

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 2021 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, 2021 to April 30, 2022. The next agenda will be published in Fall 2021 and will update this agenda through Fall 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 April 26, 2021.

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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 spring 2021 Agenda as part of the Spring 2021 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, 2021 to April 30, 2022, 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.

The Bureau is under interim leadership pending the appointment and confirmation of a permanent Director. In light of this status, Bureau leadership is prioritizing during coming months the continuation of certain ongoing rulemakings and a new rulemaking on mortgage servicing to provide relief for consumers facing hardship due to COVID-19 and the related economic crisis. Those projects are described further below. The Bureau expects that its new Director, when confirmed, will assess further what regulatory actions the Bureau should prioritize to best further our consumer protection mission and mandate, particularly in light of the ongoing pandemic and resulting economic crisis and the Bureau's commitment to promoting racial equity. Accordingly, the Bureau anticipates that the Fall 2021 Agenda will reflect the permanent Bureau Director's priorities. In the meantime, the Bureau's Acting Director has decided to reclassify as "inactive" or "withdrawn" certain rulemakings that had been listed in previous editions of the Bureau's Unified Agenda in the expectation that final decisions on whether and when to proceed with such projects will be made in the coming months. This change in designation is not intended to signal a substantive decision on the merits of the projects but may reflect a change in priority.

Continuation of Bureau Regulatory Efforts in Various Consumer Markets

The Bureau is continuing to work on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services, including mortgages, debt collection, and small business lending, among others. The Bureau is mindful of how critically important these rulemakings are in light of the dire financial circumstances so many Americans find themselves in and of the impact of the pandemic and the resulting financial crisis on millions of consumers and small businesses. The Bureau is also mindful that the data show that these hardships fall disproportionately on families and small businesses in communities of color.

For example, 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. Congress enacted section 1071 for the purpose of (1) Facilitating enforcement of fair lending laws and (2) enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

Bureau research shows that small businesses play a key role in fostering community development and fueling economic growth, and that women-owned and minority-owned small businesses in particular play an important role in supporting their local communities. To contribute meaningfully to the U.S. economy and to their local community, small businesses – and especially women-owned and minority-owned small businesses – need access to credit to smooth business cash flows from current operations and to allow entrepreneurs to take advantage of opportunities for growth. This access to credit will be especially important as the nation works to rebuild the economy. The Bureau's section 1071 rule, when final, will be critical to enabling the Bureau to protect small business owners, including from unlawful discrimination, in their access to and use of credit.

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. The SBREFA panel was convened in October 2020 and received feedback from representatives of small entities on the impacts possible

approaches to the section 1071 rulemaking would have on small entities likely to be directly affected by it. The panel's report was completed and released in December 2020. The Bureau's next action for section 1071 is to release a Notice of Proposed Rulemaking.

The Bureau is also working on a rulemaking to address the availability of consumer financial account data in electronic form, which has helped consumers understand their finances and make better-informed financial decisions in a variety of ways. Research has indicated that the availability of certain consumer financial account data may improve underwriting and expand access to credit. At the same time, the means by which these data are accessed, transmitted, stored, and used by financial institutions of all kinds can implicate significant privacy, security, racial equity, and other consumer financial protection concerns. Furthermore, consumer access to their own financial data can foster improved transparency in credit decisions that affect consumers, including small and very small businesses relying on consumer credit access, and provide some protection against poor credit ratings based on serious errors in credit reports. This ability of consumers to access this information is particularly important at a time when financial institutions are increasingly using "alternative data" in making credit decisions. The Bureau supports innovation and believes that appropriate implementation of section 1033 can lead to competitive, consumer-friendly markets, while recognizing the importance of ensuring the safety and security of consumer account data. 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 released 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 released 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 November 2020, the Bureau released an Advance Notice of Proposed Rulemaking (ANPRM) concerning consumer data

access to implement section 1033, accepting comments until early February 2021. The Bureau is reviewing comments received in response to the ANPRM and is considering those comments as it assesses potential next steps.

Next, the Bureau is working to implement section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), Public Law 115-174, 132 Stat. 1297, which amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to “Property Assessed Clean Energy” (PACE) financing. PACE financing is a tool for consumers to finance certain improvements to residential real property. It is authorized by State and local governments and is typically available for projects promoting energy and water conservation, among other public policy goals identified in state statute. PACE is a hybrid product, with characteristics of both home equity lending and real property taxes. Like home equity loans, PACE obligations arise through voluntary contract and are secured by real property. But, under State law, they are billed and repaid as special property tax assessments and typically secured by a lien with equal priority to real property taxes. 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. EGRRCPA section 307 states that the Bureau’s PACE regulations shall carry out the purposes of TILA’s ability-to-repay (ATR) requirements for residential mortgage loans and apply TILA’s general civil liability provision for violations of the ATR requirements. 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 released an ANPRM and is continuing to engage with stakeholders and collect information for the rulemaking, including by collecting quantitative data on the effect of PACE on consumers’ financial outcomes.

The Bureau is also participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System (Board), 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 also 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 June 2023. This rulemaking is important for millions of consumers who have adjustable-rate mortgages, credit cards, student loans, reverse mortgages, home equity lines of credit (HELOCs), or other consumer products that are tied to the LIBOR index. The rulemaking would help to ensure that any changes to an index underlying these loans as a result of the transition to a different index due to the discontinuation of LIBOR are done by industry in an orderly, transparent, and fair manner. 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 April 2022, 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 a Notice of Proposed Rulemaking (NPRM) in June 2020 and expects to issue a final rule in January 2022.

Rulemakings to Extend Compliance or Effective Dates

The Bureau has proposed to extend the mandatory compliance date or effective date of certain final rules issued in 2020. First, the Bureau proposed on March 5, 2021, to extend the mandatory compliance date for a final rule issued in late 2020 amending the "qualified mortgages" (QM) provisions of

Regulation Z, which implements TILA, to ensure homeowners struggling with the financial impacts of the COVID-19 pandemic, as well as lenders, have the options they need to help people stay in their homes and to ensure the availability of responsible, affordable mortgages.

The General QM final rule is part of the CFPB's work to protect homeowners from debt traps and unaffordable, irresponsible mortgage loans. 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 a QM obtain certain protections from liability. One category of 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) was scheduled to expire no later than January 10, 2021. The Bureau issued a final rule in October 2020, to extend the Patch so that it would expire on the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z, or when the GSEs cease to operate under the conservatorship of the FHFA, if that happens earlier. 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. In December 2020, the Bureau finalized a new "seasoning" definition of QM which created an alternative pathway to QM safe-harbor status for certain mortgages when the borrower has consistently made timely payments for a period. Also in December 2020, the Bureau finalized amendments to the definition of General QM that removed the 43 percent debt-to-income (DTI) requirement and instead established a pricing threshold (i.e., the difference between the loan's annual percentage rate (APR) and the average prime offer rate for a comparable transaction) for loans to qualify as QMs. General QM loans still have to meet the statutory criteria for QM status, including restrictions related to loan features, up-front costs, and underwriting. The mandatory compliance date of the General QM final rule was July 1, 2021. However, in March 2021, the Bureau issued a proposed rule that would extend the mandatory compliance date until October 1, 2022, which would also have the effect of extending the availability of both the GSE Patch and the old, DTI-based General QM definition until that date. The purpose of the proposed extension is to help ensure flexibility and access to responsible, affordable mortgage credit for

consumers affected by the COVID-19 pandemic by continuing until that date the availability of all three QM definitions. The Bureau expects to issue a final rule as to the extension of the mandatory compliance date this spring.

Second, the Bureau issued on April 19 a proposed rule to extend the effective date of two final rules issued in late 2020 to implement the Fair Debt Collection Practices Act (FDCPA). In October 2020, the Bureau issued a final rule prescribing rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA. That final rule focused primarily on debt collection communications and addressed a number of other topics, including imposing record retention requirements and prohibiting the sale or transfer of certain types of debt. In December 2020, the Bureau issued a second final rule under Regulation F addressing disclosures related to the validation notice, requiring certain outreach by debt collectors before consumer reporting, and barring suits or threats of suit on time-barred debt. Both final rules are scheduled to take effect on November 30, 2021. The Bureau recently proposed to extend by 60 days the effective date of those final rules in light of the continuation well into 2021 of the widespread societal disruption caused by the COVID-19 pandemic. In light of that disruption, the Bureau believes that providing additional time for stakeholders to review and, if applicable, to implement the final rules may be warranted. The Bureau's next action is a final rule on whether and for how long to extend the effective date of these final rules after reviewing the comments submitted to the docket.

New Projects and Planning for Future Rulemakings

On April 5, 2021, the Bureau published an NPRM to propose amendments to the mortgage servicing early intervention and loss mitigation-related provisions in Regulation X, which implements the Real Estate Settlement Procedures Act. The NPRM aims to help ensure that mortgage borrowers are evaluated for loss mitigation before servicers initiate the foreclosure process and to avert, to the extent possible, a foreclosure crisis when the COVID-19 forbearances end. Taking these measures to protect homeowners is especially important in the context of a pandemic that makes housing security not just a financial but also a public health priority, particularly for communities of color and lower income communities that have been hardest hit both by COVID-19 and by the related economic crisis.

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 five years after the effective date of the subject matter or order. The Bureau is currently considering whether its rule implementing the Home Mortgage Disclosure Act, most of which became effective in January 2018, will require such an assessment and report.

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 these reviews is 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 RFA section 610 review 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 from July 2009 to April 2011. This review will be completed in the spring of 2021, and the Bureau will publish its determination concerning any resulting changes to the rule, in the Fall 2021 Unified Agenda.

Finally, as required by the Dodd-Frank Act, the Bureau is 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 2021
SEMIANNUAL REGULATORY AGENDA]**

Dated: March 17, 2021.

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