

## CFPB, The Roadmap Forward - Part One

### *Part One: Jean Noonan, Frankly Speaking*

March 16, 2021 | L. Jean Noonan and Texas Dealer Staff

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*This article is the first of an exclusive three-part series interview with Jean Noonan, member of the CFPB Taskforce on Federal Consumer Law*

In January 2020, the Consumer Financial Protection Bureau (CFPB) appointed a Taskforce on Federal Consumer Law (Taskforce). The CFPB stated that the Taskforce was intended to provide recommendations on how to harmonize, modernize, and update federal consumer financial laws and regulations. The Taskforce members included Chair Todd Zywicki, Howard Beales, Thomas Durkin, William MacLeod, and L. Jean Noonan. On January 5, 2021, the Taskforce released a comprehensive report that includes 102 recommendations for improved financial protection program.

Texas Dealer had the opportunity to discuss the report with L. Jean Noonan. Jean Noonan is a partner at the law firm Hudson Cook. She advises clients on consumer financial services, fair lending, marketing, financial privacy, and consumer protection matters. She counsels financial institutions, automobile dealers, and others in complying with laws related to consumer credit, privacy, telemarketing, and unfair trade practices. She is a former executive with the Federal Trade Commission, where she directed the agency's enforcement of consumer financial services laws. She also served for a decade as the General Counsel of the Farm Credit Administration, an independent federal bank regulatory agency.

**Texas Dealer:** This is an impressive document that you and your other Taskforce members spent a year working on. But now that there's a new Administration, is it dead on arrival?

**Jean Noonan:** Absolutely not. We always knew that this project and our report was meant for the long term. We were told to assume at least a 20-year horizon, similar to the landmark report of the National Commission on Consumer Credit in 1972. Any Administration would find the report helpful. It includes 102 of our best recommendations for improved consumer financial protection. Any CFPB Director will find plenty of helpful recommendations, even if the Director does not agree with every

one of them.

**Texas Dealer:** What are some examples of recommendations that the Biden Administration might find particularly interesting?

**Jean Noonan:** Our report and recommendations follow three themes, which guided our work. The first is financial inclusion, which means ensuring that a range of financial products and services are available to all consumers on a fair and nondiscriminatory basis. This requires figuring out how to make financial services available to the unbanked and underbanked. It also means fighting illegal discrimination at its source.

The second principle is keeping a laser focus on preventing consumer harm. Although the Bureau recognizes that there are many stakeholders in its mission, none is more important than the American consumer. The Taskforce has many recommendations that I believe would make preventing consumer harm the centerpiece of the Bureau's activities, that all its many tools are brought to bear on avoiding and addressing consumer harm, including appropriate sanctions when law violations are found.

The final principle is regulatory modernization. New types of consumer financial products are appearing all the time, and many of them have been embraced by consumers and have appeared to increase consumer welfare. For example, I use an app to pay my housekeeper and the funds go directly from my bank account to hers. If I used my bank's online bill payment service, the bank would mail her a check, which would arrive several days later and which she would have to deposit. Her bank might then impose a hold on the funds while the check clears. It's not hard to see why she prefers the app, and so do I. But new products carry new potential risks for consumers, which need to be examined carefully and addressed. Finally, laws and regulations drafted decades ago are often hard to apply to new products that Congress and agencies could not have imagined years ago. This regulatory uncertainty can chill the development of new and useful products and create costly compliance risk.

**Texas Dealer:** Which recommendations do you think are most in line with the goals of the Biden Administration and the new CFPB leadership?

**Jean Noonan:** Promoting financial inclusion and preventing illegal discrimination would be at the top of my list. The Taskforce considered this a moral imperative. We have between 40 and 100 million unbanked or underbanked Americans, who are missing out on financial opportunities and security. I know that Commissioner Chopra at the FTC has a strong commitment to enforcing antidiscrimination laws, which I expect him to bring to his agenda if confirmed as Director of the CFPB.

Here are just a few of the Taskforce recommendations promoting equal access to credit and expanded financial inclusion:

- o Considering whether the ECOA should be expanded to prohibit discrimination on the basis of disability.
- o Encouraging auto dealers to adopt the NADA Fair Credit Program to ensure unlawful discrimination in credit pricing does not occur.

- o Setting a standard for applying disparate impact to ECOA cases.
- o Granting national charters or licenses to FinTech companies to facilitate low-cost and innovative financial services to consumers.
- o Expanding the reporting and consideration of alternative data.
- o Expanding the opportunity of credit unions to provide financial products in underserved communities, regardless of their common bond restrictions.
- o Expanding access to financial services to rural residents, immigrants, and formerly incarcerated persons.

The Taskforce also urged states to reconsider their usury laws, which often prevent auto dealers from providing credit to higher risk consumers.

I would expect the TF's recommendations regarding consumer harm to also be of great interest to the new Administration. I'll mention just three. First, measuring the accuracy of credit reports, building on the FTC's landmark study several years ago. Second, adopting a national preemptive law for data breaches that prioritizes disclosures in breaches that have the greatest risk of consumer harm. Third, granting the Bureau explicit authority to examine institutions for compliance with the Military Lending Act.

**Texas Dealer:** The cover of our March Texas Dealer magazines features our four past female presidents. While reviewing the report, I noticed that you were the only woman on the five-member Taskforce. Do you think your perspective as a woman helped this project?

**Jean Noonan:** There were many differences more significant than sex or gender. I was the only consumer financial protection practitioner. My principal work has been in consumer financial protection services and counseling providers on how to comply with these very complex laws. My colleagues are brilliant academics and researchers, and I found working with them to be one of the great professional experiences of my legal career. But when it came time to consider the struggles dealers and other financial services providers face with applying thousands of pages of consumer financial laws and regulations to their work in offering credit to consumers, we relied extensively on my practical experience in working with our clients on their regulatory compliance challenges, which were often outside the others' knowledge. For example, E-SIGN, a federal law designed to promote electronic commerce has now become an obstacle to it. My colleagues did not regularly advise clients on E-SIGN compliance and did not know just how cumbersome and antiquated it has become. I was able to bring many concerns to the table about modernization because I have spent a lot of time helping my clients comply with consumer financial laws.

I spent 14 years at the Federal Trade Commission prosecuting companies for not complying with the law. William MacLeod and Dr. Howard Beales both served as Director of the FTC's Bureau of Consumer Protection, and they did terrific work there and were strong and effective consumer advocates. But their responsibilities were much broader

than only consumer financial protection. Although they brought many valuable insights, I had more real-world experience with where laws worked well and where they do not because consumer financial practices has been a much bigger part of my career. I also imagine I was the only Democrat on the Taskforce.

In short, I suspect my work as a practicing lawyer focusing almost exclusively on financial services for 45 years, my extensive enforcement experience, my understanding of bank examination and the exposure many independent dealers have to CFPB supervision, and my good relationships with consumer advocates in this field all were more important than being a woman.

The Taskforce has been criticized because only one woman and no people of color served on it. And those might have been legitimate criticisms, except for the fact two offers were made to people who fit these categories but who ultimately declined positions on the Taskforce for various personal reasons. The Bureau was disappointed to not have those two on the Taskforce. I was always told it would be a taskforce of seven, but in the end, it was a taskforce of five. I think the public would have perceived the Taskforce more favorably had they known the Bureau's attempt to create a more widely diverse membership.

**Texas Dealer:** I understand you attended the University of Texas School of Law and Oklahoma State University. Which brings me to the question when the Cowboys play the Longhorns, who are you cheering on?

**Jean Noonan:** My Fellow Texans, forgive me, but I cheer for the Cowboys. I have been a Texas fan and some of my best friends still live in Austin. I normally cheer for the Longhorns, but when Oklahoma State plays Texas, I do cheer for Oklahoma State because my sister was a cheerleader there, and she and her friends have the best tailgates for home games.

**Texas Dealer:** The report states:

*"DOOR-TO-DOOR SALES In any contract for the sale of goods entered into outside the creditor's place of business and payable in more than four installments, the debtor should be able to cancel the transaction at any time prior to midnight of the third business day following the sale."*

As you are aware, door-to-door sales statutes were originally designed to combat shady door-to-door salesman and car dealers were excluded from the federal door to door rescission law. Today consumers are reaching out over the internet to car dealers from numerous states with various state statutes modeled after the federal law and some of those laws are less clear as to applicability. Would you care to share your view on the application of door-to-door statutes to internet sales?

Find out next month in Part Two of this series when Noonan provides the answer to this question and many more.

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