

Looking Ahead

January 1, 2016 | [Eric L. Johnson](#)

When the Consumer Financial Protection Bureau released its Fall 2015 Rulemaking Agenda in late November, I didn't have time to delve into it fully. With the December holidays a distant memory, Super Bowl 50 a thing of the past, lots of snow on the ground, and warm spring weather still months away, I decided now would be a good time to see what the CFPB might have in store for dealers and finance companies this year.

Arbitration. The CFPB has begun a rulemaking process to address its concerns related to the use of arbitration agreements. The Bureau is considering if it should propose rules that would prevent companies from using arbitration agreements that foreclose consumers' ability to bring class action lawsuits. It also is considering if it should propose rules requiring that arbitration filings and awards be submitted to the Bureau and posted online. A Small Business Regulatory Enforcement Fairness Act panel was convened on October 20, 2015, to review the arbitration proposals the CFPB is considering. The SBREFA panel's report will not become public until the Bureau issues its proposed rule, which may not occur until spring.

Debt collection. In November 2013, the CFPB issued an Advance Notice of Proposed Rulemaking concerning debt collection. In the Agenda, the CFPB stated that it is analyzing the results of a "groundbreaking nationwide survey related to consumers' experiences with debt collection." The Bureau also is engaged in "consumer testing to determine what information would be useful for consumers to have about debt collection and their debts and how that information should be provided to them." The Agenda estimates that further pre-rule activities, which may involve the convening of another SBREFA panel to consider any debt collection proposal, will occur this month.

Women-owned, minority-owned, and small business data collection. Dodd-Frank Act Section 1071 amended the Equal Credit Opportunity Act to require financial institutions, in connection with credit applications made by women-owned, minority-owned, and small businesses, to collect and maintain certain data, including the race, sex, and ethnicity of the principal owners of the business. However, the CFPB has previously stated that until a rule is promulgated, the requirement to collect the data would not be triggered. The CFPB is beginning to work on this project, building off a rule it released in the fall to revise a similar regime for reporting data about home mortgage lending. The Bureau also recently posted a job opening for an Assistant Director for Small Business Lending Markets, who will "lead an inter-disciplinary team in the Bureau's research and development of a landmark collection of data about loans to small, women-owned, and

minority-owned businesses." In the Agenda, the CFPB estimates a September 2016 date for pre-rule activities.

Consumer reporting. In the Agenda, the CFPB included consumer reporting in the list of potential initiatives beyond November 2016. The CFPB stated that it is monitoring the consumer reporting market through its supervisory, enforcement, and research efforts and will evaluate possible policy responses to the issues it identifies, including additional rules or amendments to existing rules. Some of the potential topics for consideration might include the accuracy of credit reports and the processes for resolving consumer disputes.

At the same time the CFPB was releasing its Agenda, the House of Representatives, by a vote of 332-96, passed H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act. The bill states that the CFPB's indirect auto finance guidance issued in March 2013 (Bulletin 2013-02) would have no force or effect. The bill also requires the CFPB, when proposing and issuing guidance related to indirect auto financing, to: (1) provide for a public notice and comment period; (2) make available to the public, including on the Bureau's website, all studies, data, methodologies, analyses, and other information it relied on; (3) consult with the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Justice; and (4) conduct a study on the costs and impacts of such guidance to consumers and women-owned, minority-owned, veteran-owned, and small businesses, including consumers and small businesses in rural areas.

It wasn't too shocking that The White House quickly issued a statement indicating that it strongly opposed passage of H.R. 1737. Nevertheless, the bill had bipartisan support, with 65 House Democrats listed as cosponsors of the bill and 88 voting in favor of the bill. The bill moved on to the Senate, where it hopes to find additional bipartisan support and passage.

So, as we continue to look forward to the goings-on involving the CFPB in 2016, I hope you are ready for a very busy year!

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