

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR CH. X

Semiannual Regulatory Agenda

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing this agenda as part of the Spring 2020 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from May 1, 2020, to April 30, 2021. The next agenda will be published in fall 2020 and will update this agenda through fall 2021. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DATES: This information is current as of March 5, 2020.

ADDRESS: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: A staff contact is included for each regulatory item listed herein. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is publishing its spring 2020 Agenda as part of the Spring 2020 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from May 1, 2020, to April 30, 2021, as described further below. The Bureau's participation in the Unified Agenda is voluntary.¹ The complete Unified Agenda is available to the public at the following website: <http://www.reginfo.gov>.

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124

¹ The listing does not include certain routine, frequent, or administrative matters. Further, the fields "Unfunded Mandates," "EO 13771 Designation," and "Federalism Implications" are not required for independent regulatory agencies, including the Bureau, and, accordingly, the Bureau has indicated responses of "no" or "Independent Agency" for such fields.

Stat. 1376 (Dodd-Frank Act), the Bureau has rulemaking, supervisory, enforcement, consumer education, and other authorities relating to consumer financial products and services. These authorities include the authority to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the Bureau from seven Federal agencies on July 21, 2011. The Bureau's general purpose, as specified in section 1021(a) of the Dodd-Frank Act, is to implement and enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

Section 1021 of the Dodd-Frank Act specifies the objectives of the Bureau, including ensuring that, with respect to consumer financial products and services, consumers are provided with timely and understandable information to make responsible decisions about financial transactions; consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; that Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

As a general matter, the Bureau believes that it can best achieve these statutory purposes and objectives by using its various tools to focus on the prevention of consumer harm. With specific regard to rulemaking, the Bureau seeks to articulate clear rules of the road for regulated entities that promote compliance with the law, foster competition, increase transparency, and preserve fair markets for financial products and services. If Congress directs the Bureau to promulgate rules or address specific issues through rulemaking, the Bureau will comply with the law. If the Bureau has discretion, the Bureau will focus on preventing consumer harm by maximizing informed consumer choice, and by reducing unwarranted regulatory burden which can adversely affect competition and consumers' access to financial products and services. Consistent with these priorities and to enhance transparency, the Unified Agenda identifies the rulemaking activities in which the Bureau is likely to be engaged over the next 12 months and those that are contemplated in the ensuing year.

Rulemaking to Implement EGRRCPA

The Bureau is conducting the two remaining rulemakings mandated in the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, Public Law 115-174, 132 Stat. 1297 (EGRRCPA). As part of these rulemakings, the Bureau is working to maximize consumer welfare and achieve other statutory objectives through protecting consumers from harm and minimizing regulatory burden, including facilitating industry compliance with rules.

First, section 307 of the EGRRCPA amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to “Property Assessed Clean Energy” (PACE) financing. As defined by EGRRCPA section 307, PACE financing results in a tax assessment on a consumer’s real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA’s ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA’s general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The regulations must “account for the unique nature” of PACE financing. Section 307 of the EGRRCPA also specifically authorizes the collection of data and information necessary to support a PACE rulemaking. In March 2019 the Bureau issued an Advance Notice of Proposed Rulemaking (ANPRM) and is continuing to engage with stakeholders and collect information for the rulemaking, including by pursuing quantitative data on the effect of PACE on consumers’ financial outcomes.

Second, section 108 of the EGRRCPA directs the Bureau to conduct a rulemaking to exempt from the escrow requirement loans made by certain creditors with assets of \$10 billion or less and meeting other criteria, adding to a 2013 rule issued by the Bureau under the Dodd-Frank Act that created an exemption for creditors with under \$2 billion in assets and meeting other criteria. In anticipation of future rulemaking activity, the Bureau conducted, and in late summer 2019 released, a preliminary analysis of the number of lenders potentially impacted by implementation of the new exemption in section 108 of EGRRCPA. This analysis showed that a limited number of additional lenders would be exempt under section 108 of EGRRCPA once implemented by rule. The Bureau expects to issue a Notice of Proposed Rulemaking (NPRM) in summer 2020.

Rulemakings to Implement the DFA and Other Statutes

1. *Continuation of Other Rulemakings*

The Bureau is continuing certain other rulemakings described in its Fall 2019 Agenda to articulate clear rules of the road for regulated entities that promote compliance with the law, foster competition, increase transparency, and preserve fair markets for financial products and services.

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau hosted a symposium on small business data collection in November 2019 to facilitate its decisionmaking. In addition, the Bureau is working to conduct a survey of lenders to obtain estimates of one-time costs lenders of varying sizes would incur to collect and report data pursuant to section 1071. The Bureau's next step will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act, in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, to hear from representatives of small businesses on which Bureau rules to implement section 1071 may impose costs.

In addition, to consider concerns about possible unwarranted regulatory burden, the Bureau issued an NPRM in May 2019 to reconsider the thresholds for reporting data about closed-end mortgage loans and open-end lines of credit under the Bureau's 2015 Home Mortgage Disclosure Act (HMDA) rule. The NPRM also proposed to incorporate into Regulation C an interpretive and procedural rule that the Bureau issued in August 2018 to clarify partial HMDA exemptions created by the EGRRCPA. In August 2019, the Bureau reopened until mid-October the comment period for certain aspects of the NPRM. The Bureau determined that it would issue two final rules at different times to address different aspects of the proposed rule. The Bureau issued the first of these final rules in October 2019. It finalized the proposed 2-year extension of the 500-loan temporary threshold for collecting and reporting data on open-end lines of credit and incorporated into Regulation C the EGRRCPA partial exemption provisions. The Bureau plans to issue a second final rule in April 2020 that would address the proposed changes to the permanent thresholds for collecting and reporting data on open-end lines of credit and closed-end mortgage loans.

Likewise, to consider concerns about possible unwarranted regulatory burden, the Bureau also issued an ANPRM in May 2019 concerning certain data points that are reported under the 2015 HMDA rule and

coverage of certain business or commercial purpose loans. In June 2019, the Bureau extended the comment period on the ANPRM to mid-October 2019. The Bureau expects to issue an NPRM in late summer 2020 to follow up on the ANPRM. The Bureau also expects to issue an NPRM in late summer 2020 addressing the public disclosure of HMDA data in light of consumer privacy interests, so that stakeholders can concurrently consider and comment on the collection and reporting of data points and public disclosure of those data points. This NPRM will follow up on the Bureau's 2018 final policy guidance regarding disclosure of the HMDA data. Until the Bureau promulgates a final rule, it anticipates that it will continue to disclose HMDA data in the manner detailed in the final policy guidance.

In April 2020, the Bureau plans to complete an action begun in February 2019 to revoke the mandatory underwriting requirements of the regulations promulgated in a 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. As amended, the regulations will no longer: (1) Identify as an unfair and abusive practice a lender making a covered short-term or longer-term balloon-payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; (2) prescribe mandatory underwriting requirements for making the ability-to-repay determination, or exempt certain loans from the mandatory underwriting requirements; and (3) include definitions or impose reporting and recordkeeping requirements relating to the mandatory underwriting requirements. In response to stakeholder input, the Bureau is now evaluating what, if any, other actions to take with respect to the application of the payments provisions of the 2017 Rule to the short-term, longer-term balloon-payment, and certain high cost installment loans covered by those provisions. These actions could include, but are not limited to, updated compliance aids, policy statements, or other guidance.

The Bureau also issued an NPRM in May 2019 that would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the Fair Debt Collection Practices Act. The Bureau's proposal would, among other things, address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The proposal builds on the Bureau's research and pre-rulemaking activities regarding the debt collection market; the conduct of debt collectors remains a top source of complaints to the Bureau. The Bureau

expects to take final action in October 2020 with regard to the May 2019 NPRM. The Bureau has also engaged in testing of time-barred debt disclosures that were not the focus of the May 2019 proposal. In early 2020, after completing the testing, the Bureau published a supplemental NPRM related to time-barred debt disclosures.

The Bureau also is continuing work related to a rulemaking to amend the Bureau's Remittance Rule. Section 1073 of the Dodd-Frank Act contains a temporary exception to its requirement that remittance transfer providers disclose actual amounts for remittance transfers. The exception permits insured depository institutions and insured credit unions in certain circumstances to estimate certain required disclosures. As mandated by statute, this exception will expire on July 21, 2020. After completing an assessment in October 2018 of the Remittance Rule and issuing in April 2019 a Request for Information to gather information related to the expiration of the temporary exception and information related to the scope of the Remittance Rule's coverage, the Bureau issued an NPRM in December 2019. In the NPRM, the Bureau proposed to increase a safe harbor threshold under which a person is deemed not to be providing remittance transfers in the normal course of business, from 100 per year to 500 per year. The Bureau also proposed changes to mitigate the effects of the expiration of the statutory temporary exemption. The proposed changes would allow insured institutions to continue to estimate the exchange rate and covered-third party fees under certain circumstances. Finally, the Bureau solicited comment on a permanent exception permitting remittance transfer providers to use estimates for transfers to certain countries and the process for adding countries to the safe harbor countries list maintained by the Bureau. The Bureau expects to issue a final rule in May 2020.

In July 2019, the Bureau issued an ANPRM to solicit information about possible amendments to the qualified mortgage provisions of Regulation Z. With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for "qualified mortgages" obtain certain protections from liability. One category of qualified mortgages (QMs) covers certain loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Under Regulation Z, this category of QMs (Temporary GSE QM or "Patch" loans) is scheduled to expire no later than January 10, 2021. The Bureau is planning to propose in

May 2020 amendments to the definition of General QM that would move away from the 43 percent Debt-to-Income (DTI) requirement and would instead establish an alternative, such as a pricing threshold (i.e., the difference between the loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction) for loans to qualify as QMs. General QM loans would still have to meet the statutory criteria for QM status, including restrictions related to loan features, up-front costs, and underwriting. The Bureau also expects that in May 2020 it will propose to extend the Patch for a short period until the effective date of the proposed alternative or until one or more of the GSEs exits conservatorship, whichever comes first. This would help ensure a smooth and orderly transition away from the Patch by (among other things) allowing the Bureau to complete this rulemaking and to avoid any gap between the expiration of the Patch and the effective date of the proposed alternative. Finally, the Bureau is considering adding a new "seasoning" definition of QM which would be issued through a separate NPRM. This definition would create an alternative pathway to QM safe-harbor status for certain mortgages when the borrower has consistently made timely payments for a period.

The Bureau is participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency to develop regulations to implement the amendments made by the Dodd-Frank Act to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning appraisals. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs). These standards are designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.

2. New Projects and Planning for Future Rulemakings

The Bureau is commencing a new rulemaking to address the anticipated expiration of the LIBOR index, which the UK Financial Conduct Authority has stated that it cannot guarantee the publication of beyond the end of 2021. The Bureau's work is designed to facilitate compliance by open-end and closed-end creditors

and to lessen the financial impact to consumers by providing examples of replacement indices that meet Regulation Z requirements. For creditors for HELOCs (including reverse mortgages) and card issuers for credit card accounts, the rule would facilitate the transition of existing accounts to an alternative index, beginning around December 2020, well in advance of LIBOR's anticipated expiration. The rule also would address change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to the transition away from LIBOR, to ensure that consumers are informed of the replacement index and any adjusted margin. To facilitate compliance by card issuers, the rule would address how the rate re-evaluation provisions applicable to credit card accounts apply to the transition from LIBOR to a replacement index. Commencing a notice-and-comment rulemaking will enable the Bureau to facilitate compliance by creditors with Regulation Z as they transition away from LIBOR. The Bureau expects to issue an NPRM in May 2020.

Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation we are monitoring is use of artificial intelligence (AI), including a subset of AI, machine learning (ML). Issues concerning use of AI and how it may apply in the context of the Federal consumer financial laws and regulations were raised in response to the Bureau's 2017 Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process, the Bureau's 2018 Calls for Evidence, and in other outreach since then. As the Bureau continues to monitor developments concerning AI, the Bureau will evaluate whether rulemaking, a policy statement, or other Bureau action may be appropriate.

The Bureau is also actively reviewing existing regulations. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law and publish a report of each assessment not later than 5 years after the effective date of the subject matter or order. The Bureau is conducting an assessment of its Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) Rule and certain amendments.

The Regulatory Flexibility Act (RFA) also requires the Bureau to consider the effect on small entities of certain rules it promulgates. The Bureau published in May 2019 its plan for conducting reviews, consistent with section 610 of the RFA, of certain regulations which are believed to have a significant impact on a substantial number of small entities. Congress specified that the purpose of such reviews shall be to

determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of the applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.

The Bureau has conducted its first 610 RFA review, concerning the impact on small banks and credit unions of a 2009 Regulation E amendment governing overdraft services. After considering the statutory review factors, including a review of public comment, the Bureau has determined that the rule should continue without change at this time. The Bureau believes that there is a continued need for this rule, which does not overlap with other Federal or State rules and which likely preserves a valuable consumer choice. The overdraft rule is not complex, and no aspect of the rule was identified as presenting a unique burden or cost to small entities. Commenters also overwhelmingly supported continuing the 2009 rule without change. The Bureau expects to conduct additional reviews pursuant to section 610 of the RFA, including, commencing in 2020, a review of the Regulation Z rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Finally, as required by the Dodd-Frank Act, the Bureau is also continuing to monitor markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets. As discussed in a recent report by the Government Accountability Office, the Bureau's Division of Research, Markets, and Regulations and specifically its Markets Offices continuously monitor market developments and risks to consumers. The Bureau also has created a number of cross-Bureau working groups focused around specific markets which advance the Bureau's market monitoring work. The Bureau's market monitoring work assists in identifying issues for potential future rulemaking work.

[THIS SIGNATURE PAGE PERTAINS TO THE PREAMBLE TO THE SPRING 2020 SEMIANNUAL
REGULATORY AGENDA]

Dated: March 5, 2020.

NAME: Susan M. Bernard,

Assistant Director for Regulations, Bureau of Consumer Financial Protection.