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Part XXIII

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 2016 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, 2016 to October 31, 2017. The next agenda will be published in spring 2017 and will update this agenda through spring 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 October 19, 2016.

**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 2016 agenda as part of the Fall 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The CFPB's participation in the Unified Agenda is voluntary. The complete Unified Agenda is available to the public at the following Web site: <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 was transferred to the CFPB from seven Federal agencies on July 21, 2011. 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.

The CFPB reasonably anticipates having the regulatory matters identified below under consideration during the period from November 1, 2016, to

October 31, 2017.<sup>1</sup> Among the Bureau's more significant regulatory efforts are the following.

**Bureau Regulatory Efforts in Various Consumer Markets**

The Bureau is working on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services, including mortgages, debt collection, credit cards, and installment lending, among others.

For example, in May 2016, the Bureau issued a Notice of Proposed Rulemaking concerning the use of agreements between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future disputes. The rulemaking follows 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. The proposal would prohibit 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 proposal, companies would still be able to include arbitration clauses in their contracts. However, for contracts subject to the proposal, the clauses would have to say explicitly that they cannot be used to stop consumers from being part of a class action in court. The proposal would also require 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. The deadline for comments on the Notice of Proposed Rulemaking was August 22, 2016. As the Bureau considers development of a final rule for spring 2017, it is reviewing and considering comments on the proposed rule.

The Bureau also released a Notice of Proposed Rulemaking in June 2016, to address consumer harms from practices related to payday loans, vehicle title 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 deadline for comments on the Notice of Proposed Rulemaking is

<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.

October 7, 2016. Among other things, the proposal would require lenders to make a reasonable determination that the consumer has the ability to repay a covered loan before extending credit. It would also require lenders to make certain disclosures before attempting to collect payments from consumers' accounts and restrict lenders from making additional payment collection attempts after two consecutive attempts have failed.

The Bureau also expects to issue a final rule in early fall 2016, to create a comprehensive set of consumer protections for prepaid financial products, such as general purpose reloadable cards and other similar products, which are increasingly being used by consumers in place of traditional checking accounts or credit cards. The final rule will build off a proposal that the Bureau issued in November 2014, to bring prepaid products expressly within the ambit of Regulation E (which implements the Electronic Fund Transfer Act) as prepaid accounts and to create new provisions specific to such accounts. The proposal also included provisions to amend Regulation E and Regulation Z (which implements the Truth in Lending Act) to regulate prepaid accounts with overdraft services or certain other credit features.

The Bureau also expects to issue a final rule amending Regulation P, which implements the Gramm-Leach-Bliley Act (GLBA) in fall 2016. Congress recently amended the GLBA to provide an exception to the requirement for financial institutions to deliver annual privacy notices when certain conditions are met. On July 11, the Bureau published in the **Federal Register** proposed conforming amendments to Regulation P for consistency with the statutory amendment.

Building on Bureau research and other sources, the Bureau is also engaged in policy analysis and further research initiatives in preparation for a rulemaking on overdraft programs on checking accounts. The CFPB issued a white paper in June 2013, and a report in July 2014, based on supervisory data from several large banks that highlighted a number of possible consumer protection concerns, including how consumers opt in to overdraft coverage for ATM and one-time debit card transactions, overdraft coverage limits, transaction posting order practices, overdraft and insufficient funds fee structure, and involuntary account closures. The CFPB is continuing to engage in additional research, including qualitative

consumer testing initiatives relating to the opt-in process.

The Bureau is also engaged in rulemaking activities regarding debt collection practices. Debt collection continues to be the single largest source of complaints to the Federal Government of any industry. Building on the Bureau's November 2013, Advance Notice of Proposed Rulemaking, the Bureau released materials in July 2016, 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 small businesses that may be affected by the policy proposals under consideration. This SBREFA process focuses on companies that are considered "debt collectors" under the Fair Debt Collection Practices Act; the Bureau expects to convene a separate SBREFA proceeding focusing on companies that collect their own debts in 2017. The CFPB also continues to analyze the results of a survey to obtain information from consumers about their experiences with debt collection and plans to publish a report in the coming months.

The Bureau is also continuing rulemaking activities that will further establish the Bureau's nonbank supervisory authority by defining larger participants of certain markets for consumer financial products and services. Larger participants of such markets, as the Bureau defines by rule, are subject to the Bureau's supervisory authority. The Bureau expects that its next larger participant rulemaking will focus on the markets for consumer installment loans and vehicle title loans for purposes of supervision. 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 is also continuing to develop research on other critical markets to help implement statutory directives and to assess whether regulation of other consumer financial products and services may be warranted. For example, the Bureau is starting its work to implement section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity

Act to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau is focusing on outreach and research to develop its understanding of the players, products, and practices in business lending markets and of the potential ways to implement section 1071. The CFPB then expects to begin developing proposed regulations concerning the data to be collected and determining the appropriate procedures and privacy protections needed for information-gathering and public disclosure under this section.

### **Implementing Dodd-Frank Act Mortgage Protections**

The Bureau is also continuing efforts to implement critical consumer protections under the Dodd-Frank Act to 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 consumer protections for mortgage originations and servicing, integrate various federal mortgage disclosures, and amend mortgage reporting requirements for institutions covered under the Home Mortgage Disclosure Act. The Bureau engages in intensive implementation work for each new rule or rule change to facilitate understanding and implementation of rulemaking requirements, including follow-up rulemaking where warranted.

For example, the Bureau issued a Notice of Proposed Rulemaking in July 2016, to make clarifications and provide further regulatory guidance concerning its rule integrating several Federal mortgage disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. The integration and streamlining of the disclosures is mandated under the Dodd-Frank Act and the rule took effect in October 2015. The rule is the cornerstone of the Bureau's broader "Know Before You Owe" mortgage initiative.

In August 2016, the Bureau issued a final rule to amend various provisions of the mortgage servicing rules in Regulation X (which implements RESPA) and Regulation Z. Among other amendments, the final rule clarifies the applicability of certain provisions when

a borrower is in bankruptcy or has invoked cease communication rights under the Fair Debt Collection Practices Act (FDCPA), enhances loss mitigation requirements, and extends the protections of the mortgage servicing rules to confirmed successors in interest. The Bureau conducted consumer testing of certain disclosures on sample forms provided in the final rule.

Concurrently with the final rule, the Bureau also issued an interpretive rule under the FDCPA, relating to servicers' compliance with certain mortgage servicing provisions as amended by the final rule. Most provisions of the final rule and interpretive rule take effect 12 months after publication in the **Federal Register**. The provisions relating to bankruptcy periodic statements and successors in interest take effect 18 months after publication in the **Federal Register**. The Bureau will work to conduct outreach with industry to monitor and facilitate implementation of the final rule.

The Bureau is also working intensely to conduct outreach with industry and coordinate with other agencies to monitor and facilitate implementation of its rule to implement Dodd-Frank amendments to HMDA. The Bureau has already released a small entity compliance guide in connection with the rule, which was finalized in October 2015. Certain elements of the rule take effect in January 2017, and most new data collection requirements begin in January 2018. The Bureau is working to streamline and modernize HMDA data collection and reporting processes in conjunction with implementation.

### **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 herein. 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 2017, to reflect the results of this further prioritization and planning.

**Kelly Thompson Cochran,**

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

CONSUMER FINANCIAL PROTECTION BUREAU—PRERULE STAGE

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

CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
457 .....	Payday Loans and Deposit Advance Products .....	3170-AA40

CONSUMER FINANCIAL PROTECTION BUREAU—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
458 .....	The Expedited Funds Availability Act (Regulation CC) .....	3170-AA31

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Prerule Stage

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

*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 and maintained, including the number of the application and date the application was received; the type and purpose of 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 business lending markets and of the potential ways to implement section 1071. The CFPB then expects to begin developing proposed regulations concerning the data to be collected and determining the appropriate procedures and privacy protections needed for information-gathering and public disclosure under this section.

*Timetable:*

Action	Date	FR Cite
Prerule Activities	03/00/17	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Elena Grigera Babinecz, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.  
*RIN:* 3170-AA09

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Proposed Rule Stage

**457. Payday Loans and Deposit Advance Products**

*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 reborrowing and certain payment collection practices. The proposal would cover two categories of loans. First, the proposal generally would cover loans with a term of 45 days or less. Second, the proposal generally would cover loans with a term greater than 45 days, provided that they: (1) Have an all-in annual percentage rate greater than 36 percent; and (2) either are repaid directly from the consumer’s account or income or are secured by the consumer’s vehicle. For both categories of covered loans, the proposal 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 released a Notice of Proposed Rulemaking in June 2016, and is accepting comments on the proposal through October 7, 2016.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/22/16	81 FR 47864
RFI .....	07/22/16	81 FR 47781
NPRM Comment Period End.	10/07/16	
RFI Comment Period End.	11/07/16	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.  
*RIN:* 3170-AA40

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Final Rule Stage

**458. The Expedited Funds Availability Act (Regulation CC)**

*Legal Authority:* 12 U.S.C. 4001 *et seq.*  
*Abstract:* The Expedited Funds Availability Act (EFA Act), implemented by Regulation CC, governs availability of funds after a check deposit and check collection and return processes. Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFA Act to provide the CFPB with joint rulemaking

authority with the Board of Governors of the Federal Reserve System (Board) over certain consumer-related EFA Act provisions. The Board proposed amendments to Regulation CC in March 2011, to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return. The Board's proposal includes some provisions that are subject to the CFPB's joint rulemaking authority, including the period for funds availability and revising model form disclosures. In addition, in December 2013, the Board

proposed revised amendments to certain Regulation CC provisions that are not subject to the CFPB's authority and extended the comment period to May 2014. The CFPB will work with the Board to issue jointly a final rule that includes provisions within the CFPB's authority.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/25/11	76 FR 16862
NPRM Comment Period End.	06/03/11	

Action	Date	FR Cite
Final Rule .....	11/00/16	

*Regulatory Flexibility Analysis Required: Yes.*

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

*RIN:* 3170-AA31

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