



# FEDERAL REGISTER

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Vol. 83

Friday,

No. 9

January 12, 2018

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Part XXI

Bureau of Consumer Financial Protection

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Semiannual Regulatory Agenda

## 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 (CFPB or Bureau) is publishing this agenda as part of the Fall 2017 Unified Agenda of Federal Regulatory and Deregulatory Actions. The CFPB reasonably anticipates having the regulatory matters identified below under consideration during the period from November 1, 2017 to October 31, 2018. The next agenda will be published in spring 2018 and will update this agenda through fall 2018. 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 28, 2017.

**ADDRESSES:** 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.

**SUPPLEMENTARY INFORMATION:** The CFPB is publishing its Fall 2017 Agenda as part of the Fall 2017 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 CFPB reasonably anticipates having under consideration during the period from November 1, 2017, to October 31, 2018, as described further below.<sup>1</sup> The CFPB's participation in the Unified Agenda is voluntary. 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 CFPB has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. These authorities include the ability to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the CFPB from seven Federal agencies on

July 21, 2011. The Bureau's general purpose, as specified in section 1021 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.

The CFPB is working on a wide range of initiatives to address issues in markets for consumer financial products and services that are not reflected in this notice because the Unified Agenda is limited to rulemaking activities. Section 1021 of the Dodd-Frank Act specifies the objectives of the Bureau, including providing consumers with timely and understandable information to make responsible decisions about financial transactions; protecting consumers from unfair, deceptive, or abusive acts and practices and from discrimination; addressing outdated, unnecessary, or unduly burdensome regulations; enforcing Federal consumer financial law consistently in order to promote fair competition, without regard to the status of a covered person as a depository institution; and promoting the transparent and efficient operation of markets for consumer financial products and services to facilitate access and innovation. The CFPB's regulatory work in pursuit of those objectives can be grouped into three main categories: (1) Implementing statutory directives; (2) other efforts to address market failures, facilitate fair competition among financial services providers, and improve consumer understanding; and (3) modernizing, clarifying, and streamlining consumer financial regulations to reduce unwarranted regulatory burdens.

#### Implementing Statutory Directives

Much of the Bureau's rulemaking work is focusing on implementing directives mandated in the Dodd-Frank Act and other statutes. As part of these rulemakings, the Bureau is working to achieve the consumer protection objectives of the statutes while minimizing regulatory burden on financial services providers and facilitating a smooth implementation process for both industry and consumers.

For example, the Bureau is continuing efforts to facilitate implementation of critical consumer protections under the Dodd-Frank Act that guard against mortgage market practices that contributed to the nation's most significant financial crisis in several decades. Since 2013, the Bureau has

issued regulations as directed by the Dodd-Frank Act to implement certain protections for mortgage originations and servicing, integrate various Federal mortgage disclosures, and amend mortgage reporting requirements under the Home Mortgage Disclosure Act (HMDA). The Bureau is conducting follow-up rulemakings as warranted to address issues that have arisen during the implementation process for these rules and to provide greater clarification and certainty to financial services providers. The Bureau has three such efforts underway at this time:

- In August, the Bureau finalized amendments to Regulation C to facilitate implementation of a rule it issued in 2015 to effectuate Dodd-Frank Act amendments to HMDA. The amendments included a number of clarifications, technical corrections, and minor changes to the HMDA regulation, which largely takes effect in 2018, as well as temporarily changing the reporting threshold for open-end lines of credit. The Bureau issued a final rule in September amending Regulation B, which implements the Equal Credit Opportunity Act (ECOA), that also concerns data collection. The Bureau is also continuing to work closely with industry and other regulators to streamline and modernize HMDA data collection and reporting in conjunction with implementation of the Dodd-Frank amendments. For example, the Bureau in September sought comment on draft guidance for what HMDA information will be released to the general public in light of privacy concerns as specified in the Dodd-Frank Act.

- The Bureau is expecting to issue a proposed rule and an interim final rule in early October to address narrow issues concerning the timing of certain mortgage servicing disclosure requirements. The proposed rule and interim final rule relate to concerns raised by industry participants in connection with the mortgage servicing rule that the Bureau issued in August 2016, under Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA) and Regulation Z, which implements the Truth in Lending Act (TILA).

- The Bureau is seeking comment on a follow up rulemaking concerning certain consolidated mortgage disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the TILA and RESPA. The proposed amendments relate to when a creditor may compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure, instead of a Loan Estimate, to determine

<sup>1</sup> The listing does not include certain routine, frequent, or administrative matters. Further, certain of the information fields for the listing are not applicable to independent regulatory agencies, including the CFPB, and, accordingly, the CFPB has indicated responses of "no" for such fields.

if an estimated closing cost was disclosed in good faith. The consolidated disclosures rule is the cornerstone of the Bureau's broader "Know Before You Owe" mortgage initiative.

The Bureau is also working to implement section 1071 of the Dodd-Frank Act, which amends ECOA to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. This rulemaking could provide critical information about how these businesses—which are critical engines for economic growth—access credit. The Bureau held a public hearing on this subject in spring 2017, and released a white paper summarizing preliminary research on the small business lending market. In May 2017, the Bureau also issued a Request for Information seeking public comment on, among other things, the types of credit products offered and the types of data currently collected by lenders in this market and the potential complexity, cost of, and privacy issues related to, small business data collection. The comment period closed on September 14, 2017. The information received will help the Bureau determine how to implement the rule efficiently while minimizing burdens on lenders.

#### **Other Efforts To Address Market Failures, Facilitate Fair Competition Among Financial Services Providers, and Improve Consumer Understanding**

The Bureau is considering rules in places where there are substantial market failures that make it difficult for consumers to engage in informed decision making and otherwise protect their own interests. In addition, the Dodd-Frank Act directs the Bureau to focus on activities that promote fair competition among financial services providers, which itself has substantial benefits for consumers.

For example, the Bureau released a Notice of Proposed Rulemaking in June 2016, building on several years of research documenting consumer harms from practices related to payday loans, auto title loans, and other similar credit products. In particular, the Bureau is concerned that product structure, lack of underwriting, and certain other lender practices are interfering with consumer decision making with regard to such products and trapping large numbers of consumers in extended cycles of debt that they do not expect. The Bureau is also concerned that certain lenders' payment collection practices are causing substantial harm to consumers, including substantial unexpected fees and heightened risk of

losing their checking accounts. The Bureau received more than one million comments in response to the proposal and is carefully considering how best to address concerns raised in the proposal in a manner consistent with the Bureau's objectives under the Dodd-Frank Act.

The Bureau is also engaged in rulemaking activities regarding the debt collection market, which continues to be a top source of complaints to the Bureau. The Bureau is concerned that because consumers cannot choose their debt collectors or "vote with their feet," they have less ability to protect themselves from harmful practices. In January 2017, the Bureau published the results of a survey of consumers about their experiences with debt collection. The Bureau has also received encouragement from industry to engage in rulemaking to resolve conflicts in case law and address issues of concern under the Fair Debt Collection Practices Act (FDCPA), such as the application of the 40-year-old statute to modern communication technologies. The Bureau released an outline of proposals under consideration in July 2016 concerning practices by companies that are "debt collectors" under the FDCPA, 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 consult with representatives of small businesses that might be affected by the rulemaking. The Bureau expects to release a proposed rule concerning FDCPA collectors' communications practices and consumer disclosures. The Bureau intends to follow up separately at a later time about concerns regarding information flows between creditors and FDCPA collectors and about potential rules to govern creditors that collect their own debts.

The Bureau is also engaged in policy analysis and further research initiatives in preparation for a potential rulemaking regarding overdraft programs on checking accounts. After several years of research, the Bureau believes that there are consumer protection concerns with regard to these programs. Consumers do not shop based on overdraft fee amounts and policies, and the market for overdraft services does not appear to be competitive. Under the current regulatory regime consumers can opt in to permit their financial institution to charge fees for ATM and point-of-sale debit overdrafts, but the complexity of the system may complicate consumer decision making.

Despite widespread use of disclosure forms, the regime produces substantially different opt-in rates across different depository institutions and the Bureau's supervisory and enforcement work indicates that some institutions are aggressively steering consumers to opt in. The CFPB is engaged in consumer testing of revised opt-in forms and considering whether other regulatory changes may be warranted to enhance consumer decision making.

In addition, the Bureau is continuing rulemaking activities that will ensure meaningful supervision of non-bank financial services providers in order to create a more level playing field for depository and non-depository institutions. Under section 1024 of the Dodd-Frank Act, the CFPB is authorized to supervise "larger participants" of markets for various consumer financial products and services as defined by Bureau rule. The Bureau has defined the threshold for larger participants in several markets in past rulemakings, and is now working to develop a proposed rule that would define non-bank "larger participants" in the market for personal loans, including consumer installment loans and vehicle title loans. The Bureau is also considering whether rules to require registration of these or other non-depository lenders would facilitate supervision, as has been suggested to the Bureau by both consumer advocates and industry groups.

The Bureau's October 2016 rulemaking concerning prepaid financial products also advanced fairness and consistency objectives by creating a uniform disclosure regime and providing basic protections similar to those enjoyed by users of debit cards and credit cards. In April 2017, the Bureau extended the general effective date of the rule to April 1, 2018. In June 2017, the Bureau issued a proposal that would make targeted changes to the 2016 prepaid rule to reduce implementation and compliance burdens on the industry and ensure consumer understanding of and access to these products. The Bureau expects to issue a final rule in fall 2017.

#### **Modernizing, Streamlining, and Clarifying Consumer Financial Regulations**

The Bureau's third group of activities concerns modernizing, streamlining, and clarifying consumer financial regulations and other activities to reduce unwarranted regulatory burdens and facilitate consumer-friendly innovation and increased access to consumer financial markets as directed by the Dodd-Frank Act. Since most of

the Federal consumer financial laws that the Bureau administers were enacted in the 1960s and 1970s, there is often substantial demand for these activities from both industry and consumer advocates alike.

In addition to some of the projects mentioned above that advance these objectives, such as the HMDA processes modernization and debt collection rulemaking, the Bureau is pursuing a number of other research, policy, and rulemaking initiatives. For example, section 1022(d) of the Dodd-Frank Act specifically directs the Bureau to assess the effectiveness of significant rules five years after they are implemented, including seeking public comment. In spring and summer 2017, the Bureau published requests for comment on its plans to assess the effectiveness of mortgage servicing rules, rules implementing portions of the Dodd-Frank Act requiring mortgage lenders to assess consumers' ability to repay, and rules implementing provisions of the Dodd-Frank Act regulating remittance transfers sent by consumers located in the United States to international recipients. The Bureau has received comments on all three section 1022(d) assessment plans. The comments also included recommendations for modifying, expanding, or eliminating various aspects of the three rules at issue. The Bureau is conducting substantial research for each of the section 1022(d) assessments, collecting and analyzing quantitative data where feasible. It will publish reports of these section 1022(d) assessments by the statutory deadlines (October 2018 for remittance transfers, January 2019 for the mortgage rules described above). The findings in these reports will help the Bureau and the public evaluate the recommendations the Bureau received and inform the Bureau's decisions whether adjustments to rules are warranted.

The Bureau is also beginning work this fall on the first in a series of reviews of existing regulations that it inherited from other agencies through the transfer of authorities under the Dodd-Frank Act. The Bureau had previously sought feedback on the inherited rules as a whole,<sup>2</sup> and identified and executed several burden reduction projects from that undertaking.<sup>3</sup> The Bureau has

largely completed those initial projects,<sup>4</sup> and believes that the next logical step is to review individual regulations—or portions of large regulations—in more detail to identify opportunities to clarify ambiguities, address developments in the marketplace, or modernize or streamline provisions. The Bureau notes that other Federal financial services regulators have engaged in these types of reviews over time, and believes that such an initiative would be a natural complement to its work to facilitate implementation of new regulations.

For its first review, the Bureau expects to focus primarily on subparts B and G of Regulation Z, which implement TILA with respect to open-end credit generally and credit cards in particular. As part of this general effort, the Bureau is considering rules to modernize the Bureau's database of credit card agreements to reduce burden on issuers that submit credit card agreements to the Bureau and make the database more useful for consumers and the general public. The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) requires credit card issuers to post their credit card agreements to their internet site, and submit those agreements to the Bureau to be posted on an internet site maintained by the Bureau. The Bureau believes an improved submission process and database would be more efficient for both industry and the Bureau and would allow consumers and the general public to access and analyze information more easily.

The Bureau has also launched several initiatives focusing on ways to facilitate technological and product innovation that could benefit consumers. These include the CFPB's Trial Disclosure Waiver Program, which is designed to implement the Bureau's authority under section 1032 of the Dodd-Frank Act to grant financial services providers temporary waivers to conduct controlled field experiments of consumer disclosures. In addition, the Bureau has published a policy to facilitate the issuance of "No Action Letters" indicating that Bureau staff has no present intention to recommend enforcement or supervisory action with respect to specific applicants who wish

to provide innovative financial products or services that promise substantial consumer benefit but raise substantial uncertainty as to application of existing consumer financial laws.<sup>5</sup> The Bureau has also recently published two "Requests for Information" (RFI) seeking to explore the potential benefits and risks to consumers of recent developments in the marketplace relating to use of consumer data. Specifically, one RFI focused on gathering information about the consumer benefits and risks associated with market developments related to the provision of products and services, based on the aggregation of a consumer's financial information maintained by multiple financial institutions that a consumer uses (*e.g.*, personal financial management services) and that rely on third-party entities referred to as data aggregators acting with consumer permission to collect consumer financial account and account-related information.<sup>6</sup> The other concerned use of so-called "alternative data" in the credit process, including to assess the creditworthiness of consumers who do not have substantial traditional credit histories.<sup>7</sup>

In light of the feedback received in response to the RFIs and various other outreach to industry, consumer advocates, and other stakeholders, the Bureau has decided to add two new entries to its long-term regulatory agenda.<sup>8</sup> This portion of the agenda, which focuses on potential regulatory actions that an agency may engage in beyond the current fiscal year, already contains entries concerning consumer reporting and student loan servicing. The Bureau is now adding entries concerning potential rulemakings to modernize Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and to address issues of concern in connection with data aggregators, either under existing regulatory regimes such as EFTA and the Fair Credit Reporting Act or under the Dodd-Frank Act more generally. In both cases, the Bureau believes that technological and market developments may warrant rulemaking application to clarify the application of existing statutes and regulations, modernize and

<sup>2</sup> 76 FR 75825 (Dec. 5, 2011).

<sup>3</sup> See 79 FR 64057 (Oct. 28, 2014); 78 FR 25818 (May 3, 2013); 78 FR 18221 (Mar. 26, 2013). In some cases Congress took action related to the same topics identified as part of the Bureau's streamlining initiative. See, *e.g.*, 81 FR 44801 (July 11, 2016); 78 FR 18221 (Mar. 26, 2013).

<sup>4</sup> The Bureau expects to complete work later this year on a final rule amending certain requirements concerning annual privacy notices under the Gramm-Leach-Bliley Act. The Bureau conducted a prior rulemaking to create an exception to facilitate the ability of financial services providers to deliver such notices via their websites. 79 FR 64057 (Oct. 28, 2014). Congress then amended the underlying law to create a broader exception. That amendment took effect in December 2015, and the Bureau is completing certain conforming regulatory amendments to reflect the statutory change.

<sup>5</sup> See, *e.g.*, Press Release, Bureau of Consumer Fin. Prot., *CFPB Announces First No-Action Letter to Upstart Network* (Sept. 14, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/>.

<sup>6</sup> 81 FR 83806 (Nov. 22, 2016).

<sup>7</sup> 82 FR 11183 (Feb. 17, 2017).

<sup>8</sup> Further, the Bureau is moving Amendments to FIRREA Concerning Appraisals (Automated Valuation Models) into the Long-Term Actions based on continuing interagency discussions.

streamline those laws, and address emerging consumer protection concerns.

The Bureau has also launched an internal task force to coordinate and bolster the agency's continuing effort to fulfill its mandate to identify and relieve regulatory burdens, including with regard to small businesses, consistent with the Bureau's other objectives under section 1021 of the Dodd-Frank Act. The task force is currently engaged in

reviewing ideas for reduction of regulatory burden that have been suggested by Bureau stakeholders.

**Further Planning**

Finally, the Bureau is continuing to conduct outreach and research to assess issues in various other markets for consumer financial products and services beyond those discussed above. As this work continues, the Bureau will evaluate possible policy responses,

including possible rulemaking actions, taking into account the critical need for and effectiveness of various policy tools. The Bureau will update its regulatory agenda in spring 2018, to reflect the results of this further prioritization and planning.

Dated: September 28, 2017.

**Kelly Thompson Cochran,**

*Assistant Director for Regulations, Bureau of Consumer Financial Protection.*

**CONSUMER FINANCIAL PROTECTION BUREAU—PRERULE STAGE**

Sequence No.	Title	Regulation Identifier No.
391 .....	Business Lending Data (Regulation B) .....	3170-AA09

**CONSUMER FINANCIAL PROTECTION BUREAU—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
392 .....	Payday, Vehicle Title, and Certain High-Cost Installment Loans .....	3170-AA40
393 .....	Arbitration .....	3170-AA51

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Prerule Stage

**391. Business Lending Data (Regulation B)**

*E.O. 13771 Designation:* Independent agency.

*Legal Authority:* 15 U.S.C. 1691c–2

*Abstract:* Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that certain data be collected, maintained, and reported, including the number of the application and date the application was received; the type and purpose of the loan or credit applied for; the amount of credit applied for and approved; the type of action taken with regard to each application and the date of such action; the census tract of the principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the CFPB to require any additional data that the CFPB determines would aid in fulfilling the purposes of this section. The Bureau is focusing on outreach and research to develop its understanding of the players, products, and practices in the small business lending market and of

the potential ways to implement section 1071. The CFPB then expects to begin developing proposed regulations concerning the data to be collected, potential ways to minimize burdens on lenders, and appropriate procedures and privacy protections needed for information-gathering and public disclosure.

*Timetable:*

Action	Date	FR Cite
Prerule Activities	05/00/18	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* James Wylie, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170-AA09

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Completed Actions

**392. Payday, Vehicle Title, and Certain High-Cost Installment Loans**

*E.O. 13771 Designation:* Independent agency.

*Legal Authority:* 12 U.S.C. 5531; 12 U.S.C. 5532; 12 U.S.C. 5512; 12 U.S.C. 5551

*Abstract:* The Bureau is conducting a rulemaking to address consumer harms from practices related to payday loans and other similar credit products, including failure to determine whether

consumers have the ability to repay without default or re-borrowing and certain payment collection practices. The Bureau released a Notice of Proposed Rulemaking in June 2016 that would identify it as an abusive and unfair practice for a lender to make a covered loan without reasonably determining that the consumer has the ability to repay the loan. Among other things, the proposal would require that, before making a covered loan, a lender must reasonably determine that the consumer has the ability to repay the loan. The Bureau received more than 1 million comments on the proposal.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/22/16	81 FR 47863
Request For Information.	07/22/16	81 FR 47781
NPRM Comment Period End.	10/07/16	
Request For Information Comment Period End.	11/07/16	
Final Rule .....	11/17/17	82 FR 54472
Final Action Effective.	01/16/18	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

*RIN:* 3170-AA40

**393. Arbitration**

*E.O. 13771 Designation:* Independent agency.

*Legal Authority:* 12 U.S.C. 5512(b); 12 U.S.C. 5518(b)

*Abstract:* In July 2016, the Bureau finalized a rulemaking concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of certain consumer financial products or services. The rulemaking followed on a report that the Bureau issued to Congress in March 2015 as required by the Dodd-Frank Act, as well as on preliminary results of arbitration research that were released by the Bureau in December 2013, and a May 2016 Notice of Proposed rulemaking. The Bureau received more than 110,000 comments in response to the proposal. The rule

prohibited covered providers of certain consumer financial products and services from using an arbitration agreement to bar the consumer from filing or participating in a class action. Under the rule companies would still have been able to include arbitration clauses in their contracts. However, for contracts subject to the rule, the clauses would have had to say explicitly that they cannot be used to stop consumers from being part of a class action in court. The rule also required a covered provider that has an arbitration agreement and that is involved in arbitration pursuant to a pre-dispute arbitration agreement to submit specified arbitral records to the Bureau. Congress passed a joint resolution under the Congressional Review Act disapproving the arbitration rule; the President signed the joint resolution on November 1, 2017. Under the

resolution, the arbitration rule shall have no force or effect.”

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/24/16	81 FR 32830
NPRM Comment Period End.	08/22/16	
Final Rule .....	07/19/17	82 FR 33210
Final Rule Effective.	09/18/17	
Notice of CRA Revocation.	11/22/17	82 FR 55500

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Eric Goldberg, Consumer Financial Protection Bureau, Office of Regulations, *Phone:* 202 435-7700.

*RIN:* 3170-AA51

[FR Doc. 2017-28241 Filed 1-11-18; 8:45 am]

**BILLING CODE 4810-AM-P**