CFPB Taskforce on Federal Consumer Financial Law Report

The Consumer Financial Protection Bureau (CFPB) Taskforce on Federal Consumer Financial Law released its two-volume, 900+ page report in January 2021, including approximately 100 recommendations for the CFPB, Congress, and state and federal regulators on how to improve consumer protection in the financial marketplace.

Volume One of the report offers a historical and economic overview of consumer finance in the U.S.; summarizes the core elements of consumer financial protection and regulations – including those related to consumer protection, competition, innovation, and inclusion – and explores the modernization of the regulatory framework to empower consumers, drawing on empirical data and analyses. This includes a substantive and thoughtful examination of small-dollar lending. Volume Two is devoted to the taskforce's recommendations.

Overarching Principles

The CFPB created the taskforce in October 2019 to examine ways to harmonize and modernize federal consumer financial laws. Below are the three overarching principles that inspired the drafting of the report (Volume 1, pg. 12):

- **Principle One:** "Consumer protection policy should be particularly attentive to the consequences for inclusion and access by previously under-served communities. Toward that end, facilitation of competition, innovation, and consumer choice in the marketplace should be an essential element of consumer protection policy."
- **Principle Two:** "Consumer financial protection policy should be focused on avoiding harms to consumers rather than attempting to specify how providers should design and market their products."
- **Principle Three:** "The existing regulatory framework needs modernization to enable it to adapt more nimbly to changes in technology and consumer preferences, respond to new opportunities and threats to consumers, and address future crises, such as the 2008 financial crisis that spawned calls for the Bureau's creation and the 2020 Coronavirus pandemic."

Importance of Access to Credit

"For millions of individuals, especially younger ones, their demand for additional credit is highest at the stage of their lives when their available supply of credit likely is lowest….As a result, many consumers are unable to meet all of their credit demand through mainstream financial providers, yet the demand remains." (Volume 1, pg. 177)

"Without credit, [low or moderate income borrowers] would have to make large sacrifices in current consumption to pay for large or unexpected current expenses, making the purchases personally very costly." (Volume 1, pg. 183)

"Availability of short term credit when needed can reduce consumers' vulnerability to unexpected expenses or short-term fluctuations in income when they already have debts involving the financing of household investment." (Volume 1, pg. 186)

Consequences of Interest Rate Caps

"On small-dollar loans where size, rate, and maturity can all easily double or triple in size, more evaluation is necessary than just looking at the APR. As the examples here show, sometimes the highest APR can even produce the least-cost loan in dollars." (Volume 1, pg. 175)

"Consequently, attempts to change and subvert the basic economics of lending through price ceilings have existed throughout history. These attempts have enhanced the reality of credit rationing, the situation where credit supply falls short of demand at the market price." (Volume 1, pg. 180)

"Available empirical evidence indicates that although the price charged for small-dollar loans is high in APR terms, those prices appear to be the result of high operating costs including high loss rates per loan dollar on small-dollar lending." (Volume 1, pg. 194)

Key Recommendations

- Congress should authorize the Bureau to issue licenses to non-depository institutions that provide lending, money transmission, payments services. Licenses should provide that these institutions are governed by the regulations of their home states, even when providing services to consumers located in other states, similar to the National Bank Act's treatment of federally chartered banks. In the alternative, Congress should clarify that the OCC has the authority to issue charters to non-depository institutions engaged in lending, money transmissions, or payments services.

- The Bureau should consider the benefits and costs of preempting state law in some specific cases in which the potential for conflict can impeded provisions of valuable products and services, such as the regulation of FinTech companies engaged in money transmission.

- The Bureau, Congress, and other federal and state regulators should exercise caution in restriction of the use of nonfinancial alternative data. These data can be very useful indicators of creditworthiness, and existing fair lending laws prohibit unlawful discrimination.

- The Bureau should continue to identify and focus on opportunities to coordinate regulatory efforts. The Bureau and prudential regulators should eliminate overlapping examination subject areas and reconcile inconsistent examination standards that unnecessarily expend multiple resources and can cause confusion.

- The Bureau should explore mechanisms, identify barriers, and make appropriate recommendations to Congress and other regulators for expanding access to the payments system by non-bank providers, while at the same time recognizing legitimate concerns about money laundering and financial solvency.

- States should exercise caution when setting interest rate caps when implementing regulations on small dollar credit loans. States should carefully consider the negative impact on credit availability when considering further regulations. Preferably, interest rate caps should be eliminated entirely.

- States should reconsider, update, or eliminate usury laws as appropriate, recognizing the high costs they impose by denying valuable services to consumers who need them.

- The Bureau should conduct recently announced research on payday loan disclosures with an eye toward making sure consumers understand what they are signing up for, rather than prescribing normative disclosures designed to influence consumer behavior.