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Bureau of Consumer Financial Protection

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 (Bureau) is publishing this agenda as part of the Fall 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from October 1, 2018 to September 30, 2019. The next agenda will be published in spring 2019 and will update this agenda through spring 2020. 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 August 30, 2018.

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. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is publishing its Fall 2018 Agenda as part of the Fall 2018 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 October 1, 2018 to September 30, 2019, as described further below.¹ The Bureau'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 Bureau has rulemaking, supervisory, enforcement, 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, which transferred to the Bureau 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 Bureau is working on various 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 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 confirmation of a permanent director. The Bureau is also in the process of implementing various provisions in the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Public Law 115–174, 132 Stat. 1297, which was signed into law in May 2018, and of conducting its first assessments of the effectiveness of prior “significant” Bureau rulemakings as required by section 1022(d) of the Dodd-Frank Act. In addition, the Bureau is analyzing more than 86,000 comments received in response to its “Call for Evidence” initiative seeking feedback on Bureau operations and regulations. The comment period for the last of that initiative's twelve Requests for Information closed in July 2018.

This Agenda largely focuses on the continuation of projects from the Spring 2018 Agenda and the addition of rulemakings to implement EGRRCPA requirements. The Bureau is carefully

considering the feedback received through the Call for Evidence, prior Requests for Information released in conjunction with the section 1022(d) assessments, and other sources in setting its future priorities. Following this consideration, the Bureau expects to refine its priorities no later than the Spring 2019 Agenda and will publish a statement of priorities at that time.

Implementing Statutory Directives

Much of the Bureau's rulemaking work is focusing on implementing directives mandated in the EGRRCPA, 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, including facilitating industry compliance with rules.

For example, the Bureau issued two rules to facilitate the implementation of the EGRRCPA. The first was an interim final rule that adjusts certain model forms under the Fair Credit Reporting Act in light of EGRRCPA amendments to strengthen consumers' ability to protect themselves from identity theft. To reduce compliance costs and disruption in light of the September 21, 2018 effective date of this amendment, the rule provides various options for amending the affected disclosures to inform consumers that the EGRRCPA created a right to obtain a free “security freeze” from nationwide consumer reporting agencies and extended the length of “fraud alerts” that consumers may place on their files with nationwide consumer reporting agencies from 90 days to one year. The interim final rule takes effect on September 21, 2018, but the Bureau is seeking comment on the changes and underlying disclosures.

The second issuance in August 2018 was an interpretive and procedural rule that provides clarification regarding EGRRCPA amendments to the Home Mortgage Disclosure Act (HMDA), which requires financial institutions to report certain mortgage information to federal financial regulators and the public. The scope of HMDA reporting was expanded by the Dodd-Frank Act and by the Bureau via rule in 2015. The EGRRCPA creates a partial exemption to allow certain insured depository institutions and insured credit unions not to report certain data points for certain transactions. The August 2018 interpretive and procedural rule provides clarification as to which loans and lines of credit count toward the EGRRCPA exemption thresholds and which data points are covered by the partial exemptions. As indicated in the

¹ 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 Bureau, and, accordingly, the Bureau has indicated responses of “no” for such fields.

rule and discussed further below, the Bureau anticipates commencing an additional notice-and-comment rulemaking in spring 2019 to incorporate the August interpretations and procedures into Regulation C, further implement the EGRRCPA amendments to HMDA, and conduct the Bureau's own reconsideration of the 2015 HMDA rule.

The Bureau has also added three additional EGRRCPA projects to the agenda, in addition to engaging in a range of other non-rulemaking activities to reflect the statute's passage and to provide guidance to industry on implementation issues. The first two projects reflect directives in sections 108 and 307 of EGRRCPA that require the Bureau to engage in rulemakings to (1) exempt certain creditors with assets of \$10 billion or less from certain mortgage escrow requirements under the Dodd-Frank Act; and (2) develop standards for assessing consumers' ability to repay "Property Assessed Clean Energy" financing (PACE), which results in a tax assessment on a consumer's home and covers the costs of home improvements, often to increase energy efficiency. The third project contemplates that notice-and-comment rulemaking may be helpful to implement or clarify other provisions of EGRRCPA that do not require Bureau rulemaking to take effect,² particularly with regard to various provisions that address mortgage requirements under the Dodd-Frank Act and its implementing regulations.

The Bureau has also added a new rulemaking to its agenda to facilitate further implementation of a statutory directive in the 2010 Dodd-Frank Act amendments to HMDA that the Bureau modify or require modification of the public HMDA data for the purpose of protecting consumer privacy interests. In the 2015 final rule to implement the Dodd-Frank Act amendments, the Bureau adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purpose. The Bureau sought comment in 2017 on its proposed application of the balancing test to the 2018 data to be collected and reported by lenders, and expects to issue final guidance in the next few months to govern the disclosure of the 2018 data. After consideration of stakeholder

comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau has decided to add the new notice-and-comment rulemaking to govern the disclosure of HMDA data in future years.

In light of the need to focus additional resources on various HMDA initiatives discussed elsewhere in this agenda, the Bureau has adjusted its timeline for implementing an additional statutory directive contained in section 1071 of the Dodd-Frank Act. Section 1071 amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau delayed implementation of this provision pending implementation of the Dodd-Frank Act amendments to HMDA, which creates a similar regime for mortgages, and then accelerated work on the project after the HMDA rules were issued in 2015. In light of current resource constraints and priority accorded to HMDA implementation, the Bureau has now reclassified the section 1071 project from pre-rule status to longer-term action status. The Bureau intends to continue certain market monitoring and research activities to facilitate resumption of the rulemaking.

Continuation of Other Rulemakings

The Bureau is continuing certain other rulemakings described in its Spring 2018 Agenda to ensure that markets for consumer financial products and services operate transparently and efficiently and to address potential unwarranted regulatory burdens.

For example, the Bureau announced in January 2018 that it intends to engage in a rulemaking to reconsider a 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The rule has a compliance date in August 2019. The Bureau expects to issue a Notice of Proposed Rulemaking by no later than early 2019 that will address reconsideration of the rule on the merits as well as address changes to its compliance date.

In addition, prior to the enactment of the EGRRCPA, the Bureau had already taken action in August 2017 to temporarily increase the threshold for collecting and reporting HMDA data with respect to open-end lines of credit so that the Bureau could assess whether to make a permanent adjustment to that threshold. In December 2017, the Bureau announced that it intended to open a rulemaking to reconsider its

2015 HMDA rule more generally, for instance by potentially revisiting such issues as the institutional and transactional coverage tests and the rule's discretionary data points. In addition, as noted above, the Bureau anticipates engaging in notice-and-comment rulemaking to incorporate the EGRRCPA interpretative and procedural rule issued in August 2018 into Regulation C and to further implement the Act. The Bureau is considering these various HMDA projects in conjunction with each other and expects to issue a Notice of Proposed Rulemaking in spring 2019 to address some or all of the issues related to them.

Finally, the Bureau has continued to engage in research and pre-rulemaking activities regarding the debt collection market, which remains a top source of complaints to the Bureau. The Bureau has also received encouragement from industry and consumer groups to engage in rulemaking to address how to apply the 40-year old Fair Debt Collection Practices Act (FDCPA) to modern collection practices. The Bureau released an outline of proposals under consideration in July 2016 concerning practices by companies that are debt collectors under the FDCPA. This outline was released in advance of convening a panel in August 2016 under the Small Business Regulatory Enforcement Fairness Act 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 issue a Notice of Proposed Rulemaking addressing such issues as communication practices and consumer disclosures by spring 2019.

Further Planning

As noted above, the Bureau has a number of workstreams underway that could affect planning and prioritization of rulemaking activity, as well as the way in which it conducts rulemakings and related processes. First, by January 2019, the Bureau will have completed three assessments prior "significant" Bureau rulemakings. These are the first assessments the Bureau has conducted to comply with section 1022(d) of the Dodd-Frank Act. These assessments focus on rules that the Bureau issued to implement Dodd-Frank Act requirements concerning international remittance transfers, the assessment of consumers' ability to repay mortgage loans, and mortgage servicing. The Bureau will consider the results of these assessments and stakeholder feedback on the rules in determining whether

² See, e.g., Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115-174, 132 Stat. 1296, §§ 101, 104, 106, 107, 109(a), 301, 601 (2018)."

additional rulemaking or other policy initiatives are warranted. The Bureau also expects to begin work in 2019 on an assessment of its rules implementing a Dodd-Frank Act mandate to consolidate various mortgage origination disclosures under the Truth in Lending Act and Real Estate Settlement Procedures Act.

In addition, as noted above, the Bureau issued twelve Requests for Information in 2018 seeking feedback on a wide variety of Bureau practices and procedures, as well as regulations that it had inherited from other agencies and issued under its own authority. The Bureau is assessing the suggestions for substantive rulemakings received in response to the RFIs along with suggestions from other sources, such as ideas gathered by an internal task force on burden reduction and projects that have previously been listed on the Bureau’s agenda for potential rulemaking.³

The Bureau is also considering future activity with regard to specific areas of consumer financial law of significant public interest. For example, the Bureau announced in May 2018 that it is reexamining the requirements of the Equal Credit Opportunity Act

concerning the disparate impact doctrine in light of recent Supreme Court case law and the Congressional disapproval of a prior Bureau bulletin concerning indirect auto lender compliance with ECOA and its implementing regulations.⁴ The Bureau is also considering whether rulemaking or other activities may be helpful to further clarify the meaning of “abusiveness” under the section 1031 of the Dodd-Frank Act. Section 1031 and other provisions of the Dodd-Frank Act authorize the Bureau to take enforcement, supervision, and rulemaking action concerning unfair, deceptive, or abusive acts and practices. While statutory language, regulations, policy statements, and case law have provided important clarifications as to the meaning of unfairness and deception under federal consumer protection law over several decades, the Dodd-Frank Act was the first federal law to define and prohibit “abusive” acts and practices with respect to consumer financial products and services generally.

The Bureau is also considering refinements to the ways in which it conducts processes related to

rulemakings, both in response to comments received in response to the Call for Evidence and other considerations. For example, the Bureau has decided to create an Office of Cost Benefit Analysis as part of an ongoing initiative to improve its analysis of the impacts of potential and adopted rules on consumers, financial services providers, and broader markets.⁵ The Bureau is also refining and expanding its processes for conducting retrospective reviews of regulations to identify and address potential unwarranted regulatory burdens on an ongoing basis.⁶

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. The Bureau expects by no later than the Spring 2019 Agenda to issue a more comprehensive statement of priorities to reflect this market monitoring and the Bureau’s other activities discussed above.

Kelly Thompson Cochran,
Assistant Director for Regulations, Bureau of Consumer Financial Protection.

CONSUMER FINANCIAL PROTECTION BUREAU—LONG-TERM ACTIONS

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

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Long-Term Actions

434. 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 Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of this section. The Bureau issued a Request for Information in 2017 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 information received will help the Bureau determine how to implement the rule efficiently while minimizing burdens on lenders. In light of other responsibilities, the Bureau has moved this rulemaking from pre-rule to long-term action status. The Bureau intends to continue certain market monitoring and research activities to facilitate resumption of the rulemaking.

Timetable:

Action	Date	FR Cite
Request for Information.	05/15/17	82 FR 22318

³ In spring 2018, the Bureau reclassified certain projects that had previously been listed on the Bureau’s active and longer-term agenda as “inactive” pending a decision by the Bureau’s next permanent director as to whether and when to proceed with the projects. The Bureau noted that the reclassification was not intended as a decision on the merits. The Bureau has made no further

adjustments to the projects that were retained on the longer-term agenda for the Spring 2018 edition except to note where some projects have been reclassified as active rulemakings.

⁴ <https://www.consumerfinance.gov/about-us/newsroom/statement-bureau-consumer-financial-protection-enactment-sj-res-57/>.

⁵ <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/>.

⁶ See, e.g., the Regulatory Flexibility Act, 5 U.S.C. 610 (requiring agencies to review certain regulations within ten years after publication for purposes of minimizing their impacts on small businesses).

Action	Date	FR Cite	
Request for Information Comment Period End.	09/14/17		<i>Regulatory Flexibility Analysis</i> <i>Required: Yes.</i> <i>Agency Contact:</i> Elena Grigera Babinecz, Office of Regulations, Consumer Financial Protection Bureau <i>Phone:</i> 202 435-7700.
Next action undetermined.	To Be Determined		<i>RIN:</i> 3170-AA09 [FR Doc. 2018-24167 Filed 11-15-18; 8:45 am] BILLING CODE 4810-AM-P