

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 Fall 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 November 2020 to November 2021. The next agenda will be published in spring 2021 and will update this agenda through spring 2022. 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 September 11, 2020.

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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 fall 2020 Agenda as part of the Fall 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 November 2020 to November 2021, as described further below.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 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,

¹ The listing does not include certain routine, frequent, or administrative matters. The Bureau is reporting information for this Unified Agenda in a manner consistent with past practice.

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.

In addition, 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 issued a Notice of Proposed Rulemaking (NPRM) in July 2020 and expects to issue a final rule in early 2021.

Rulemakings to Implement the Dodd-Frank Act and Other Statutes

1. Continuation of Other Rulemakings

The Bureau is continuing certain other rulemakings described in its Spring 2020 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, in July 2020, the Bureau released 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. In September 2020, the Bureau released an outline of proposals under consideration and alternatives considered in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, to obtain feedback from representatives of small businesses on the likely impacts the rules the Bureau is considering proposing to implement section 1071 would have on small entities. The Bureau expects to convene a SBREFA panel in October 2020 and consistent with the Bureau's statutory obligations under SBREFA, will complete the panel report within 60 days of the panel's convening.

In addition, 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 Home Mortgage Disclosure Act (HMDA) rule and coverage of certain business or commercial purpose loans. The Bureau expects to issue an NPRM in early 2021 to follow up on the ANPRM. The Bureau also expects to issue an NPRM in early 2021 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 2018 final policy 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 issue a final rule 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 expects to issue a final rule in December 2020 addressing disclosures related to the validation notice and time-barred debt.

In July 2019, the Bureau issued an ANPRM to solicit information about possible amendments to the qualified mortgage provisions of Regulation Z, which implement provisions of TILA. 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. In June, the Bureau proposed amendments to the definition of General QM that would move away from the 43 percent Debt-to-Income (DTI) requirement and 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 proposed in June 2020 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, in August 2020 the Bureau proposed a new "seasoning" definition of

QM. 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 expects to take final action on each of these proposals later this year.

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.

The Bureau is continuing a 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 home equity lines of credit (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 March 2021, 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. This rulemaking will enable the Bureau to facilitate compliance by creditors with Regulation Z as they transition away from LIBOR. The Bureau issued an NPRM in June 2020 and expects to issue a final rule in January 2021.

New Projects and Planning for Future Rulemakings

The Bureau anticipates issuing an NPRM in spring 2021 to consider possible amendments to the Bureau's mortgage servicing rules to address actions required of servicers working with borrowers affected by natural disasters or other emergencies. In January 2013, the Bureau issued final mortgage servicing rules, pursuant to Regulations X and Z, implementing numerous provisions of the Real Estate Settlement Procedures Act (RESPA) and TILA, as amended by title XIV of the Dodd-Frank Act. The Bureau has since made various corrections, clarifications, and other amendments to the January 2013 rules. In June 2020, the Bureau issued an Interim Final Rule (IFR) amending aspects of the mortgage servicing rules to address the exigencies of COVID-19. Comments received on the IFR and information gathered through the Bureau's market monitoring suggest that the rules may need additional updates to address natural disasters or other emergencies.

Section 1033 of the Dodd-Frank Act provides that, subject to rules prescribed by the Bureau, covered persons shall make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from a covered person. Section 1033 also states that the Bureau shall prescribe by rule standards to promote the development and use of standardized formats for information made available to consumers. In November 2016, the Bureau issued a Request for Information seeking comment from the public to better understand the consumer benefits and risks associated with market developments that rely on access to consumer financial account and account-related information. In October 2017, the Bureau issued Consumer Protection Principles for Consumer-Authorized Financial Data Sharing and Aggregation to express the Bureau's vision for the data aggregation market. The Bureau hosted a symposium on consumer authorized financial data sharing in February 2020. In fall 2020, the Bureau expects to issue an Advance Notice of Proposed Rulemaking concerning consumer data access to implement section 1033 of the Dodd-Frank Act.

The Bureau has decided to add two new items to its long-term regulatory agenda. This portion of the agenda focuses on potential regulatory actions that an agency may engage in beyond the current fiscal year. First, the Bureau is adding an entry related to its TILA/RESPA Integrated Disclosures (TRID) rule. The Dodd-Frank Act directed the Bureau to integrate the mortgage disclosures required under TILA and

RESPA. In November 2013, the Bureau issued a final rule to implement this requirement (the TILA/RESPA Integrated Disclosure or TRID rule). The Bureau amended the 2013 final rule on two occasions before its effective date, and the amended rule took effect on October 3, 2015. The Bureau subsequently amended the 2013 final rule in July 2017 and April 2018. The July 2017 Amendments took effect on October 10, 2017, and the April 2018 Amendments took effect on June 1, 2018. As noted below, in October 2020 the Bureau will publish a report of its assessment of the TRID rule, as amended when the rule took effect in October 2015, as required by section 1022(d) of the Dodd-Frank Act. The Bureau has received feedback—in response to a November 2019 Request for Information in connection with the TRID rule assessment, the Bureau’s 2018 Calls for Evidence, and other Bureau outreach—suggesting that modifications of aspects of the TRID rule may make the rule more effective. As the Bureau continues to monitor market developments, the Bureau will evaluate possible policy responses to issues identified, including potential rulemaking, guidance, or other activities. Possible topics for consideration will be determined based on the findings in the Bureau’s assessment report as well as other input the Bureau receives on the TRID rule.

Second, the Bureau has commenced research that focuses on providing information to consumers about the costs associated with payday loans. The goal of this research is to identify possible ways the Bureau may be able to improve consumer understanding and aid consumer decisionmaking around payday loans through rulemaking or other actions. The first phase of this research involves qualitative testing, which the Bureau anticipates completing by the end of September 2021. The results of the qualitative testing will inform the Bureau in deciding whether and how to move forward with quantitative testing that might support possible future rulemaking or other actions related to payday loan disclosures.

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 expects to complete an assessment of its TRID rule and certain amendments in October 2020.

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. In August 2020 the Bureau commenced its review pursuant to section 610 of the RFA of Regulation Z rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009. Specifically, the Bureau will review an interim final rule and three final rules published by the Board of Governors of the Federal Reserve System (Board) from July 2009 to April 2011.

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.