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Steven A. Meyerowitz

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CFPB Taskforce Report and Recommendations in a Nutshell

*William C. MacLeod**

In this article, the author offers a guide to the more important recommendations and findings for researchers and policymakers who would like to find particular subjects of interest contained in a report released recently by the Consumer Financial Protection Bureau.

In January, the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) released a comprehensive report (the “Report”) with over a hundred recommendations to improve consumer protection in financial markets. Backed by 800 pages of research and analysis, the Taskforce on Federal Consumer Financial Law¹ surprised many observers with proposals to expand the Bureau’s authority and launch new initiatives.

Selected recommendations were described in the Bureau’s press release,² including several that attracted attention throughout the financial sector. To the CFPB, Congress, other federal regulators, and state authorities, the taskforce proposed:

- Federal licensing of non-depository institutions that provide lending, money transmission, and payments services;
- Expanding access to payment systems by unbanked and underbanked

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² Available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureaus-taskforce-on-federal-consumer-financial-law-releases-its-report/>.

consumers;

- Identifying and reducing competitive barriers that exclude non-banks from payments systems;
- Considering preemption of state laws where conflicts impede the provision of valuable products and services, such as FinTech;
- Coordinating regulatory efforts across agencies, eliminating overlapping examination subjects, and reconciling inconsistent examination standards;
- Attending to the challenges and improving the protection of formerly incarcerated people;
- Expanding financial inclusion in rural communities and reducing restrictions that discourage credit unions and other providers from operating in remote areas;
- Avoiding undue restrictions on the use of alternative data; and
- Assessing the accuracy of consumer credit reports, and clarifying the obligations of consumer reporting agencies and furnishers dealing with disputed information.

Upon the release of the Report, the Director of the Bureau responded that the agency was “already committed to many of the recommended ideas presented” in the Report. Other findings and proposals undoubtedly will illuminate regulatory and legislative deliberations, with the potential to influence financial consumer protection for years. Indeed, the issues animating the recommendations are the subjects of debates in the agencies, the courts, and Congress.

Volume I of the Report contains a comprehensive analysis of the issues, in 13 chapters (including thousands of footnotes in the hundreds of pages) that amount to a modern treatise on consumer financial protection.³ Volume II of the Report contains 102 recommendations, grouped by subject area, of the Taskforce. Preceding each set of recommendations is a synopsis of the analysis behind them.⁴

A challenge for any reader is how to approach such a large cache of information.

³ To read the Taskforce Report Volume I, *see* https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2021-01.pdf.

⁴ To read the Taskforce Report Volume II, *see* https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-2_2021-01.pdf.

This article offers a guide to the more important recommendations and findings for researchers and policymakers who would like to find particular subjects of interest. Addressed first are the recommendations. Then the analysis, which the Taskforce regarded as its substantiation for the recommendations, is described in abstracts of the 13 chapters. These summaries are necessarily limited to selected highlights of the two volumes. Many additional insights and a trove of references await the reader who explores the full text.

THE RECOMMENDATIONS

The recommendations distill the work of the Taskforce into concrete policy proposals. Volume II organizes those recommendations by 19 topic areas, listed alphabetically. Accordingly, recommendations appearing early deal with alternative data, competition, equal access, inclusion, and FinTech. No implications of importance were intended in the order, however, as is apparent in the later recommendations, which will be on regulatory agendas for the foreseeable future. For example, toward the end, the Taskforce takes on the consistently controversial subject of small-dollar credit.

Topic 1—Alternative Data

Drawing upon the discussion of Competition and Innovation in Chapters 8 and 9 of Volume I, the Taskforce assesses alternative data to have significant potential to improve underwriting, especially for the tens of millions of consumers with little or no reported credit history. Immigrants, minorities, and other groups on the margins of finance are those most likely to benefit from greater use of alternative data.

Ironically, the growing acceptance of new types of information has attracted an audience of skeptics who worry that alternative data and artificial intelligence could compound consumer disadvantages rather than ameliorate them. The Taskforce finds little basis for those concerns and devotes three recommendations to alternative data—recommendations directed not just to the Bureau, but to Congress, other federal agencies, and state authorities. The Taskforce urges caution in restricting credit reports from using new sources of data and encouraged regulators to lower barriers to its collection and use.

Topic 2—Bureau Organization

The Taskforce recommends a reorganization of the Bureau, which is generally organized according to regulatory tools and mandated offices. Focusing on the challenges consumers face in their financial affairs would more likely reveal the best tools to remedy problems, the Taskforce believes, so it suggests organizing around markets such as credit cards, student loans, and mortgages.

It also recommends creating a new unit to facilitate strategic planning, evaluate the effectiveness of Bureau activities, and advocate for competition and consumer financial protection throughout the country.

Topic 3—Competition

Based on the analysis in Chapters 8 through 10, the Taskforce calls on the Bureau to fulfill the Dodd-Frank goals of ensuing robust competition in consumer financial markets, enhancing consumer choices and improving access to financial services. Advancing such objectives requires analysis of the costs of financial services and the benefits consumers derive from them.

Of particular concern to the Taskforce is the patchwork of state licensing laws that thwarted competition, especially by providers that operate in many states or nationally. The Taskforce also notes the difficulty of switching bank accounts from one bank to another and suggested that FinTech could reduce that friction and increase competition among banks.

Among the nine recommendations relating to competition is one to remove obstacles to mortgage lenders offering packaged settlement services at a fixed cost. Such a change would allow consumers to shop by settlement-fee costs as well as by interest rates.

Topic 4—Consumer Credit Reporting

The Taskforce identifies several areas of regulatory uncertainty under the Fair Credit Reporting Act and urges the Bureau to provide more compliance advice. Drawing on the findings in Chapter 11, the Taskforce also urges the Bureau to replicate the FTC's influential report on credit bureau accuracy.

Comments received in response to the Taskforce's request for information indicated that issues remain unresolved in reporting bankruptcies and in the difficulty some consumers report in placing and removing a security freeze on their credit report. In the seven recommendations on credit reporting is a proposal of legislation that would set appropriate limits on statutory and punitive damages in class actions under the FCRA, as Congress did in the other parts of the Consumer Credit Protection Act.

Topic 5—Consumer Empowerment

The Taskforce surveys the research on consumer financial education, much of which found that decades of efforts have yielded disappointing results. A reason for the shortcomings, suggests the Taskforce, may be that the traditional approaches suffered from poorly defined goals that reflected the preferences of information providers rather than the interests of consumers. The Taskforce recommends research to specify more precisely the ultimate goals of financial literacy and urged the Bureau to be a leader in that research.

Topic 6—Cost-Benefit and Bureau Activities Analysis

After devoting Chapter 13 in Volume I to cost-benefit analysis, the Taskforce makes nine recommendations to the Bureau with respect to the subject.

The first recommendation is a general call to incorporate cost-benefit analysis to improve regulatory decision-making, transparency, accountability, and credibility. Complementing the Bureau's work under the Government Performance and Results Act, the Taskforce suggests supplementing the analysis with additional metrics derived from economics—such as prices, competitiveness, and innovation—to track the general health of the markets the Bureau regulates.

Another area ripe for cost-benefit analysis is the conducting of retrospective analyses of enforcement actions, which could help explain how past cases have affected consumer protections.

Topic 7—Deposit Accounts

The Taskforce makes three recommendations related directly to deposit accounts.

First it proposes policies increasing the use prepaid cards and other nonbank products by unbanked and underbanked consumers, which would be a welcome alternative to higher cost products.

The second, directed to the Fed, urges speeding up payment clearance, the sluggish pace of which makes little sense with today's technology.

The third proposal would eliminate permanently the limit of six transactions per cycle on savings accounts, as the Fed had done in an interim final rule.

Topic 8—Disclosures

Effective disclosures must seek to reduce the costs to consumers of locating the product of service they want, the Taskforce explains in Chapter 7 of Volume I, but striking the right balance between information and overload is often difficult. Disclosing all possible details and contingencies may seem desirable, but adding disclosures to volumes of information does not enhance consumer protection. Disclosure policy, says the Taskforce, should be based on research that shows what customers need, want, and can use.

The Taskforce notes that while specifying the exact language of a disclosure would bring more certainty to compliance, it tends to ossify communications, leaving them inapt to modern products. The Report favors principles-based rules over prescriptive rules in Regulation Z's credit advertising provisions and offered suggestions for improving Regulation B's adverse action notices by reducing regulatory burdens without reducing consumer protection.

Another recommendation suggests that the Bureau facilitate marketing financial products to consumers with limited English proficiency.

Topic 9—Electronic Signature and Document Requirements

The Report has three recommendations for Congress to reform E-SIGN and for the Bureau to alleviate inefficiencies pending Congressional action. Many of the Act's requirements, which addressed 20-year-old technology, are antiquated. The Taskforce cites mandates relating to consent, disclosures, and hardware.

Until Congress updates the statute, the Taskforce suggests, the Bureau could enhance efficiency by providing guidance and amending rules to reflect modern means of electronic disclosures.

Topic 10—Emergency Authority

The Taskforce commends the Bureau and other federal and state regulators for their responsiveness to assist consumers during the COVID pandemic. Given that disruptions to the financial system were likely to recur, the Taskforce recommends that the Bureau have sufficient authority to act effectively to protect consumers and ensure access to safe and effective credit in times of emergency.

One example for Congress to consider would be giving the Bureau additional authority to preempt state laws that hinder financial transactions in an emergency.

Topic 11—Enforcement

The Taskforce recommends several enforcement reforms, all based on the principle that consumer harm should guide enforcement decisions. Estimates of harm—both frequency and severity as well as aggravating or mitigating factors—should be the starting place for seeking monetary relief, says the Taskforce, and consumer redress should get priority over civil penalties in allocating recoveries of funds.

It recommends that the Bureau issue a policy statement on consumer harm, addressing both tangible and intangible forms, and that Congress pass legislation to harmonize the powers of the Bureau and the FTC. Enforcement is not the appropriate vehicle to set new industry standards, argues the Taskforce. For such situations, rulemaking would be more preferable and fair.

The Taskforce also calls for more transparency from the Bureau on civil penalties, since it regarded Dodd-Frank's mitigating factors as inadequate notice of the penalties the Bureau would seek. Among the recommended options for the Bureau are the FFIEC's Policy Statement on Assessment of Civil Money Penalties and a matrix of penalties for various circumstances.

Topic 12—Equal Access to Credit

The Taskforce’s first recommendation pertains to discrimination based on disability. It is a prohibited basis under the Fair Housing Act and worth considering whether it should be covered by the Equal Credit Opportunity Act (“ECOA”). The Report notes the detailed prohibitions under Regulation B and questions whether they are still needed after 40 years. The Taskforce recommends that the Bureau express its view on disparate impact liability, especially in the wake of Supreme Court decisions that questioned common interpretations.

Two recommendations relate to concerns about discrimination in auto finance: one suggesting that suspected disparate treatment by auto dealers be addressed by investigating dealers directly, rather than through indirect investigations of their financial sources; the other proposing that the Bureau and Federal Reserve Board amend the Regulation B commentary to state that a dealer’s adoption of the NADA’s Fair Credit Program or a substantially similar policy would constitute compliance with Regulation B’s ban on discrimination.

Topic 13—Financial Inclusion

The Taskforce considers financial inclusion to be a most important principle—a moral imperative—and recommends that the Bureau consider inclusion, access, and choice in all its deliberations. To the National Credit Union Administration, the Taskforce recommends asking Congress to allow all credit unions to served underserved communities regardless of charter type.

Another recommendation proposed measures to ameliorate the impact of inadequate or nonexistent credit histories that often constrain credit for recent immigrants and formerly incarcerated people. The Taskforce proposes research on the potentially deleterious consequences of the CARD Act on inclusion, as well as research on the impact of AML/BSA requirements on immigrant populations and remittance transactions.

Noting the decline of free or low-cost banking accounts in the wake of controls on debit-card interchange fees, the Taskforce supports expanding access to the payments system by non-bank providers. And the Taskforce urges attention to the growing problem of inclusion in rural communities.

Topic 14—FinTech Regulation

After recounting ways in which innovation has fueled competition and given consumers more choices, improved products, lower prices, and greater inclusion, the Taskforce notes that innovation has been impeded by a patchwork of regulations.

To facilitate more innovation, the Taskforce supports federal licensing or chartering if FinTechs, giving them a nationwide legal regime comparable to

banks. The Report also advocates the consideration of preempting state law when the potential for conflict could impede the provision of services valuable to consumers.

Topic 15—Privacy

The Taskforce takes a holistic approach to privacy policies and recommends policies that benefit consumers, providers, and the economy as a whole. Studies cited in the Report found that privacy-policy disclosures have been ineffective, offering little benefit to consumers while imposing substantial costs on industry. Instead of adding to information overload, says the Taskforce, the Bureau should focus on protecting consumers by identifying the potential harms from data use or misuse and fashioning policy to prevent such harms. For example, data breach notifications should be limited to situations where consumers can use the information to avoid harm. Privacy is another area, the Taskforce believes, where preemption of inconsistent state laws could be worthwhile, because requirements varying from state to state impose significant costs.

Topic 16—Regulatory Coordination

Regulatory overlap at both the federal and state levels is extensive, and it therefore puts a premium on coordination to minimize duplication of effort and avoid unnecessary costs.

Examples of redundancy include prudential regulators and the CFPB both examining banks' implementation of compliance management systems ("CMS") and avoidance of unfair or deceptive acts or practices ("UDAP"). Such duplication can raise costs, result in contradictory guidance, and consume resources that could be used in more productive ways. The Taskforce identifies opportunities for the Bureau to improve communication and outreach with state regulators, including coordinating more effectively regarding enforcement actions, such as those involving auto dealerships and auto finance.

Topic 17—Regulatory Principles

The Taskforce recommends more use of principle-based regulations, based on its belief that their greater flexibility would be more effective in rapidly evolving markets. Because principles-based rules sometimes may lack precision on compliance standards, however, the Taskforce supports interpretive guidance. In addition, the Bureau should review regulations regularly, modify them as needed, and answer requests for guidance quickly and consistently. The Taskforce supports the Bureau's innovative programs, such as its no-action letters and sandbox programs.

Topic 18—Small-Dollar Credit

Small-dollar credit is expensive and controversial, but it provides vital services to many consumers, the Taskforce finds, especially those on the economic

margins. The Taskforce recommends research on less-costly alternatives that could meet the needs of consumers with unplanned expenses, loss of income, or other liquidity shocks, and it urged states to consider the effects of interest-rate caps that limit the access of their residents to small-dollar loans.

Analysis may find that some such options are preferable to default. Disclosure requirements on payday lenders should focus on providing consumers with important costs and terms, recommends the Taskforce, rather than trying to change consumer behavior.

Topic 19—Supervision

The Taskforce encourages the Bureau's increased use of automated or data-based examinations. It recommended that the Bureau cease "grading" an entity's compliance management system and instead emphasize assessing the company's actual compliance. Resources saved by more performance-based reallocation could be reallocated to expanding the scope of supervision or redirected to enforcement.

The Taskforce also recommends reforms to the Bureau's supervision appeals procedure and reforms to its procedures for selecting larger participants in various industries. The last recommendation is for Congress, that it grant express authority to the Bureau to examine for compliance with the Military Lending Act.

THE SUBSTANTIATION

Part I: Historical and Economic Overview of Consumer Finance

Forward—10 Years of CFPB

Laying the groundwork for the Report, a Forward explains the three principles that animated the Taskforce: first, that financial consumer protection should be attentive to inclusion and under-served communities; second, that helping consumers avoid consumer harm should be the primary goal of consumer protection; and third that regulation needs modernization to keep up with the challenges of 21st century life.

An appendix to the forward offers a summary of the Bureau's accomplishments, including highlights of enforcement, rulemaking, supervision, research, and education. For example, the Bureau has recovered \$13 billion for consumers in the form of redress and other relief, and has transmitted to the Treasury \$1.5 billion in civil penalties. Final rules have clarified, defined, and implemented the law in areas such as payday lending, debt collection and mortgage lending.

Ongoing supervision and advisory opinions have provided guidance pertaining to specific businesses, while the Bureau's has handled more than 2.5 million

consumer complaints and obtained timely responses from businesses. The complaint database, statistical reports, and numerous educational materials have been made available to the general public, and distributed in hundreds of thousands of copies.

Chapter 1—Introduction

In a quick overview of the Taskforce and its work, the introduction recounts the CFPB's decision to create the Taskforce on Federal Consumer Financial Law in October 2019, approximately the 50th Anniversary of the National Commission on Consumer Finance ("NCCF"), which had issued an influential report in 1972. The Taskforce focused on five issues:

- (1) Strengthening the conceptual foundations of consumer financial protection;
- (2) Empowering consumers through effective provision of information;
- (3) Promoting competition and innovation for the benefit of consumers;
- (4) Expanding financial inclusion; and
- (5) Modernizing the consumer financial regulatory framework.

Chapter 2—Extent and Growth of Consumer Credit

The evolution of modern consumer finance is divided into three periods in Chapter 2. In the "early modern" era from the early-20th century until the 1960s, the growth of urban life and a wage economy created a growing need for access to financial products and credit. Along with the rise of credit came the spread of loan sharks and other unsavory credit practices, which inspired the formation of consumer protection. Charitable organizations often led the way, followed by local and state authorities.

The second phase of the modern era of consumer financial markets developed after World War II, as increasing affluence and migration to the suburbs created demands for durable goods that consumers purchased on credit and the growth of an increasingly national consumer financial system. Tables and charts in the chapter illustrate the dramatic expansion of consumer credit and lending institutions after World War II. Measured in 2019 dollars, consumer credit outstanding grew from about \$100 billion in 1945 to nearly \$2 trillion in 1995.

The third era arrived at the turn of the century, as technological innovation raised vast opportunities for consumers—and new challenges for financial regulators. Credit outstanding doubled in just 15 years between 1995 and 2019, surpassing \$4 trillion by the end of the period.

Chapter 3—Demand for Consumer Credit

This chapter explains the economics of consumers' demand for credit. In essence the use of credit stems from needs that arise before consumers have the

cash to satisfy them. In early adulthood, consumers acquire expensive household goods and services—including homes, automobiles, appliances, and services such as health and education—before they have saved the money to pay for these investments.

For over a century, according to research summarized in the chapter, most people have been borrowers early in life and lenders (or savers) later in life. The chapter reviews decades of academic attitudes, both negative and positive, about consumer behavior and assesses other theories of consumer demand, such as behavioral economics.

Most of the economic research finds that “using debt to finance certain purchases is a rational investment that provides an implicit rate of return that exceeds the cost of finance.”

More recent research, often presented as “behavioral economics,” has questioned earlier findings that rational consumers typically were making informed choices.

The chapter concludes that arguments faulting consumer decision-making and hypotheses of consumer irrationality have not evolved into coherent theories or marshalled as much empirical support as the traditional economic analysis of consumer welfare.

Chapter 4—The Supply of Consumer Credit

Like other goods and services, the supply of credit and other financial services depends on the costs of providing them. Chapter 4 discusses the main elements of credit creation and demonstrates that lending costs are not proportional with the size of loans. Risk of losses and costs of administration decline as loan amounts increase. The economic literature documents these relationships, as shown in several charts and tables. Smaller loans have higher costs per dollar and therefore higher break-even interest rates, and very small loans have the highest costs along with the highest rates.

For a traditional installment lender, an APR of 100 percent is the breakeven point on a \$600 loan, according to a Fed study. Breakeven falls to 36 percent when a loan exceeds \$2,500 dollars. These levels are slightly lower than in 1964 and substantially lower than in 1987—indicating that efficiency has improved.

Nonetheless, the calculations indicate that lenders are unlikely to make loans that do not cover costs. Rates capped below breakeven levels can be expected to deprive riskier applicants of access to credit. The broader implications of small loan costs for regulatory policy are addressed in Chapter 5.

Chapter 5—Small-Dollar Lending

Small-dollar credit represents a small share of lending, but it has been a continuous concern of civilized society. Chapter 5 explores these corners of the

credit market. Cash installment loans, pawn loans, vehicle title loans and payday loans added up to about \$75 billion borrowed in 2017, compared to \$135 billion in student loans, \$400 billion on credit cards, and \$600 billion for autos. A 2017 FDIC Unbanked-Underbanked Supplement to the Current Population Survey, found 1.7 percent of households used payday loans, 1.4 percent used pawn loans, and 1.4 percent used automobile title loans.

Among the data presented in Chapter 5 is a demographic breakdown of small-dollar loans, which shows wealthier borrowers accounting for higher shares of vehicle loans and payday loans than poorer customers. Pawnshops, however, attract their largest share of borrowers from the poorest income bracket.

Against this backdrop, the chapter reviews the history of small-dollar lending, which has provoked opposition because of its expensive rates and its borrowers' unfortunate circumstances. That opposition has inspired measures to control it with both cultural norms and legal rules. The chapter discusses the current market for small-dollar loans, why consumers use them, how regulators have responded, outbreaks of illegal lending, and the consequences for consumers. (Chapter 8 offers more on the history of small loans.)

Chapter 5 concludes with considerations of the social and economic forces that must be reconciled to reach a consensus on protecting small-dollar borrowers and calls for a fresh look at the issue.

Part II: The Framework of Consumer Financial Protection

Chapter 6—Consumer Financial Protection Principles

Chapter 6 reviews the framework of an effective system of consumer financial protection, identifying the interaction of markets, common law, and regulation. It describes the Bureau's regulatory tools—enforcement, supervision, regulation, education, and policy research and development—as well the differences between substantive (or market displacing) regulations and supportive (or market facilitating) regulations. Interventions are analyzed in the context of a three-step approach that a regulator of markets should take.

First, is there a market failure?

Second, is there a feasible solution?

Third, will the benefits of intervention exceed the costs?

The chapter also discusses the Bureau's internal organization, initiatives it has pursued, and innovations it has adopted.

Couching the conclusions of the chapter in the context of the Bureau's statutory objectives—which include preventing discrimination and unfair,

deceptive, or abusive acts and practices, as well as advancing inclusion, competition, and innovation—the chapter summarized its assessment:

[The] Bureau has generated an impressive record on these objectives, but it is not clear to the Taskforce that the Bureau has dedicated the same degree of energy and attention toward facilitating inclusion, competition, and innovation, as it has to protecting consumers from improper practices. Several of the Taskforce’s recommendations focus on the ways in which Congress, the CFPB, and other regulatory agencies can act to promote those goals.

The chapter discusses at length the performance of financial institutions and consumers’ experiences with them. Sectors reviewed include credit cards (with high customer satisfaction), credit reporting (with attenuated incentives for accuracy), and the penalties that companies pay (in both business and legal losses) for scandals involving consumer fraud.

Chapter 7—Information and Disclosure

Starting with the basic premise that acquiring information is a costly exercise, Chapter 7 explains the challenges consumers face in markets for goods and services. Information has become increasingly inexpensive, almost ubiquitous, and often free. But even when it is readily available, consumers make decisions with less than perfect information, because their time and attention is limited. They will search when and until they no longer expect the additional intelligence to be worth the extra effort. Competitive markets create strong incentives to provide consumers with the information that is most important to them.

Disclosure requirements have helped in circumstances where market incentives may be inadequate, especially in cases like truth in lending, where metrics help consumers compare products. But well-intentioned disclosure requirements have grown over time, often to the point where the sheer volume of information that sellers must disclose likely overwhelms its utility and may lead to consumer decisions that are worse, not better.

A success story recounted in Chapter 7 is the history of the Truth in Lending Law (or “TILA”), which clarified ambiguities of credit offers and intensified competition among providers. Other gains for consumers have come from modern technology, which allows consumers to manage from their personal devices such services as general search engines, financial applications, and information aggregators.

Also noted in the chapter are cautionary tales of information overload and obsolete requirements can interfere with informed choice. The chapter concludes with a call for clear and realistic disclosure goals.

Chapter 8—Competition and Financial Consumer Protection

Chapter 8 begins with a reminder that the statutory purpose of the Bureau is to ensure that all consumers have access to “fair, transparent, and competitive” markets for consumer financial products and services. The chapter compares financial markets to those in other sectors and explains why the NCCF concluded in 1972 that competition, as painful as it was for sellers, provided the ultimate protection for most consumers and the best means to assure that they pay a fair price for credit services.

Drawing on the history of competition in financial markets, the chapter measures the benefits of competition for consumers, reports on rivalries among sources of credit, describes various barriers to competition, and highlights the role of innovation in credit competition. Along with these developments, the chapter reports on initiatives to promote competition and remove barriers that have deprived consumers of its benefits.

After a review of the NCCF’s assessment of industry trends in the post-war United States, Chapter 8 examines the progress of credit competition since 1970. Significant findings include disconcerting increases in concentration coinciding with declining entry in banking, especially in smaller communities and rural settings.

Among the many charts in Chapter 8 are two that track concentration and entry in banks. Concentration has risen, especially in the most sparsely populated areas, and entry has fallen across the country. The number of new FDIC charters dropped from an average of over hundred a year before 2010 to barely one a year since. Despite increased concentration and dearth of entry, academic research on interest rates and profit margins have found that loans have become more affordable and lenders more efficient in recent years. Countervailing forces have fueled competition among banks and between banks and other institutions, the net effects of which have ameliorated and perhaps outweighed the loss of competitors. The analysis finds competition robust in three broad divisions of credit: short-term loans for immediate needs, intermediate loans for autos and other major expenses, and mortgage loans for homes.

The chapter also assesses financial services beyond credit products. Payment systems, credit reporting, credit scoring, mortgage servicing, debt collection, and payment systems all are reviewed for indications of competition and impediments to it. In most, competition has endured, the Taskforce finds, but potential exceptions are noted, including a disappointing pace of innovation in payment systems and worrisome allegations of monopolization in credit scoring.

Also recurring frequently in the history of credit is the building of barriers against competition. Among the examples cited in the chapter are impediments to the chartering of new financial institutions (sometimes leading to absolute charter moratoriums), restrictions on the business of credit unions, resistance to FinTech rivals, and arguments that competition itself undermines safety and soundness of financial institutions. In most cases, vested financial interests have led the opposition, sometimes with the assistance of advocates purporting to represent consumers.

Chapter 8 also explores the beneficial effects of competition on access and inclusion. The chapter cites reports of alternative data and FinTech bringing formerly unobtainable credit to underrepresented groups—including immigrants, people of color, applicants with marginal or invisible histories, and consumers in sparsely populated regions. For years, credit bureaus have lacked sufficient information to create reliable scores for nearly 20 percent of adults in the U.S. Now, the three national bureaus are competing to find sources of alternate data that could qualify those consumers for credit.

Appendix A to Chapter 8 lays out the statutory provisions of Dodd-Frank and other statutes authorizing the Bureau's competition mission. Appendix B offers a brief history of competition, credit, and public policy. The history summarizes centuries of resilient credit markets contributing to consumer welfare and economic growth. Threatening that competition throughout was resistance by providers who could profit by excluding others from entering their markets. The chapter describes the successes and failures of public policy in response to monopolies, cartels, and other threats to competition in financial sectors.

Chapter 9—Innovation

Innovation in consumer financial products and services has always been an engine for reducing prices, improving quality, and expanding competition and inclusion in consumer financial services. Chapter 9 reviews the benefits, risks, and regulatory challenges that innovation presents. Innovation has driven competition and enhanced consumer choice in financial services markets, and the future promises more of the same, but existing laws have uncertain application to new practices or services, creating the potential for harmful practices and challenging regulatory agencies to foster innovation's benefits while also protecting consumers.

The chapter recounts trends in innovations stemming from advancing technology, new business methods, and regulatory reforms. Among the technological advances covered are the shift to online banking (now used by over 50 percent of bank customers), the advance of artificial intelligence, and the entry of competitive payment systems.

Business innovations included the proliferation of data aggregators (perhaps exceeding a hundred firms in the United States), the use of alternative data, and the advent of FinTech lenders, whose share of unsecured consumer loans rose from five percent to 38 percent from 2013 to 2018.

Regulatory reforms—such as court decisions facilitating uniform federal policies, rule revisions, no-action letters, the Compliance Assistance Sandbox, advisory opinions and tech sprints—are also covered in Chapter 9, as are the regulatory implications of alternative data, machine learning, data aggregation, and payment systems. The Taskforce observes in this chapter that financial innovation in the United States remains behind the progress in other countries. The chapter describes some of the impediments to progress here, one of which is balkanized regulation, and considers some solutions that would benefit consumers and competition:

There are numerous specific frameworks one could consider, but two general approaches stand out: (i) a federal charter and (ii) permitting non-bank FinTech companies to export their home-state laws even without a federal charter.

The chapter concludes with an optimistic assessment that the statutory purposes and objectives of the Bureau equip it well to facilitate innovation that will deliver significant benefits to consumers.

Chapter 10—Access and Inclusion

Chapter 10 begins with the declaration that financial inclusion is a moral imperative. The Taskforce explores the importance of financial inclusion for traditionally excluded Americans and examines policies that restrict greater inclusion and policies that can expand competitive markets and financial services to new consumers. This chapter contains an extensive review of the history of discrimination and literature on exclusion and examines the ongoing challenge of ensuring equal access and treatment of all consumers under law, regardless of sociodemographic characteristics.

The chapter examines the historical causes and consequences of financial exclusion. Drawing on the history in Appendix 8 B and a large body of academic literature, Chapter 10 traces the discrimination suffered by minority populations and women, recounts their struggles to overcome exclusion, and describes the public policies that resulted, including major legislation protecting civil rights and equal credit opportunity. Empirical studies on the discriminatory effects of interest-rate caps are reviewed, as is the effect on inclusion of Supreme Court decisions such as *Marquette National Bank*, which reduced the barriers to nationwide banking.

Public policies, from explicit racial discrimination to bias embedded in laws, contracts, and social norms are examined in Chapter 10. A significant source of racial discrimination was the Federal Housing Administration and real estate contracts, which explicitly discriminated against Blacks. Matrimonial customs and personal property laws restricted women's access to credit.

The repudiation of discriminatory policies in the Fair Housing Act, Equal Credit Opportunity Act, and related legislation and regulation in the late 1960s and early 1970s, and the advance of feminism at the same time are analyzed for their effects on inclusion. The chapter cites studies finding that access to credit expanded dramatically since the 1970s. Also examined in the chapter is the relationship between competition and inclusion. Its findings amplify those in Chapter 8. Where competition is compromised, access and inclusion decline.

More recent legislation is examined and found to have delivered mixed results. For example the adoption of the Card Act coincided with a notable decline in financial access, especially among consumers with lower credit scores. Consumers in lowest quartile of scores, for example, began the 21st century with 70 percent holding credit cards issued by banks. Ten years later fewer than 55 percent had bankcards.

Part III: Modernizing the Regulatory Framework and Expanding Consumer Empowerment

Chapter 11—Privacy

In the first of three chapters previewing the recommendations, Chapter 11 describes the development of new technologies, explains how they provide extraordinary opportunities to expand access and promote competition and innovation to benefit consumers, and considers the risks that greater use of information pose to privacy and data security. It is widely recognized that sharing information about payment history in appropriate circumstances is an essential element to enable well-functioning financial markets.

The chapter describes the difficulties that state and federal authorities have encountered in developing and deploying the appropriate means of protecting consumers from harmful and undesirable disclosures of their personal information. The chapter identifies the ineffectiveness of mandating detailed disclosures and expecting consumers to make use of voluminous and complicated information. The Taskforce argues that privacy regulation should focus on substantive regulation to prevent adverse consequences for consumers from information use and misuse.

Chapter 12—Consumer Empowerment

An explicit objective of the Bureau is to empower consumers through access to and use of financial services. The methods analyzed in Chapter 13 include:

- (1) Promoting financial literacy;
- (2) Examining the special challenges and opportunities for younger consumers and their rapid adoption of new payment and finance technologies; and
- (3) Facilitating savings and financial security among all American households, including the elderly.

With a literature review of the history of financial education, the chapter concludes that old methods have often failed to meet expectations and that new ideas are needed to reach the consumers for whom education is most valuable.

Chapter 13—The Regulatory Framework of Federal Consumer Financial Protection Law and Opportunities for Modernization

An overview in Chapter 13 of consumer regulations reveals a framework that has evolved in piecemeal fashion. The Taskforce examines the existing regulatory framework and assesses its effectiveness. It examines the special challenges raised by the Supreme Court in *CFPB v. Seila Law*. Chapter 13 analyzes tools, such as cost-benefit analysis, that could be used to assess the CFPB's regulatory effectiveness in promoting consumer financial welfare.

CONCLUSION

The creation of Taskforce, according to the Bureau's Director, was inspired by the 1968 National Commission on Consumer Finance, which, she observed, "had an extensive impact on credit regulation through its thoughtful recommendations." Nearly 50 years had passed since the NCCF's report, she added, and technology had transformed the financial industry. "It was high time for the Bureau to assess the impact of that dramatic evolution on consumer financial laws and regulations." She was pleased to see that many of the Taskforce's recommendations were already in place at the Bureau—like a Tech Sprint focusing on rationalizing disclosure requirements, but she acknowledged that the Bureau could do more to advance competition and inclusion, as well as to protect vulnerable consumers.

The extensive analysis of public policies in the Report will animate the discussion of consumer financial protection for years. Most of the issues facing regulators and judges today are explored in the Report. Many proposed solutions circulating now are assessed in it as well, along with their costs and benefits, successes and failures, and effects on consumers.

With the analysis and recommendations of the Taskforce, policymakers have a valuable resource that can, in the words of the Director, "meaningfully improve consumer protections, the financial marketplace, and the lives of consumers and providers of financial products and services."