be provided to adversely impacted consumers. However, a more formal structure should be established, together with more effective reporting and oversight mechanisms. Such a structure should ensure that any use of the Fund for purposes other than consumer redress (*e.g.,* financial educational purposes) actually advances the mission (*e.g.,* increased financial literacy and consumer awareness) in a fully transparent manner. This may take the form of legislative changes that curtail the CFPB's current broad discretion, or a more formal rule-making process with notice and public comment, whereby the Bureau spells out its criteria and objectives for the Fund, and subjects the criteria and objectives to the comment process. However, the current status of broad discretion without better clarity of use can become problematic.

The ambiguity relating to the program's size gives us pause. There is a vast difference between attempting to serve a population of 250,000 veterans and attempting to serve a population of 100-plus million financially underserved consumers. Specific estimates in the CFPB's materials on this program, which state that "as many as 21,000 veterans and 7,200 economically vulnerable consumers could be served" through their initial program,[41] indicate substantial thought within the Bureau has occurred on how to scope and target this approach. However, there is nothing to indicate that these proposals were informed by collaboration with external stakeholders to derive these precise estimates.[42] **The Bureau would benefit from public dialogue with those stakeholders, who may have the same, if not more, expertise in these areas as the Bureau.** Launching too large a program could dilute its effectiveness, stretching resources to the point where the amount spent to engage individual consumers is too low to feasibly achieve the program's goals. One potential path for the Bureau to address concerns about the program's size and scope would be to launch its program with a focus exclusively on veterans, their families, and single parents.

The Task Force recommends that the Bureau restart its efforts to utilize Civil Penalty Fund resources to support a new financial services coaching program, beginning with consultation and collaboration with external stakeholders to help define the goals and scope of the effort. The Task Force is concerned that the program may not have the desired meaningful impact without collaboration on the project's design and implementation from key stakeholders including other federal

agencies, industry participants and consumer groups that regularly work with veterans and economically underserved consumers.

The Scope of CFPB Authority

The CFPB was created to improve a method for administering federal consumer financial protection that Congress determined was inadequate in the wake of the 2008 financial crisis. Before the crisis, a complicated web of regulation covered consumer financial protection, which had prudential regulators enforcing most of the 18 federal consumer financial protection laws against the institutions they chartered and monitored for safety and soundness, while the FTC regulated nonbank financial companies through enforcement actions (but generally not rule-making or supervision). In this arrangement, there was little, if any, federal regulation of certain market participants, because states had primary authority over a broad range of nonbank companies, such as those that helped facilitate the origination of clearly defective subprime mortgages.

One of the clearest benefits to creating the Bureau was the creation of uniform consumer protection standards and principles, allowing for consistent rules, guidelines, and enforcement actions across the marketplace, including for both bank and nonbank providers. This allows for similar financial products to be regulated consistently, and it allows for different financial institutions that provide similar services to be held to the same standards, which benefits consumers and creates a fairer and more competitive financial services marketplace. This will be no small task given that this marketplace had been almost exclusively regulated at the state level and had not been subject to comprehensive federal regulation. **In its interviews, the Task Force found that most people agreed that the agency had about the "right amount" of authority. Nevertheless, the CFPB may need additional authority in certain areas, such as auto financing as discussed below.**

CFPB Supervision of Nonbanks

While the exact number of nonbank financial services providers is unknown due to varying licensing standards and a lack of a single registry or database, the CFPB has estimated that there are thousands of nonbank companies that are providing financial services to consumers.[43] The Dodd-Frank Act gave the CFPB supervisory and regulatory authority over certain designated nonbank providers of consumer financial products and services. Specifically, the CFPB has jurisdiction over mortgage originators, brokers and servicers, private student lenders, and payday lenders. Additionally, the CFPB may identify larger nonbank participants in markets for other consumer financial products and services for supervision, as well as persons who engage in conduct that poses risks to consumers with regard to consumer financial products or services. The CFPB has identified larger participants in consumer reporting and consumer debt-collection markets, and has proposed a similar rule for student loan servicing. One of the primary goals of establishing the CFPB was to create a level playing field for all consumer financial products and services providers. To date, however, the CFPB's oversight of these nonbank providers has been limited in scope. This is due, in large part, to the rule-writing obligations Congress mandated in the Dodd-Frank Act, which have absorbed much of the Bureau's time and attention. Now that most of those mandates have been addressed, the CFPB should focus additional attention on this sector of the industry.

The CFPB should devote additional resources to the supervision of providers of nonbank financial products and services and be more transparent in the process. In addition, the Bureau should clearly identify the appropriate metrics for success in regulating nonbank providers of financial services. Suggestions for metrics are found later in the paper. However, the Task Force stresses that the means to achieve these outcomes may differ between bank and nonbank firms.

CFPB Consultation with Other Agencies

The Dodd-Frank Act requires the CFPB to consult with other agencies when writing regulations. Since the CFPB has the sole authority to write rules implementing the federal consumer protection laws, this provision is intended to ensure that there is collaboration among financial regulators and that the CFPB has the benefit of insights from other agencies that have extensive experience in rule-writing. Our review indicates, however, that the CFPB is following the letter of this requirement more than the spirit of the law. In other words, the Bureau has demonstrated a reluctance to engage with other agencies until its own deliberations are fairly well advanced. This problem is not unique to the Bureau. Other independent financial regulators have followed similar paths. However, the best regulatory output often requires consultation; this is why Congress requires it. **The Task Force recommends that the CFPB take full advantage of the consultation process with other agencies, since such consultation should improve the final outcome of regulations.**

Nevertheless, Congress has placed in the Bureau, rather than the prudential banking regulators, the general authority to write rules and release interpretations on consumer laws. There is one cop and one entity that Congress intends to do the rule-writing. This transfer of authority may be difficult for other prudential regulators to fully internalize given their historic responsibilities for consumer protection. **The CFPB is the lead agency on consumer protection issues, as intended by Congress, for authorities transferred to the Bureau. This is the law. If prudential regulators identify consumer protection issues they believe are problematic, they should inform the CFPB of the problems and defer to the Bureau's authority on such issues.**

CFPB's Authority to Cover Lending Activities of Auto-Dealers

While the CFPB has substantial authority to regulate consumer products in most of the financial services landscape in the United States, there was one major product that was specifically excluded from the Bureau's authority: lending from auto-dealers.[44] This exclusion did not exist in earlier versions of the legislation[45] but was added later on in the political process.[46] This is a significant exemption from a consumer protection standpoint, since it excludes the CFPB from regulating a sizeable consumer financial market, covering approximately $780 billion in outstanding auto loans.[47] For most consumers, a car loan is one of their largest sources of debt, smaller than their mortgage, but often larger or on par with student loans or credit card debt. Recent reports show nearly 60 million outstanding auto loans, and new credit for auto loans is on pace to hit an eight-year high with nearly $70 billion in new auto loan credit being extended in the first two months of 2013.[48]

The auto-financing marketplace is a complicated market. There are similarities to the mortgage market, where some mortgage brokers had an incentive to place borrowers into higher interest rate products. Most vehicle financing begins when auto-dealers submit basic information to financial institutions on the creditworthiness of an interested car buyer. Financial institutions respond by providing auto-dealers with an interest rate they believe fits the buyer's risk profile; but this interest rate is not always shared with the borrower. In some instances, the difference between the financial institution's interest rate offer and what the consumer actually receives becomes profit to the dealer. These costs to consumers may be substantial; one estimate from 2009 shows that these additional interest charges cost Americans $25.8 billion in additional interest over the life of their auto loans.[49]

Recently, the CFPB has considered a less direct avenue in an effort to reach the practices of auto-dealers. The Bureau has warned that it may enforce anti-discrimination laws against banks that purchase consumer auto loans from auto-dealers to finance car loans for consumers, because the Bureau apparently believes it cannot enforce these laws against auto-dealers directly. The Bureau would rely on the ECOA, which prohibits lending that results in unequal treatment on the basis of race, color, religion, national origin, or other identified forms of discrimination. According to the CFPB's interpretation of this law, such unequal treatment in lending does not have to be intentional; the practice just needs to result in noticeable pricing differences among different groups of individuals, also known as "disparate impact."[50] Pricing differences in auto lending appear to be a real, not a theoretical concern, and academic work on this subject has shown that indirect auto lending disproportionately burdens African Americans and Hispanics relative to white borrowers.[51] However, such a marketplace disparity should be addressed directly against auto-dealers, not indirectly by attempting to regulate the business relationships that regulated lenders have with such auto-dealers.

As noted above, one of the most significant financial transactions Americans undertake is the financing of an automobile. However, the current system is opaque and may not give consumers the benefit of market competition. While the Task Force takes no position on the accuracy of the CFPB's interpretations of the anti-discrimination laws, the Task Force sees this as an example of the CFPB using every tool at its disposal to protect consumers, even where the CFPB lacks jurisdiction over the entities actually engaged in the questioned practices. **The Task Force believes the Bureau should be able to regulate auto financing directly, rather than being forced to indirectly attempt to regulate the car's financing terms through the interactions of auto-dealers with financial services providers. Thus, the Task Force calls on Congress to consider legislation to explicitly prescribe CFPB authority to regulate similar transactions in a similar fashion, regardless of whether they occur in an auto dealership. In the interim, the Task Force recommends the CFPB take the next step and propose a formal rule-making on indirect auto lending, to gather input and ideas from external stakeholders and consider policy options to address issues of discrimination. The outcome of this process should be to prevent any discriminatory pricing, without causing a shift of these products to the unregulated sector.**

Stakeholders have said that the current guidance unfairly shifts fair lending compliance risk from auto-dealers, which the CFPB cannot directly regulate, to banks and auto-finance companies. The Task Force believes that the Bureau has multiple rule-making avenues to end discriminatory dealer markups, which appears to be its ultimate goal, without shifting fair lending compliance risk to creditors. For example, the CFPB could use its unfair, deceptive, or abusive acts or practices rule-making authority to require retail installment sales contracts to contain clear and conspicuous disclosures about a dealer's markup, even listing it as a broker fee. Applied equally to banks and finance companies, such a requirement should not have a substantial impact on bank revenues or access to credit, as consumers who ordinarily would have obtained indirect financing through a dealer would be free to obtain less expensive direct financing directly from the banks themselves.

Transparency

A range of stakeholders, including both consumer groups and industry representatives, have suggested the CFPB should increase transparency by improving its process for conducting public hearings and meetings, including providing adequate notice for such hearings and meetings. For example, our review suggests that the CFPB has not published notice of any of its field hearings in the *Federal Register*, the official journal of the U.S. federal government. While the CFPB has posted notice of upcoming hearings on its blog, these postings often have occurred just a few days in advance of a hearing and often do not contain the level of disclosure typically found in *Federal Register* notices from other regulators. For example, the CFPB provided just five days' notice, via blog post, of its July 16, 2012, field hearing in Detroit, Michigan.[52] The blog post also provided little information about the subject matter of the hearing, noting only that it was "on credit reporting."[53] In other instances, the CFPB appears not to have provided any advance notice of its public hearings. For instance, the CFPB did not provide any notice prior to its February 22, 2012, hearing on overdraft fees in New York City.[54] For a list of other examples of what appears to be inadequate notice, see Appendix D.

In addition to the concern about inadequate notice of public hearings, others have suggested that the CFPB should provide the public with additional opportunities to participate in its meetings. As an example, one day after its June 6, 2013, forum—titled "Life of a Debt: Data Integrity in Debt Collection"—the CFPB held an ostensibly public follow-up meeting. The meeting, however, was open only to those consumer groups, industry members, and government officials who received a personal invitation from the CFPB. Similarly, on June 5, 2013, the CFPB's Credit Union Advisory Council held a closed-door meeting via teleconference to discuss payday lending practices and recent revisions to the QM rule.[55] By excluding the public from such meetings, and by providing inadequate notice for other hearings, the CFPB has limited the ability of both consumer groups and industry members to participate in the policymaking process.

Similarly, criticism has been expressed about the selective manner in which the CFPB releases its regulations and guidance. Specifically, we have heard of examples of select members of the media being provided copies of final regulations and guidance, on an embargoed basis, well in advance of distribution to consumer groups and other market participants. While this practice by itself may not ultimately change how consumer groups and covered entities respond to new regulations, it suggests a lack of even-handedness that is inconsistent with the CFPB's stated goal of full transparency.[56] Properly functioning financial markets require input from all stakeholders, and the CFPB should not, whether in appearance or practice, grant preferential access to one group at the exclusion of another.

The CFPB can easily demonstrate its commitment to transparency by emulating the transparency practices of other federal agencies. For example, the CFPB could improve the transparency of its advisory committee meetings by following the model established by the FDIC's Advisory Committee on Economic Inclusion ("ComE-IN"). Unlike the CFPB's Consumer Advisory Board, ComE-IN publishes notice of its meetings in the *Federal Register*,[57] makes all portions of its meetings open to public observation, and broadcasts its meetings on its website.[58] **In sum, by emulating best practices of other agencies, the CFPB could facilitate robust public participation in its regulatory efforts by both consumer groups and regulated entities.**

CFPB Funding and Accountability

The origin of the Bureau is usually credited to then-Professor Elizabeth Warren's 2007 paper "Unsafe at Any Rate," in which she compared the state of financial services regulation to that of consumer products and vehicles in the mid-20th century. In that paper, Professor Warren argued for the creation of a Financial Product Safety Commission, stating:

> Clearly, it is time for a new model of financial regulation, one focused primarily on consumer safety rather than corporate profitability. Financial products should be subject to the same routine safety screening that now governs the sale of every toaster, washing machine, and child's car seat sold on the American market. The model for such safety regulation is the U.S. Consumer Product Safety Commission (CPSC), an independent health and safety regulatory agency founded in 1972 by the Nixon Administration.[59]

The idea of a freestanding consumer financial regulator was embraced in 2008 by the Bush administration as Treasury Secretary Henry M. Paulson endorsed the concept in his proposed *Blueprint for a Modernized Financial Regulatory Structure* to modernize financial regulation. Secretary Paulson's Treasury proposed an independent Conduct of Business Regulatory Agency (CBRA) that would have authority regarding "disclosures, business practices, chartering and licensing, and enforcement." Importantly, the proposed "CBRA should be responsible for business conduct regulation across all types of financial firms. … Existing business conduct laws and regulatory authority for all types of retail financial products and services should be consolidated under one structure." The *Blueprint* did not go into detail regarding the focus of the CBRA, although it did propose giving the CBRA authority over a wider range of financial products, including insurance and retail securities, and it endorsed the idea that like-products should be regulated in a similar fashion regardless of which entity offers the product.[60]

Later, House Financial Services Committee Chairman Barney Frank (D-MA), Representative Brad Miller (D-NC), and 17 other co-sponsors sought to capture Warren's original idea when they introduced the Financial Product Safety Commission Act of 2009. Under this proposed legislation, the commission was to have independent funding (i.e., not congressionally appropriated funding) based on fees and assessments on regulated entities. There also was a victim's compensation fund, but it was limited to remitting funds only for payment to victims.[61]

The Obama administration's initial proposal for a consumer regulator contemplated a Consumer Financial Protection Agency (CFPA). With regard to funding, the white paper argued for an independent agency with "a stable funding stream which could come in part from fees assessed on entities and transactions across the financial sector, including bank and nonbank institutions and other providers of covered products and services." Similar to Paulson's *Blueprint*, Treasury Secretary Timothy Geithner's white paper argued that the CFPA should apply consistent regulation to similar products.[62]

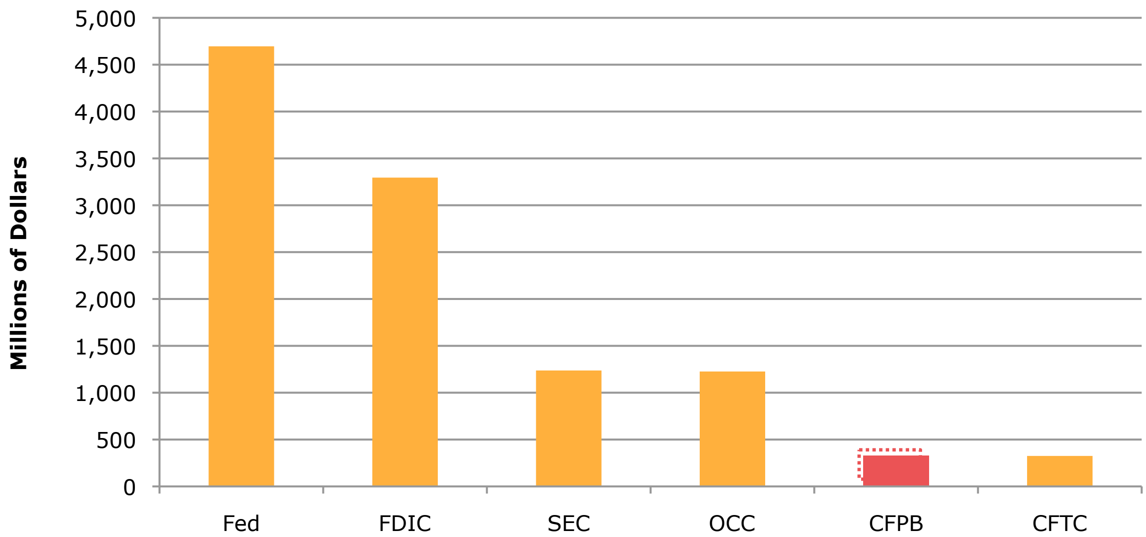
In the end, the Dodd-Frank Act created the CFPB. Despite locating the CFPB within the Federal Reserve Board, Congress essentially made the Bureau independent of the Federal Reserve System, with the important exception of funding. The Bureau is funded by the Federal Reserve System out of its seigniorage income,[63] with a hard cap at effectively $598 million per year, adjusted for inflation. The CFPB does have authorization to request from Congress (through appropriations) up to an additional $200 million for each fiscal year through 2014. The Bureau has never requested additional authorized funds, and in the current budget and political environment would be unlikely to receive them.

The Task Force supports independent funding for the CFPB. Congress should and does have oversight over the Bureau, similar to that over other bank regulators. Keeping the Bureau's funding off of congressional appropriations helped the CFPB stand up expeditiously and continue to function as an independent regulator. **Thus, the Task Force supports allowing the current authorization for additional funding to lapse and not be renewed.** Similar to any federal agency, the Bureau can always request additional funding, through a change in its statutory cap and make that case to the Congress and the Administration.

The decision to fund the CFPB through the Federal Reserve was predicated on the Federal Reserve's historic ability to fund itself through its profitable operations. As Graph 2 illustrates, the Bureau's budget is small relative to that of the Federal Reserve; the Federal Reserve's budget was more than 10 times larger than that of the CFPB in FY 2012, and should be approximately 8 times as large in FY 2014 when the Bureau is fully staffed. However, there is the growing possibility that the Federal Reserve may fail to turn a profit as a result of its recent unorthodox monetary policy. Federal Reserve Board Chairman Ben Bernanke raised the possibility of this occurring potentially in 2018.[64] Similarly, President Obama's FY 2014 budget projected the same.[65] Some have questioned whether this scenario raises uncertainty about how the CFPB would be funded. Would it continue to be funded, as the Federal Reserve funds its own activities, and just accrue as part of a loss taken by the Federal Reserve? Or would the Fed attempt to distinguish between funding itself and the Bureau?

The Task Force recognizes that the Dodd-Frank Act placed the CFPB as part of the Federal Reserve for budgetary purposes. Therefore, the Task Force believes that the Federal Reserve Board should satisfy its obligations to fund the Bureau, under the Dodd-Frank Act, in a manner consistent with the way the Federal Reserve funds itself. The Task Force recommends that the Federal Reserve and the CFPB resolve any such funding ambiguity and publicly affirm their interpretations of how the Bureau would be funded in the event that the Federal Reserve was to incur an annual operating loss.

Graph 2. Fiscal Year 2012 Budgets of Regulators



Sources: Data drawn from annual reports found on each regulator's website. The CFPB has $547.8 million worth of funds it can request for Fiscal Year 2012 (dashed line). However, the CFPB only used $343.3 million.

The Bureau should have all of the other trademarks of accountability that independent bank regulators share. The Dodd-Frank Act contains semi-annual reporting requirements to Congress, which the Task Force fully supports. **An independent Bureau should have a correspondingly independent inspector general with full investigative and reporting powers.** For example, the Bureau currently shares the Federal Reserve Board's inspector general, who lacks some of the authority of other inspectors general. **Therefore, the Task Force recommends that a separate office of inspector general be established for the CFPB.**

Metrics

Measuring success in consumer protection is inherently difficult. However, despite the challenge, it is important to identify key metrics to gauge progress and encourage course corrections. Alternatively, it is difficult to evaluate that which the Bureau does not provide the metrics to gauge progress. The mission of the CFPB is clear, but the metrics to measure success are not. **The Task Force recommends that overarching performance metrics for the Bureau be created. Those metrics should be driven by considerations focused on both the Bureau's internal activities and the impact the CFPB has on consumers and the financial marketplace.**

Consumer, Regulatory, and Product Focused Metrics

Establishing metrics for consumer protection is difficult and time consuming; take, for example, the creation of new financial products. One of the goals of the Bureau should be to ensure that predatory financial products are not created and marketed to consumers. However, another goal of the Bureau should be to ensure a vibrant marketplace that includes new financial products, which provide benefit to consumers. How do you measure creating a regulatory environment that is open to innovation based on the creation of quality products while being able to identify and respond quickly to the creation of predatory products?

The Task Force recommends that the CFPB develop metrics around the following questions:

- Are there quality, safe products available in both the bank and nonbank space?
- Is the CFPB identifying and responding promptly to problems in both the bank and nonbank space?
- Does the Bureau engage consumers in a meaningful way, so that they are active in making marketplace recommendations beyond usage of the complaint portal?
- Is the CFPB collaborating effectively with other regulators in both the bank and nonbank space to ensure consumers are protected?
- Is there a healthy amount of quality product innovation in the financial services marketplace that the Bureau regulates?

The Task Force recommends that the CFPB measure part of its success by whether or not there is demonstrable evidence of improved consumer decision-making with regard to consumer products. In so doing, the Bureau should consider questions such as:

- Has the CFPB ensured that product disclosures are appropriately clear and understandable?
- Is information that is clear and understandable getting into the hands of consumers, particularly in low-income communities?
- Has the Bureau successfully monitored or eliminated products that are problematic? Has it made sure products that may only be appropriate (or applicable) for one segment of the consumer population are not the only products available to other segments of the population, particularly if they are unaffordable to those other segments?
- Has the Bureau identified new products that are needed because of a lack of information or a lack of alternatives for consumers? If so, has the Bureau worked with consumer groups and industry to identify obstacles to innovation that would create alternative products that meet this demand?
- Are market participants able to develop new and alternative products that can find broader market adoption to provide consumers additional value and opportunities to access quality credit?

The development and calibration of these metrics will take time. Improving the marketplace will also take time. **Thus, the Task Force recommends that the Bureau develop and publish these metrics as soon as possible and set goals to achieve them by the end of this decade. In addition, the Task Force recommends that the Bureau regularly publish its progress in meeting these goals and report on outstanding issues to Congress and the public.**

Access to Credit

Furthermore, the Task Force finds that access to quality credit remains an important issue. Quality credit is credit extended on reasonable, risk-based terms that accurately reflect a consumer's risk profile. It is also sustainable credit; that is, the extension of credit is designed such that the consumer should, in all likelihood, be successful in repaying the full principal plus interest, absent unpredictable life events.

Quality credit provides a pathway out of poverty, and is a key component for building wealth and building the middle class in all communities–be they white, African American, Hispanic, Native American, Asian, etc. The Joint Center for Housing Studies at Harvard University recently published a paper focused on future lending in low-income and minority communities in particular. The primary author, William Apgar, former Federal Housing Administration commissioner and senior scholar at Harvard, noted that creating access to credit and informing consumers will be an ongoing challenge:

> Accomplishing these goals will not be easy or quick. … Low-income and minority communities were among the hardest hit by the mortgage market meltdown. Since

> policymakers have failed to address longstanding issues—including persistent racial and ethnic discrimination and growing inequality in the distribution of income and wealth—these same households and neighborhoods may not fully benefit from the emerging housing recovery.

But even as reforms in the housing market take hold, the Joint Center paper rather astutely notes the disparity in information flow between companies and customers:

> [T]he potential beneficiaries of these reforms may not readily understand the implications of the policies designed to enhance access to affordable and sustainable homeownership opportunities, while the powerful interests that benefited from the very policies that triggered the mortgage market meltdown are fully armed to resist the changes.

The CFPB recently launched Project Catalyst as a way of supporting innovation in the creation of financial products and services that are considered consumer friendly. The Bureau is collaborating with industry to that end, a move that the Task Force supports. For example, in December 2012, the Bureau launched an initiative to "Encourage Trial Disclosure Programs." The goal of the initiative is to work with industry to identify disclosure forms that consumers can readily understand and through which they can make informed decisions. This will allow consumers to more accurately determine what is and is not quality credit. The Bureau also has indicated that it is engaging small businesses on a regular basis in an effort to "democratize access" and garner greater input. It also is engaging with technology companies that have created a product or service that promotes a consumer-friendly approach or online tool, such as Banking Up or Simple. The Task Force applauds this outreach to the business and technology communities in addition to the financial services industry.

The CFPB currently is taking steps to ensure that existing laws and regulations do not negatively affect access to credit for low-income communities. Specifically, in late 2012, the CFPB issued a public request for information about the effects of the CARD Act on the credit card market. The CARD Act required the CFPB to conduct a review of the consumer credit card market, and the Bureau issued the request for information as part of an effort to solicit information from the public to inform its review of the CARD Act. One of the specific questions the Bureau asked centered on whether the implementation of the CARD Act had affected the "cost and availability of credit, particularly with respect to non-prime borrowers." As this example demonstrates, the Bureau is concerned with understanding how its regulations could affect access to credit. The review of the CARD Act is an opportunity for the CFPB to incorporate public comments in order to develop relevant metrics that could provide clear information on measuring access to credit. **The Task Force recommends that through this process the Bureau develop and publish metrics for determining when the restriction of access to credit is part of an intended regulatory response (such as reducing the availability of credit cards with high credit lines for college students or applicants under the age of 21) and when it has an unintended consequence (such as restricting access to responsible products for**

college students who are trying to build a credit history). When issuing rule-making or guidance that would restrict the availability of specific credit products or product features, the Bureau should indicate the steps it is taking to identify and address the credit needs of the affected population.

Key to all of this will be establishing metrics that track industry and CFPB progress in ensuring that consumers have access to quality credit and are informed of these financial products. The Task Force also recommends that the CFPB pay close attention to the communities it intends to reach, as well as achieving representation among the senior-level staff who develop relevant policies and programs. A significant challenge within the federal government is minimal representation among senior policymakers and decision-makers who have had these life experiences; for example, policymakers who have grown up in low-income families, who have experienced racial and ethnic discrimination, and who have witnessed their immediate family members experience financial turmoil, perhaps as a result of a financial product targeted for their demographic communities. There is growing diversity in public and congressional affairs offices in federal agencies, which is an important step forward, but little representation among policy decision-makers. Given how high the stakes are on this particular issue, the Task Force recommends that the CFPB pay close attention to increasing diversity among its senior staff who are responsible for creating public policy and managing significant programs.

Agency Focused Metrics

The Task Force recommends that the CFPB measure part of its institutional success by considering the success of the Bureau itself, appreciating both its process and whether it is conducting the type of continued dialogue necessary to build a balanced and thoughtful new agency. The Bureau should:

- Record and observe whether the CFPB's staff turnover decreases and becomes consistent with that of the federal prudential regulators by 2020.
- Measure the timeliness of its exam closures.
- Maintain and publish statistics of its regulatory actions, including rule-making, guidance, and enforcement (with publication on a regular basis) to achieve and measure a stable balance of responses, even though measures taken may differ between banks and nonbanks.
- Measure the timeliness of its response to discovered marketplace problems, including restrictions on access to credit.
- Measure and publish the diversity of Bureau staff in mission-critical positions in greater detail. This should include statistics about senior Bureau staff and also be available as a breakdown by major divisions of the Bureau (supervision, enforcement, data, external affairs, etc.).

The Task Force also finds that a key metric by which the Bureau should be measured includes its ability to engage and target its regulatory and outreach efforts to growing minority populations. According to the U.S. Census Bureau, the Hispanic population will more than double by the year 2060, from 53 million today to 128 million. The African American population is also expected to grow from 41 million to 61 million in the same time frame. The Asian population is also expected to double, from 15 million to 34 million. All three groups combined will comprise 223 million Americans. Conversely, the non-Hispanic white population is expected to decrease by more than 20 million in the decades between 2024 and 2060 (from 199 million to 179 million). Predatory lending is a major problem in the United States, and it has contributed significantly to the financial crisis. Given that predatory lending is disproportionately concentrated in minority communities, it will be imperative for U.S. economic stability for the CFPB to provide targeted and comprehensive financial information and protection to these three minority groups over the coming decades.

The United States has a unique history of integrating immigrants and communities from a range of backgrounds. One of the nation’s greatest sources of economic strength has been the ability for people to succeed regardless of what station in life they were born into. Access to quality credit is critical to continuing that tradition. The growth in America’s minority communities over the next 50 years will test whether the nation is able to continue that tradition.

The Bureau will need a comprehensive and innovative strategy in order to have a measured impact, informed and appropriately influenced by the minority communities they seek to serve and protect. Given a historical disconnection from the mainstream market and the growing size of minority populations, any metrics that are used to measure the CFPB’s progress in consumer protection and consumer literacy should place a special emphasis on this issue.

The Task Force hopes these measures will serve as guideposts as the CFPB considers its strategic plans moving forward; these important considerations will allow the Bureau to further its mission to create a 21st-century agency that is dedicated to helping consumer financial markets work to advance and empower consumers.

Conclusion

A well-functioning regulatory environment is an important aspect of providing quality financial products and services to American consumers. These recommendations, taken together, will improve the quality of consumer regulation and increase the efficiency and effectiveness of the financial services industry in providing consumers quality products.

The Bureau has the potential to achieve these outcomes. Although the CFPB is only a few years old, it has made significant strides in establishing itself as an effective regulator. However, it has also made several errors, which is to be expected of any agency, especially a new one. The Task Force's interview process found significant consensus between industry participants and consumer advocates that the Bureau functions best when it seeks a broad range of input from stakeholders through a deliberative process. The Task Force also found that when the Bureau deviated from this tack, the quality of its results has suffered. Several of the Task Force's recommendations are aimed at the latter outcomes, while we acknowledge where the Bureau has engaged in the former. Still, the Task Force urges continued and enhanced outreach by the Bureau to its full range of stakeholders. The Task Force also believes the Bureau could improve its efficiency and effectiveness by implementing the operational and procedural recommendations called for in this report. Finally, the Task Force recommends the Bureau work with its stakeholders to develop metrics for success. A robust set of metrics would help guide the Bureau in fulfilling its mission. They would help guide the industry in developing new, responsible products and services to benefit consumers. They would provide additional public accountability for the Bureau. And, they would serve as a guide for the Bureau to accomplish its principal task: to make the consumer financial market work for all Americans.

Appendix A: List of Abbreviations

APA	Administrative Procedure Act
Bureau (or CFPB)	Consumer Financial Protection Bureau
CARD Act	Credit Card Accountability Responsibility and Disclosure Act of 2009
CFPB (or Bureau)	Consumer Financial Protection Bureau
ComE-IN	FDIC’s Committee on Economic Inclusion
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
ECOA	Equal Credit Opportunity Act
EFTA	Electronic Fund Transfer Act
FACT Act	Fair and Accurate Credit Transactions Act
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration
FLEC	Financial Literacy and Education Commission
FTC	Federal Trade Commission
HMDA	Home Mortgage Disclosure Act
OCC	Office of the Comptroller of the Currency
PATH Act	Protecting American Taxpayers and Homeowners Act
QM Rule	Qualified Mortgage Rule
SEC	Securities and Exchange Commission
TILA	Truth in Lending Act

Appendix B: Outreach Interview Form

BPC's Financial Regulatory Reform Initiative
Consumer Financial Protection Working Group
List of Questions

1. Does the CFPB have too little, too much, or the appropriate level of authority to carry out its responsibilities?
2. Does the CFPB have the right amount of flexibility to conduct its examination, supervision, and enforcement responsibilities?
3. How should the Task Force measure the CFPB's success in its efforts to:
    a. Address unfair, deceptive, or abusive practices?
    b. Create a successful financial services marketplace where consumers can effectively shop between products?
    c. Improve financial literacy?
4. Two of the most notable regulations Dodd-Frank required the CFPB to promulgate were the Qualified Mortgage (QM) rule and the Remittance rule.
    a. How would you grade the CFPB's handling of these two rules?
        i. What do you think they did right?
        ii. What do you think they did wrong?
        iii. Are there ways that you think they could improve either rule?
    b. Are there other CFPB rules or regulations that you see as particularly significant?
5. Are there situations where the Bureau's regulations interfere with the ability of financial institutions to offer products that are not economically sustainable?
6. What do you think about the CFPB's outreach efforts to consumers so far? Do you have any thoughts on the Consumer Complaint Portal?

7. Congress created the CFPB to have a single director, similar to the OCC and FHFA. It took the administration almost one year to nominate someone and Congress has never confirmed a director.

    a. What are the benefits and drawbacks of the CFPB's leadership by a single director?

    b. Would alternative leadership structures for the CFPB enhance or diminish the Bureau's effectiveness?

8. Congress established the CFPB to be financially independent of Congress, similar to the other bank regulators (as opposed to the market regulators, like the SEC and CFTC). In doing so, it placed the CFPB within the Federal Reserve and structured the Bureau's funding to come from the Fed.

    a. Do you think this structure makes sense? If so, why? If not, what changes would you recommend?

9. The CFPB has authority to levy fines and then use those fines for restitution, financial literacy, and other broad purposes through its Civil Penalty Fund.

    a. What are the likely benefits and disadvantages of using this fund for its statutory purpose?

    b. Does the current construct create an undue incentive for the Bureau to collect penalty fees? Why or why not?

10. Does the supervision and enforcement overlap between the CFPB and the banking agencies enhance consumer financial protection or does it undercut the ability of the CFPB to take the lead in consumer financial protection and/or confuse the compliance obligations of covered entities?

11. How would you grade the CFPB and the Dodd-Frank Act on how they have thus far balanced the interests of transparency with the public and privacy with regulated institutions? Specifically, do you think the CFPB has used the APA rule-making process appropriately?

12. What are your thoughts on the broad data-collection efforts of the CFPB?

    a. Will the data-collection efforts of the CFPB advance a better, more transparent understanding of the consumer product market?

    b. What variables will enable the CFPB to have a better understanding of how consumers are protected from potentially deceptive and discriminatory products?

    c. Do the benefits of this data outweigh its production and collection costs?

d. Do these efforts create privacy concerns for consumers and providers of financial products? Are there ways to collect data that would diminish these concerns?

Appendix C: List of New Authorities

THE CFPB'S NEW AND INHERITED AUTHORITIES:
Rule-making and enforcement authority inherited from other federal financial regulators for 18 consumer financial protection statutes.
Examination authority to ensure compliance with consumer protection laws for financial institutions with more than $10 billion in assets.
Primary authority to examine and supervise non-depository institutions for compliance with federal consumer financial protection laws. Institutions specifically under the Bureau's jurisdiction include payday lenders, private student lenders, mortgage brokers, mortgage servicers, and mortgage lenders. Additionally, the Bureau can require other specific institutions to register with the Bureau.
Authority to prohibit unfair, deceptive, or abusive acts or practices in connection with consumer financial products or services.
Authority to establish a center for the timely resolution of consumer complaints.
Authority to create model disclosure forms that provide automatic consumer disclosure compliance.
Authority to issue rules requiring disclosure of the costs, risks, and other features of a financial product.
Authority to conduct studies of various consumer financial products and laws with a focus on consumer protection.

Appendix D: List of Select CFPB Public Hearings

CFPB PUBLIC MEETINGS AND PRIOR PUBLIC NOTICE:		
Event	**Notice Provided**	**Website Announcement**
Atlanta Mortgage Hearing—release of Mortgage Servicing Rule	Although 30 days' notice was provided on the CFPB blog, the only indication of the meeting topic was a reference to "mortgage policy."	http://www.consumerfinance.gov/blog/save-the-date-baltimore-md-and-atlanta-ga/ and http://www.consumerfinance.gov/blog/see-you-soon-atlanta-ga/
Baltimore Mortgage Hearing—release of Ability-to-Repay Rule	23 days' notice provided on the CFPB blog, indicating that the meeting topic was "mortgage policy."	http://www.consumerfinance.gov/blog/save-the-date-baltimore-md-and-atlanta-ga/ and http://www.consumerfinance.gov/blog/see-you-soon-baltimore-md/
Project Catalyst	Six days' notice provided on the CFPB blog with no indication of the purpose of the meeting or the purpose of "Project Catalyst."	http://www.consumerfinance.gov/blog/save-the-date-mountain-view-ca/
Debt-Collection Hearing	14 days' notice provided on the CFPB blog.	http://www.consumerfinance.gov/blog/category/debt-collection/
Inaugural Consumer Advisory Board Meeting	Eight days' notice provided on the CFPB blog.	http://www.consumerfinance.gov/blog/save-the-date-st-louis-mo/
Consumer Reporting Hearing	Five days' notice provided on the CFPB blog.	http://www.consumerfinance.gov/blog/save-the-date-detroit-michigan/
Prepaid Card Hearing	Six days' notice provided on CFPB blog.	http://www.consumerfinance.gov

		/blog/save-the-date-durham-nc/
Overdraft Hearing	No advance notice was provided. The CFPB published a press release on its website that it was commencing an inquiry into overdraft practices and that evening held its hearing.	http://www.consumerfinance.gov/blog/live-from-new-york-city/#more-12149.
Payday Lending Hearing	No advance notice of the hearing was provided.	http://www.consumerfinance.gov/blog/hearing-your-stories-on-payday-lending/#more-11325
Los Angeles Consumer Advisory Board Meeting	14 days' notice provided on the CFPB blog.	http://www.consumerfinance.gov/blog/save-the-date-join-us-for-a-consumer-advisory-board-meeting-in-los-angeles/
Miami Field Hearing	Six days' notice provided on the CFPB blog in English. (20 days' notice provided on the CFPB blog in Spanish.) The only indication of the meeting topic was a reference to "student loan borrowers."	http://www.consumerfinance.gov/blog/save-the-date-miami-dade-county-florida/ and http://www.consumerfinance.gov/blog/reserve-la-cita-miami-dade-florida/
Des Moines Field Hearing	17 days' notice provided on the CFPB blog. The only indication of the meeting topic was a reference to the "consumer complaint database."	http://www.consumerfinance.gov/blog/save-the-date-join-us-for-a-field-hearing-in-des-moines/
DC Consumer Advisory Board Meeting	Eight days' notice provided on the CFPB blog. While an agenda was provided, no topics were announced for the "public" portion of the meeting.	http://www.consumerfinance.gov/blog/join-us-on-feb-20th-to-discuss-financial-issues-facing-consumers/

Endnotes

[1] Available at: http://us.spindices.com/indices/real-estate/sp-case-shiller-us-national-home-price-index.

[2] See Kochar, Rakesh, Richard Fry, and Paul Taylor, *Pew Research & Social Demographic Trends*, July 26, 2011. Available at: http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/.

[3] See Weissmann, Jordan, Countrywide's Racist Lending Practices were Fueled by Greed, *The Atlantic*, December 23, 2011. Available at: http://www.theatlantic.com/business/archive/2011/12/countrywides-racist-lending-practices-were-fueled-by-greed/250424/.

[4] Ibid.

[5] See Pub. Law No. 111-203, 124 Stat. 1376.

[6] The CFPB received most (though not all) of the consumer protection responsibilities from the seven federal agencies that had such authority prior to the crisis. Those agencies were: (1) Board of Governors of the Federal Reserve System, (2) Department of Housing and Urban Development, (3) Federal Deposit Insurance Corporation, (4) Federal Trade Commission, (5) National Credit Union Administration, (6) Office of the Comptroller of the Currency, and (7) Office of Thrift Supervision.

[7] Specifically, the Task Force notes that guidance that creates new substantive requirements not otherwise found in statute or regulation may be challenged, and even overturned, through the courts. For example, the D.C. Circuit recently invalidated a 2010 administrative interpretation from the Department of Labor that significantly revised a 2006 opinion without the use of the notice-and-comment process. See *Mortgage Bankers Association v. Seth Harris*, No. 1:11-cv-00073, 2013 U.S. App. LEXIS 13470 (D.C. Cir. July 2, 2013). Available at: http://www.cadc.uscourts.gov/internet/opinions.nsf/FAC3D9E1235DEC2185257B9C004F3742/$file/12-5246-1444670.pdf.

[8] See Dodd-Frank Act §§ 1400(c)(2) and (3), which required the final mortgage rules to be finalized within 18 months of rule-making authority transferring from the Federal Reserve to the CFPB.

[9] See 76 Fed. Reg. 27,390 (May 11, 2011).

[10] See Dodd-Frank Act § 1061, which requires the secretary of the treasury to designate a date between six and 12 months after enactment of the Dodd-Frank Act for primary rule-making and other authorities to transfer from the primary banking regulators, the U.S. Department of Housing and Urban Development, and the Federal Trade Commission to the CFPB. Then–Secretary of the Treasury Timothy Geithner ultimately selected July 21, 2011. See 75 Fed. Reg. 57,252 (September 20, 2010).

[11] As one of the persons interviewed for this paper pointed out, the CFPB also had the unenviable task of leading the way on homeownership issues before Congress acts on reforms for the secondary mortgage market.

[12] See 77 Fed. Reg. 33,120 (June 5, 2012).

[13] See 78 Fed. Reg. 6,407 (January 30, 2013), which was released on the CFPB's website on January 10, 2013.

[14] Available at: http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-lays-out-implementation-plan-for-new-mortgage-rules/.

[15] Available at: http://www.consumerfinance.gov/blog/a-small-entity-compliance-guide-for-the-ability-to-repay-and-qualified-mortgage-rule/.

[16] See 12 C.F.R. § 1026.13 (Regulation Z's dispute-resolution requirements for credit-card-issuers) and 12 C.F.R. 1005.11 (Regulation E's error-resolution requirements).

[17] See Pub. Law No. 111-203, 124 Stat. 1376, section 1073 (2010).

[18] See 77 Fed. Reg. 6,193 (February 7, 2012).

[19] See 77 Fed. Reg. 6,310 (February 7, 2012).

[20] See 77 Fed. Reg. 50,243 (August 20, 2012).

[21] See 78 Fed. Reg. 30,661 (May 22, 2013).

[22] See Pub. Law No. 111-24, § 301 (2009) (codified at 15 U.S.C. § 1637(c)(8)(A)).

[23] See 76 Fed. Reg. 22,948, 22,974–22,977 (April 25, 2011).

[24] Available at: http://www.momsrising.org/blog/denied-stand-up-for-stay-at-home-moms-dads-caregivers/.

[25] See 77 Fed. Reg. 66,748 (November 7, 2012).

[26] See 78 Fed. Reg. 25,818 (May 3, 2013).

[27] See CFPB Supervision and Examination Manual, Version 2 – October 2012. Available at: http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf

[28] See CFPB Ombudsman's Office, FY 2012 Annual Report to the Director. Available at: http://files.consumerfinance.gov/f/201211_Ombuds_Office_Annual_Report.pdf.

[29] See Federal Reserve Office of Inspector General, Work Plan. Available at: http://www.federalreserve.gov/oig/files/OIG_Work_Plan.pdf.

[30] *See e.g.,*

http://bipartisanpolicy.org/sites/default/files/ARGUS%20II.PDF

http://bipartisanpolicy.org/sites/default/files/DOWN%20TO%20ZIP%20CODE%20IN%20CREDIT%20SCORE.PDF

http://bipartisanpolicy.org/sites/default/files/GATHER%20STORE%20SHARE.PDF

[31] Specifically, the CFPB's contract with Experian states that the company will provide services of an "indefinite delivery, indefinite quantity."

[32] Specifically, the Office of the Inspector General found that the data-security controls of the CFPB's consumer-response system did not meet the standards for data security as set forth in the Federal Information Security Management Act of 2002. See Executive Summary: Security Control Review of the Consumer Financial Protection Bureau's Consumer Response System, 2013-AA-C-005, March 28, 2013. Available at:http://www.federalreserve.gov/oig/files/CFPB_SCR_Consumer_Response_System_summary_Mar2013.pdf.

[33] Available at: http://www.federalreserve.gov/oig/files/Audit_CFPB_FISMA_November2012.pdf, page 3.

[34] The Federal Financial Institutions Examination Council (FFIEC) has defined "reputation risk" to mean "the risk arising from negative public opinion." The FFIEC also has noted that "[a]ctivities that result in dissatisfied consumers and/or negative publicity could harm the reputation and standing of the financial institution, even if the financial institution has not violated any law." See 78 Fed. Reg. 4,848 (January 23, 2013).

[35] See, Anderson, Eric, and Duncan Simester, *Deceptive Reviews: The Influential Tail*, May 2013. Available at: http://web.mit.edu/simester/Public/Papers/Deceptive_Reviews.pdf.

[36] Available at: http://www.consumerfinance.gov/complaintdatabase/.

[37] Available at: http://files.consumerfinance.gov/f/201307_cfpb_snapshot_complaints-received-july.pdf.

[38] See Dodd-Frank Act, § 1017(d).

[39] See Sec. 1017(d)(2) of the Dodd-Frank Act, which states "[t]o the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs."

[40] Available at: http://www.consumerfinance.gov/blog/financial-coaching-services-to-transitioning-veterans-and-economically-vulnerable-consumers/.

[41] Available at: http://www.consumerfinance.gov/blog/financial-coaching-services-to-transitioning-veterans-and-economically-vulnerable-consumers/, page 12.

[42] Available at: http://www.consumerfinance.gov/blog/financial-coaching-services-to-transitioning-veterans-and-economically-vulnerable-consumers/, page 12.

[43] Available at: http://www.consumerfinance.gov/blog/explainer-what-is-a-nonbank-and-what-makes-one-larger/.

[44] See Dodd-Frank Act, § 1029.

[45] See H.R. 3126, Consumer Financial Protection Agency Act of 2009. Available at: http://www.govtrack.us/congress/bills/111/hr3126.

[46] See the original amendment from Representative John Campbell (R-CA) and Representative Bill Posey (R-FL). Available at: http://democrats.financialservices.house.gov/media/file/markups/111/campbell_-_posey_086_xml.pdf. See also, their final vote; available at: http://democrats.financialservices.house.gov/media/file/markups/111/111th_fc_record_vote_--64.pdf.

[47] See Consumer Financial Protection Factsheet. Available at: http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Factsheet.pdf.

[48] See Equifax Release. Available at: http://investor.equifax.com/releasedetail.cfm?ReleaseID=767754.

[49] See Center for Responsible Lending, *Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses*, April 19, 2011. Available at: http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/Under-the-Hood-Auto-Dealer-Rate-Markups.pdf.

[50] See Consumer Financial Protection Bureau Bulletin 2013–2012. Available at: http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

[51] See Cohen, Mark, *Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation*, December 2006. Available at: http://ftc.gov/os/comments/motorvehicleroundtable/00016-58451.pdf.

[52] Available at: http://www.consumerfinance.gov/blog/save-the-date-detroit-michigan/.

[53] Ibid.

[54] Available at: http://www.consumerfinance.gov/blog/live-from-new-york-city/#more-12149.

[55] Available at: http://www.cutimes.com/2013/06/04/cfpb-cu-advisory-council-planning-wednesday-tel-co.

[56] Officials from the CFPB have continually expressed a goal of increasing transparency in how the Bureau functions. For example, in his letter accompanying the Bureau's 2013 Strategic Plan and Operations report, Director Cordray writes, "At the Consumer Financial Protection Bureau, transparency is central to achieving our mission. … Transparency in our operations keeps us accountable to the American public as we strive to serve all consumers." Available at: http://files.consumerfinance.gov/f/strategic-plan-budget-and-performance-plan-and-report.pdf. Separately, discussing the Bureau's operations in front of the House Financial Services Committee, Director Cordray explained, "Because we are committed to transparency, we have posted our budget justification, our financial statements, the GAO audit, and the independent audit on our website." Available at: http://www.consumerfinance.gov/speeches/testimony-of-richard-cordray-before-the-u-s-house-of-representatives-committee-on-financial-services/. In remarks to the Exchequer Club, Cordray stated, "We have been willing to meet frequently with parties who among them represent a broad spectrum of views on the issues at hand, as long as those parties are willing to include in our administrative record a summary of the meeting so that our processes remain transparent. And we have made some effort to open up the comment process, which may have become something of an 'insider's game' over time." Available at: http://www.consumerfinance.gov/speeches/director-cordray-remarks-at-the-exchequer-club/. Similarly, in remarks to the Senate Banking Committee, Cordray reported, "We have begun to fulfill our pledge of transparency around the work we are engaged in." Available at: http://www.consumerfinance.gov/speeches/director-richard-cordray-before-the-senate-committee-on-banking-housing-and-urban-affairs/.

[57] See, e.g., 78 Fed. Reg. 25,442 (May 1, 2013).

[58] See, e.g., http://www.fdic.gov/about/comein/2013/2013-05-16_agenda.html.

[59] Available at: http://www.democracyjournal.org/5/6528.php?page=all.

[60] Available at: http://www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf, pp. 171–175.

[61] Available at: http://beta.congress.gov/bill/111th-congress/house-bill/3126/text.

[62] Available at: http://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf, pp. 55-70.

[63] The Federal Reserve earns seignorage income by selling circulating paper currency, literally the dollar bills, which we call cash. The income and interest earned from it are kept directly by the Federal Reserve System and used to fund its expenses, that of the Board of Governors, the Federal Reserve Regional Banks, and now the CFPB. All additional income in excess of Fed expenses is remitted to the Treasury.

[64] Available at: http://www.federalreserve.gov/pubs/feds/2013/201301/201301pap.pdf.

[65] See Office of Management and Budget, "Fiscal Year 2014 Budget of the U.S. Government," page 187. Available at: http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/budget.pdf.