

## **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 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 November 1, 2021 to October 31, 2022. The next agenda will be published in Spring 2022 and will update this agenda through Spring 2023. 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 November 1, 2021.

**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 Fall 2021 Agenda as part of the Fall 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 November 1, 2021 to October 31, 2022, as described further below.<sup>1</sup> 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,

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<sup>1</sup> 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 Senate recently confirmed the Bureau's new permanent Director. In this regulatory agenda the Bureau is prioritizing the continuation of certain ongoing rulemakings that further the Bureau's consumer financial protection mission and help to advance the country's economic recovery from the financial crisis related to the COVID-19 pandemic. The Bureau also continues to prioritize work that promotes racial and economic equity and supports underserved, vulnerable and marginalized communities by, among other things, facilitating access to fair and affordable credit. The Bureau expects that its new Director, will assess what regulatory actions the Bureau should prioritize to best further its consumer protection mission and that the Spring 2022 Agenda will reflect his priorities.

#### *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, small business lending, and consumers' access to their own financial information, among others. The Bureau is mindful of how critically important these rulemakings are in light of the dire financial circumstances so many Americans continue to find themselves, particularly in light of the

ongoing COVID-19 pandemic and the resulting financial crisis, which has affected the financial well-being of millions of consumers and small businesses. The Bureau is also mindful that the data show that these hardships fall disproportionately on individuals, 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. It also shows 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 in light of the COVID-19 pandemic and resulting economic impacts. The Bureau's section 1071 rule, if finalized, would be critical to enabling the Bureau to protect small business owners, including from unlawful discrimination, in their access to and use of credit.

The Bureau has been working on this important and complex rulemaking for a number of years, including through research, supervisory work, policy development, and engagement seeking comment and information from the public, small business lenders, and small businesses themselves, including minority- and women-owned small businesses. The Bureau made significant progress on implementing section 1071 since the Spring 2021 Unified Agenda was published. On October 8, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** which, if finalized as proposed, would, among other things, require financial institutions to report the amount and type of small business credit applied for, and extended, demographic information about small business credit applicants, and key

elements of the price of the credit offered. The Bureau's next action for the section 1071 rulemaking is to review and consider the comments submitted in response to the proposed rule.

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 must 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. The Bureau has taken a number of steps to gather information and perspectives from the public, financial institutions, consumer advocacy groups, and others concerning current practices with respect to financial data access and data sharing and to learn more about this complex and rapidly-changing market. Most recently, in November 2020, the Bureau published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the implementation of section 1033, and accepted comments until February 2021. The Bureau is reviewing comments received in response to the ANPRM and is considering those comments, as well as ongoing market monitoring efforts, as it assesses potential next steps, including whether a Small Business Review Panel is required pursuant to the Regulatory Flexibility Act.

Next, the Bureau is continuing its work to implement section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), 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 a 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 automated valuation models. 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 will be bringing to a close its rulemaking to address the anticipated expiration of the LIBOR index, which the UK Financial Conduct Authority has stated that it cannot guarantee publication 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. When final, 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. The Bureau issued an NPRM in June 2020 and, expects to issue a final rule in January 2022.

#### *Planning for Future Rulemakings*

The Bureau is 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 has decided to conduct an assessment of a rule implementing the Home Mortgage Disclosure Act, most of which became effective in January 2018.

The Regulatory Flexibility Act (RFA) also requires the Bureau to consider the effect on small entities of certain rules it promulgates. In May 2019, the Bureau published 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 (CARD Act). Specifically, the Bureau reviewed an interim final rule and three final rules published by the Board from July 2009 to April 2011. After considering the statutory review factors and public comments, the Bureau determined that, within the context of this RFA section 610 review, the CARD Act rules should continue without change at this time. The Bureau found that there is a continued need for the CARD Act rules to protect consumers given Congress's purpose in adopting the CARD Act provisions, and these rules do not overlap with other Federal or State rules. The Bureau also found the CARD Act rules to be complex; however, this complexity likely results from the complexity of the CARD Act provisions themselves and pricing on credit card accounts generally. Additionally, while some commenters requested changes to the CARD Act rules, most of these changes would not reduce the significant economic impact upon a substantial number of small entities (SISNOSE) in a meaningful way. For the requested changes that would likely reduce the SISNOSE, the Bureau found these changes would be inconsistent with the purposes of the CARD Act.

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 Office continuously monitor market developments and risks to consumers. The Bureau also has created a number of cross-Bureau working groups focused around specific markets to further advance the Bureau's market monitoring work. The Bureau's market monitoring work assists in identifying issues for potential future rulemaking work.

**Dated:** September 10, 2021.

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