

Taskforce Member Orientation – Day Two & Three

January 30 – 31, 2020



Consumer Financial
Protection Bureau

Taskforce Member Orientation

TAB 1 – Agenda



Consumer Financial
Protection Bureau

TASKFORCE MEMBER ORIENTATION

Thursday, January 30, 2020

Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
Room B102

| TIME | AGENDA | LOCATION | SPEAKER |
|----------------------------|--|---|--|
| 9:30 a.m. - 10:00 a.m. | Overview of Data Access | 1700 G Street NW Washington, D.C. Room B102 | <i>Suzan Muslu, Data Governance Analyst, Office of the Chief Data Officer</i> <i>Ren Essene, Chief Data Officer, Office of the Chief Data Officer</i> |
| 10:00 a.m. – 10:15 a.m. | Consumer Response Overview | 1700 G Street NW Washington, D.C. B102 | <i>Chris Johnson, Assistant Director, Office of Consumer Response</i> <i>Darian Dorsey, Deputy Assistant Director, Office of Consumer Response</i> |
| 10:15 a.m. – 10:30 a.m. | Break | 1700 G Street NW Washington, D.C. Room B102 | |
| 10:30 a.m. – 11:30 a.m. | Research, Markets, and Regulations Overview | 1700 G Street NW Washington, D.C. Room B102 | <i>Dan Sokolov, Deputy Assistant Director, Office of Research, markets, and Regulations</i> <i>Jason Brown, Assistant Director, Office of Research</i> <i>John McNamara, Assistant Director, Consumer Lending, Reporting and Collections Markets, Office of Consumer Credit, Payments, and Deposit Markets</i> |

Sensitive/Predecisional/Not for External Distribution

| | | | |
|--------------|---|---|---|
| 11:30 a.m. – | Law and Policy Overview | 1700 G Street NW Washington, D.C. Room B102 | <i>Stephen Van Meter, Deputy General Counsel, Office of Law and Policy</i> |
| <hr/> | | | |
| 12:00 p.m. – | Lunch | | |
| 1:00 p.m. | | | |
| 1:00 p.m. – | Historical Overview of the National Commission of Consumer Finance | 1700 G Street NW Washington, D.C. Room B102 | <i>Dr. Thomas Durkin, Taskforce Member Todd Zywicki, Taskforce Chair</i> |
| 1:15 p.m. – | Taskforce Governance | 1700 G Street NW Washington, D.C. Room B102 | <i>Matt Cameron, Staff Director, Office of Advisory Board and Councils Nathaniel Weber, Chief of Staff, Office of Advisory Board and Councils</i> |
| 1:45 p.m. – | Planning Kick-Off | 1700 G Street NW Washington, D.C. Room B102 | <i>Matt Cameron, Staff Director, Office of Advisory Board and Councils Nathaniel Weber, Chief of Staff, Office of Advisory Board and Councils</i> |
| 4:30 p.m. | <ul style="list-style-type: none">• Review Constraints• Begin Scoping• Begin Formulating Timeline | | <i>Kimberley Medrano, Program Analyst, Office of Advisory Board and Councils</i> |
| 4:30 p.m. | Day Two Orientation Concluded | 1700 G Street NW Washington, D.C. Room B102 | |
| <hr/> | | | |

Friday, January 31, 2020

Consumer Financial Protection Bureau

1700 G Street NW

Washington, D.C. 20552

Room B102

Conference Line:

(866) 836-5298

Leader Code: **Redacted**

Participant Code: **Redacted**

| TIME | AGENDA | LOCATION | SPEAKER |
|---------------------------|--|---|---|
| 9:30 a.m. - 12:00 p.m. | Continue Taskforce Planning and Visioning Tactical Planning <ul style="list-style-type: none">• Establish Meeting Cadence• Establish Key Milestone Dates• Identify key topics for analysis and tentative allocation of responsibilities among Task Force Members | 1700 G Street NW Washington, D.C. Room B102 | <i>Matt Cameron, Staff Director, Office of Advisory Board and Councils</i> <i>Nathaniel Weber, Chief of Staff, Office of Advisory Board and Councils</i> <i>Kimberley Medrano, Program Analyst, Office of Advisory Board and Councils</i> |
| 12:00 p.m. | Lunch | 1700 G Street NW | |
| 1:00 p.m. | | Washington, D.C. B102 | |
| 1:00 p.m. – 4:00 p.m. | What's Available and What's Needed <ul style="list-style-type: none">• What resources/studies/information should the team acquire prior to the next meeting Action Items <ul style="list-style-type: none">• Public engagement work; Report drafting template; roadmap | 1700 G Street NW Washington, D.C. Room B102 | <i>Matt Cameron, Staff Director, Office of Advisory Board and Councils</i> <i>Nathaniel Weber, Chief of Staff, Office of Advisory Board and Councils</i> <i>Kimberley Medrano, Program Analyst, Office of Advisory Board and Councils</i> |
| 4:00 p.m. | Orientation concluded | 1700 G Street NW Washington, D.C. Room B102 | |

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Taskforce Member Orientation

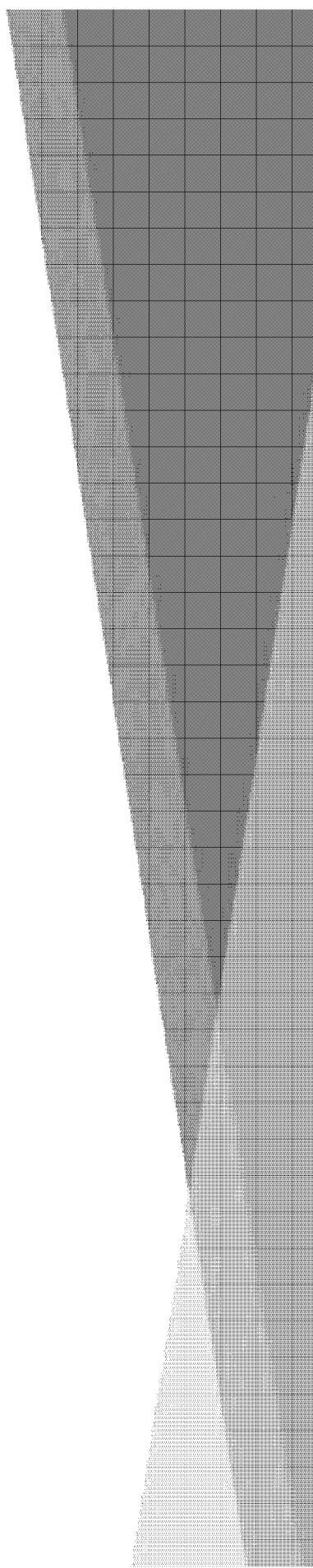
TAB 2 – Data Access



Consumer Financial
Protection Bureau

Accessing and Using Data at the Bureau

Taskforce Orientation | January 2020



Office of the Chief Data Officer

The Office of the Chief Data Officer (OCDO) leads the Bureau's data strategy and is responsible for developing policies and guidance to facilitate compliance and effectively manage the use, sharing and protection of Bureau data assets across the data lifecycle. The OCDO also leads the Bureau's implementation of the Federal Data Strategy and statutory requirements of the Evidence Act to facilitate data-driven decision making and ensure that the data needs of the Bureau are met.

OCDO Teams

1. **Data Policy and Governance**
 - Leads the development of enterprise data policies; supports data-related policymaking; manages the Bureau's data governance bodies; and facilitates compliance across the data management lifecycle.
2. **Freedom of Information Act**
 - Ensures compliance with the Freedom of Information Act (FOIA) and the Privacy Act of 1974 while providing timely access to CFPB records.
3. **Paperwork Reduction Act**
 - Ensures efficient and effective implementation of the Paperwork Reduction Act (PRA) at the Bureau by managing PRA compliance risks, by ensuring the integration of PRA requirements into the business operations of the Bureau, by ensuring public engagement in the Bureau's information collection activities, and by conducting an independent review of information collection requests.
4. **Privacy**
 - Ensures that consumers' and others' PII held by the Bureau are appropriately protected through adherence to the Privacy Act of 1974, the E-Government Act of 2002, Office of Management and Budget (OMB) privacy related memoranda and privacy related circulars, legal obligations, and best practices.
5. **Records and Information Management**
 - Provides information, guidance, and support in managing and safeguarding the Bureau records and Controlled Unclassified Information in accordance with Federal regulations, the National Archives and Records Administration (NARA) policies and best practices, and Bureau policies and procedures.



DRAFT

Policy on Information Governance

- The Bureau's Policy on Information Governance defines data as all information received, created, stored, or disclosed by the Bureau or by a third party on behalf of the Bureau, regardless of format.

Data Examples

- Surveys
- User tests
- Data from financial institutions
- Information embedded in some third-party software or tools
- Consumer interviews or focus groups

Information Formats

- Structured databases
- Unstructured files
- Text / narratives
- Physical documents
- Media
- Audio or video media

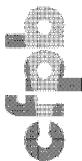
- All data and information are subject to the Policy on Information Governance unless otherwise noted. Subsets, extracts, aggregations, or other transformations of information are themselves subject to the policy.



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Information collection guiding principles

1. **Ensure proper authority** – any information received by the Bureau must be acquired under authorities established in the Dodd-Frank Act and/or other applicable law.
2. **Adhere to applicable law** – the Bureau must at all times comply with existing law governing the intake and use of information.
3. **Demonstrate due diligence** – the Bureau should assess the reliability of the data source before requesting or receiving information.
4. **Avoid undue burden** – the Bureau should seek to ensure that it does not place unnecessary burdens (technical, financial, etc.) on external parties in the course of requesting or receiving information.
5. **Validate reasonableness** – the Bureau should request or receive only information that is reasonably necessary to fulfill the Bureau's responsibilities, and that has value in light of any risks of that collection to the consumers or entities to whom the information relates. Care should be taken to ensure that the volume and specific data elements requested are reasonable, in light of the purposes that will be served.
6. **Avoid redundancy** – the Bureau should, wherever reasonably possible, avoid requesting or receiving information (either through the same source or from different sources) that is duplicative.
7. **Align with bureau goals & objectives** – any decision to receive information should align with the Bureau's purpose, objectives, and functions; its strategic goals; its responsibility to protect the privacy or confidentiality of consumers' and financial institutions' proprietary, personal, or confidential information; and its responsibility to maintain the public trust.
8. **Standardization** – whenever reasonably possible, information should be brought on board with formats, field names, and definitions consistent with preexisting usage and standards that have been set across the Bureau.



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Requesting data access

- You can request access to data by submitting a ticket through:
<https://ops.data.cfpb.local/newticket>



The screenshot shows the CFPB SharePoint 'Sites' page. On the left, there's a navigation bar with options like 'EDIT', 'Save', 'Close', 'Clipboard', 'Recent', and links to 'Data Ops Ticket Tracker', 'BI Team', 'Tableau Visualization Gallery', 'DSci DataConnection', 'DSA WikiTest', 'DSA Misc', 'Prepaid Institutions', 'Prepaid Incident Tracker', 'TCCP Institution List - January 2020', and 'Enterprise Data Team'. The main content area features the CFPB logo and the title 'Data Ops Ticket Request Form'. It includes fields for 'Attachments' (with a placeholder 'Click here to attach a file'), 'Requester Name' (with a placeholder 'Required *'), 'Supervisor Name' (with a note 'If this is an access request, the supervisor field must be filled out.'), 'Description' (a large text area), and a 'Submit' button.



Consumer Financial
Protection Bureau

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Industry and markets

Sources and uses of data at the Bureau of Consumer Financial Protection

SEP 26, 2018

The Dodd-Frank Act states that the Bureau "shall seek 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 [those markets] are fair, transparent, and competitive." Data informs this work to a great extent.

To fulfill its statutory functions and obligations, the Bureau obtains data to inform its decisions. These activities include:

- Writing rules, supervising companies, and enforcing the law
- Taking consumer complaints
- Providing financial education
- Researching the consumer experience of using financial products
- Monitoring financial markets for new risks to consumers

This report describes the Bureau's data governance program as well as what data the Bureau collects, where the data come from, how data are used, and how data are reused within the Bureau.

On June 27, 2019, the Bureau published a supplement that includes information on voluntarily-provided consumer data assets and the third-party costs associated with the purchase and/or collection of information.

SOURCES AND USES OF DATA

[Read the full report](#) 

[Read the full supplement](#) 

[Data governance policies, charters, and data sharing procedures](#) 

[List of Bureau MOUs](#) 

Sources and Uses of Data at the Bureau of Consumer Financial Protection



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1. Introduction

The Bureau of Consumer Financial Protection (Bureau) was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act states that the Bureau “shall seek 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 [those markets] are fair, transparent, and competitive.”¹ Data informs this work to a great extent.

Outside of the Bureau’s Operations Division, three Divisions of the Bureau conduct most of the Bureau’s data-driven work: the Division of Supervision, Enforcement and Fair Lending (SEFL) is responsible for conducting supervisory, enforcement and fair lending activities; the Division of Research, Markets, and Regulations (RMR) is responsible for conducting research and monitoring the consumer financial products and services markets as well as developing, implementing, and assessing regulations; and the Division of Consumer Education and Engagement (CEE) is responsible for providing financial education to consumers and collecting, monitoring, and responding to consumer complaints regarding consumer financial products or services.

To fulfill its statutory functions and obligations, the Bureau obtains data to inform its decisions. These activities include:

- Writing rules, supervising companies, and enforcing the law
- Taking consumer complaints
- Providing financial education
- Researching the consumer experience of using financial products, and
- Monitoring financial markets for new risks to consumers

The Bureau has data governance processes for each stage of the data lifecycle, including intake, management, publication, and disposition of data. This report describes those processes as well as what data the Bureau collects, where data come from, how data are used, and how data are

¹ 12 U.S.C. § 5511.

accessed and “reused” within the Bureau.² Appendix A provides copies of the governance documents, Appendix B lists the Bureau’s data assets subject to the limitations described below, and Appendix C lists the Bureau’s Memoranda of Understanding with other governmental and quasi-governmental agencies that address the sharing of data.³ The Bureau intends to supplement this report with the text of its MOUs subject to obtaining the necessary approval of affected state and federal agencies.

Appendix B does not cover Bureau data collections from consumers on a voluntary basis through focus groups, one-on-one interviews, user testing or small-scale informal surveys, except where such data collection took place in the context of developing disclosures in a rulemaking or potential rulemaking context. The Bureau is compiling information with respect to the data collections excluded from this report and will supplement the report by adding it to Appendix B. The Bureau also is compiling and will add to Appendix B information on the third-party costs associated with the purchase and/or collection of information by or on behalf of the Bureau to the extent possible.

2. Data governance at the Bureau

Today, data intake, management, and publication are governed by the Bureau’s Policy on Information Governance and related directives and operational charters, as part of the Bureau’s data governance program.⁴ The Bureau’s Chief Information Officer (CIO)⁵ has delegated responsibility for this program to the Chief Data Officer (CDO), who generally oversees the Bureau’s data management. In this capacity, the CDO makes decisions regarding intake, management, disclosure, and disposition of Bureau data. The CDO reports to the Bureau’s CIO.

The CDO’s Office includes a Data Policy team that develops policies, standards, and guidance to help the Bureau manage its data assets throughout the data lifecycle. This team leads the

² This report does not address administrative data related to the Bureau’s operation, such as the Bureau’s own employment data or financial data.

³ This report uses the term “data asset” in recognition of the fact that what is sometimes colloquially referred to as a “dataset” is, in fact, multiple, related datasets.

⁴ See Appendix A for copies of the policy, standards, and data governance body charters.

⁵ The Bureau’s Director delegated to the CIO the authority to operate the Bureau’s information governance programs.

Bureau's data governance program, managing how Bureau employees collect, use, access, and disclose data. The Bureau has established several internal advisory bodies to review general data governance issues as well as specific data intakes and public disclosures of data, as described below.

The Bureau has data governance policies in place that govern how information and data are: brought into the Bureau; shared internally across Divisions; released to the public; securely stored, classified, and used; and ultimately disposed. In addition, some data collection authorities related to the day-to-day activities are delegated to specific divisions or offices, as noted below.

2.1 Bureau data governance policies

The CIO signed the Bureau's Policy on Information Governance in June 2014. It establishes the overall framework for the Bureau's data governance program. This policy sets in place guidelines that:

- Address what information the Bureau can and should take in, and how that information intake shall occur in order to ensure compliance with applicable laws, contractual obligations, and Bureau policy requirements.
- Set forth standards for assigning a sensitivity level that may afford additional guidelines and policies on its access, use, and overall management.
- Ensure information is adequately secured and responsibly used in accordance with applicable laws, contractual obligations, and Bureau policy requirements.
- Set forth standards for what information can and should be disclosed by the Bureau and its program offices, subject matter experts, and data owners, either to the general public or to other government entities.
- Describe the rules, roles, and responsibilities related to the retention, archiving, and destruction of electronic and physical information and related assets.

The Policy on Information Governance establishes the Bureau's Data Governance Board (DGB). It also describes how information governance oversight responsibilities may be delegated and outlines how the Bureau will take in, manage, and disclose information.

2.2 Bureau data governance bodies

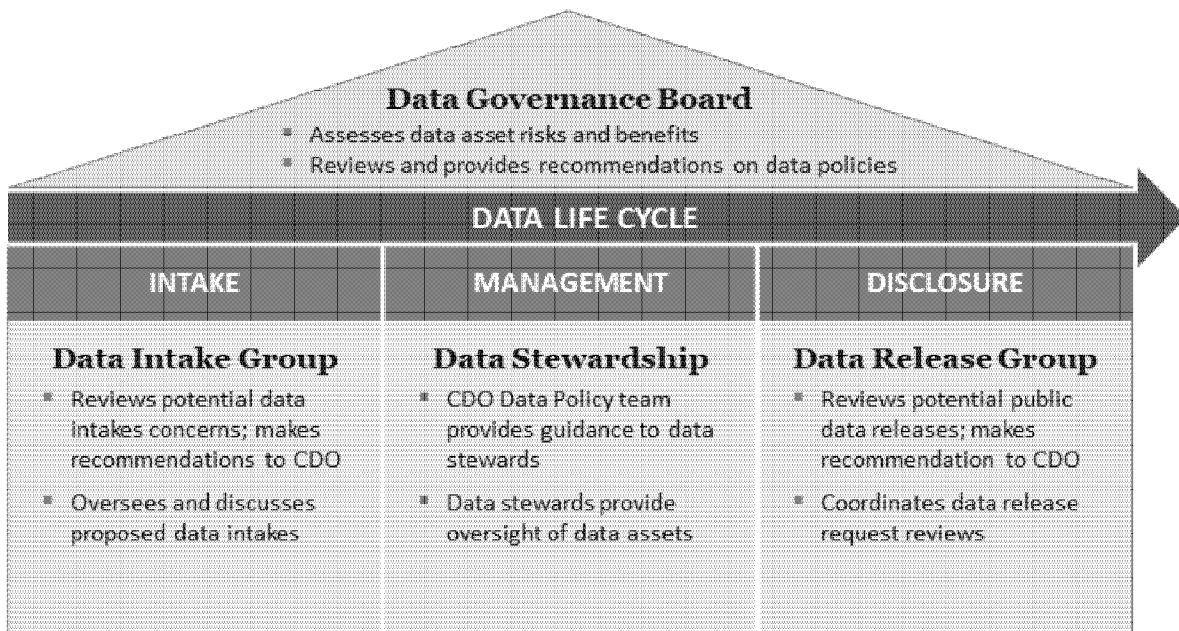
The Bureau manages its data through a centralized data governance program. In 2011, the Bureau stood up the Data Coordination Council (DCC) — chaired by the CIO with representation from every office in which data played an important role.⁶ A predecessor to the current Data Governance Board (DGB), the DCC served three primary objectives: 1) Coordinate internal data projects and policies; 2) Coordinate external data acquisition and sharing; and 3) Coordinate analytical resources. Subsequently, it was replaced by other data governance bodies, described below.

As the Bureau has grown, it has refined, documented, and improved its practices in response to changing technological and operational demands. This report is intended to describe the Bureau's current data practices.

The Bureau currently has chartered several internal bodies that work in coordination with each other as part of the data governance program to review the Bureau's data practices, review data intake and reuse requests, make recommendations regarding potential data disclosures to the public, and otherwise govern data.⁷ The diagram below illustrates their functions in the data lifecycle:

⁶ Participants included the Data Team, Data Librarian, RMR, Consumer Response, Enforcement, Supervision, Consumer Engagement, Front Office, Privacy, Records, Office of the General Counsel (now named the Legal Division), and Procurement.

⁷ See Appendix A for Policy on Information Governance and internal body charters.



2.2.1 Data Governance Board

The Bureau chartered the DGB in 2014 to replace the DCC as an advisory body on data policy. It advises the CDO on decisions regarding data intake, management, disclosure, and disposition, in accordance with Bureau policies.⁸ It also advises on creating and revising Bureau policies and procedures related to data. It is chaired by the CDO, and its members are senior staff, with cross-Bureau representatives including representatives from the CDO Data Policy team, Privacy team, Cybersecurity team, Office of Consumer Response, CEE, SEFL, RMR, Legal Division, External Affairs Division, Office of the Director, and the Operations Division Front Office.⁹

The DGB reviews data governance standards and directives and other Bureau data governance bodies' charters.¹⁰ The DGB ensures that the policies stay current with the Bureau's data needs and the rapidly evolving data security environment.

⁸ See Appendix A, at A4.

⁹ *Id.* at A4, section II(A).

¹⁰ *Id.* at A4, section IV.

The Bureau reviews data governance policies at least every five to seven years¹¹ and updates those policies as needed. For example, the Bureau is redrafting the sensitivity-leveling standard in 2018 to be more user-friendly and to align with the new government-wide guidance on Confidential Unclassified Information pursuant to Executive Order 13556.¹²

2.2.2 Data Intake Group

The Policy on Information Governance directs that the decision to acquire information be governed by eight guiding principles. The Bureau should: (1) ensure proper authority; (2) adhere to applicable law; (3) demonstrate due diligence; (4) avoid undue burden; (5) validate the reasonableness of an intake; (6) avoid redundancy; (7) align intakes with Bureau goals and objectives; and (8) standardize intakes where reasonably possible.¹³

The CIO formed the Bureau’s Data Intake Group (DIG) to coordinate and review potential data intakes in accordance with the Policy on Information Governance, and to advise the CIO on related issues. The CIO established the DIG in October 2012 and signed a written charter in 2015. It is an operational committee that is coordinated by a representative of the Data Policy team, known as the DIG Coordinator, and the committee is comprised of staff-level technical experts representing the Bureau’s Cybersecurity Office, Paperwork Reduction Act (PRA) Office, Records Office, Freedom of Information Act Office, Privacy Office, and the Legal Division.¹⁴ For data intake requests that require the CDO’s approval, the DIG members provide recommendations before the CDO approves or denies the request.

The CIO has determined that certain public data and certain low-sensitivity non-public data, such as subscription-based website content, do not warrant review and approval by the CIO or his designee. Accordingly, the CIO has established exceptions to the general rule requiring approval before any data are stored on a Bureau computer or network. These exceptions are included in Appendix A.¹⁵

Additionally, where routine data intakes are a normal part of the Bureau’s work, the CDO has granted the relevant operational office or division delegated authorities for these intakes within

¹¹ See Bureau of Consumer Fin. Prot., *Official Document Development and Approval*, at table 14: T&I Official Document Minimum Review and Timelines (Off. of Tech. & Innovation, Guideline TI-G-10-001, 2018).

¹² Exec. Order No. 13556, 3 C.F.R. part 2002 (2010).

¹³ See Appendix A, at A1, section II(A).

¹⁴ See Appendix A, at A5, section IIA(A).

¹⁵ See Appendix A, at A2, A3.

the Bureau’s governance framework. For example, it delegated data governance responsibilities for consumer complaints to Consumer Response and delegated data governance responsibilities for data specific to supervisory and enforcement activities to Supervision and Enforcement, respectively.¹⁶ Each such office submits an annual report to the CDO and the DGB that describes the major data-related decisions and activities completed under the delegated authority. The CDO and DGB review the annual reports and information provided by each delegated authority to determine whether that delegation should be continued as drafted, amended, or rescinded.¹⁷

The Bureau generally obtains data, consistent with its authorities, from five main sources: public sources, government agencies, commercial vendors, financial institutions (FIs), and consumers.¹⁸ As governed by the Policy on Information Governance, DIG charter, and DIG procedures — except as noted above — the DIG generally reviews proposed intakes of data for intended use, intended access, and compliance with applicable law and regulations and Bureau policies, including privacy and data security requirements.

The Bureau obtains many data assets for a single purpose involving a single office or division, such as a usability study pertaining to the Bureau’s website or a supervisory examination of a FI. Data intakes can also be intended for multiple uses, such as Call Reports,¹⁹ noted in the Core Data Assets section, or for one purpose that involves the participation of several Bureau offices, such as research pertaining to financial education. The Bureau is in the process of centralizing through the DIG the process of reviewing requests by one part of the Bureau to use information that was brought in for a different purpose (referred to here as “reuse”). The preexisting policy and practice regarding reuse is discussed in the Data Reuse section of this report.

As detailed in the Policy on Information Governance, specific rules govern how the Bureau shares information internally across business areas based on the sensitivity level of the information and the authority under which the information was received. Before the Bureau

¹⁶ When this report refers to an office within the Bureau, the office name is capitalized without the preface “office of.” Divisions, which are comprised of multiple offices, are referred to by their acronyms which are set forth in the introduction.

¹⁷ See Appendix A, at A1 section IV.

¹⁸ There is a very small miscellaneous category – referred to in Appendix B as “other” – which mostly includes data intakes from non-profit research organizations.

¹⁹ Call Reports, also called Consolidated Reports of Condition and Income, are reports of condition and income that each national bank, state member bank, insured state nonmember bank, and savings association must file with the FDIC every quarter. Specific reporting requirements depend on the size and type of institution, but information included in the Call Reports generally pertains to the institution’s income, investments, assets, liabilities, etc. See FFIEC, *Report Forms*, https://www.ffiec.gov/ffiec_report_forms.htm (last visited July 24, 2018).

adopted this policy in 2014, individual offices or divisions within the Bureau developed protocols for sharing data with other offices or divisions. See Section below, *Data collected for supervision or enforcement used for research, monitoring, assessments or rulemaking*.

The Bureau’s Records Management Office has primary responsibility for developing and implementing the Bureau’s record management program, including records retention schedules, in accordance with applicable laws, as described in the Information Governance Policy.²⁰ The rules around identification, classification and scheduling of official records are defined by the Bureau’s Records Management Office.²¹ The DIG includes a member of the Records Office to advise on retention (archival and disposal) requirements for records and non-records at the time of information intake or creation. Annually, the Records Officer notifies the DIG of eligible data assets for potential removal and destruction. The DIG evaluates the eligible data asset and makes a recommendation to the CDO as to whether the data should be removed or the retention period extended for one year based on a written justification. Once the CDO makes a determination, the data catalog is updated to reflect the new retention period. Where information is governed by a legal agreement, these legal agreements may provide additional disposition requirements.

2.2.3 Data Release Group

The CDO chartered the Bureau’s Data Release Group (DRG) in 2017 as an operational body comprised of staff-level technical experts. Members include representatives from the CDO’s Data Policy team, Office of Research, Privacy team, Legal Division, and the Division of External Affairs (EA). If an office or division seeks to release a Bureau data asset, the DRG works to review and refine the proposed releases. The DRG has recommended the CDO approve five proposed data disclosures since 2016.

2.3 Data security and privacy

The Bureau’s Privacy Policy establishes the Bureau’s privacy principles,²² including safeguarding the data it acquires, acquiring only the information it needs to execute each task, and

²⁰ See Appendix A, at A1, section V.

²¹ These rules are set forth in the Bureau’s *Agency File Code Policy*, and are consistent with federal law and National Archives and Records Administration (NARA) directives.

²² See Bureau of Consumer Fin. Prot., *Privacy Policy*, <https://www.consumerfinance.gov/privacy/privacy-policy/> (last visited July 30, 2018).

minimizing intake of direct personal identifiers or personally identifiable information (PII).²³ Where direct personal identifiers are necessary to perform Bureau work, such as responding to and monitoring consumer complaints, conducting enforcement investigations and litigation, or conducting supervisory activities, the Privacy Policy provides that access to the data assets that contain identifiers is to be limited to staff for whom access is relevant to their assigned duties.

The Bureau issues publicly available System of Records Notices (SORNs) pursuant to the Privacy Act of 1974. The SORNs describe personal information that the Bureau receives, why the Bureau receives such information, how the Bureau uses the information, and why and how the information may be shared. As shown in the table below, the Bureau has issued 26 SORNs, two of which have been rescinded.²⁴ Although individual consumers are not identified in most Bureau data, where applicable, individuals can submit requests to the Bureau under the Privacy Act to access, correct, or amend information that the Bureau may have about them.

TABLE 1: BUREAU SYSTEM OF RECORDS NOTICES

| SORN name | SORN number |
|--|-------------|
| Freedom of Information Act/Privacy Act System | CFPB.001 |
| Deppository Institution Supervision Database | CFPB.002 |
| Non-Deppository Institution Supervision Database | CFPB.003 |
| Enforcement Database | CFPB.004 |
| Consumer Response System | CFPB.005 |
| Social Networks and Citizen Engagement | CFPB.006 |
| Directory Database | CFPB.007 |
| Transit Subsidy | CFPB.008 |
| Employee Administrative Records | CFPB.009 |
| Ombudsman System | CFPB.010 |

²³ PII includes not only direct personal identifiers such as Social Security number, name, and email address but also includes any other information that, when combined with other data, could facilitate re-identification such as zip code, date of birth (MM/YY), and gender. See Office of Management & Budget, Circular No. A-130, *Managing Information as a Strategic Resource*, at Appendix II, (July 28, 2016).

²⁴ Bureau of Consumer Fin. Prot., *System of Records Notices (SORNS)*, <https://www.consumerfinance.gov/privacy/system-records-notices/> (last visited Aug. 27, 2018). Two notices were rescinded because they were not legally required, as explained in the applicable notices of rescindment. See *id.*

| SORN name | SORN number |
|--|--------------------|
| Correspondence Tracking Database | CFPB.011 |
| Interstate Land Sales Registration Files (ILS) (Rescinded) | CFPB.012 |
| External Contact Database | CFPB.013 |
| Direct Registration and User Management System (DRUMS) | CFPB.014 |
| Ethics Program Records | CFPB.015 |
| CFPB Advisory Boards and Committees | CFPB.016 |
| Small Business Review Panels and Cost of Credit Consultations | CFPB.017 |
| CFPB Litigation Files | CFPB.018 |
| Nationwide Mortgage Licensing System & Registry (NMLS) | CFPB.019 |
| Site Badge and Visitor Management System | CFPB.020 |
| Consumer Education and Engagement Records | CFPB.021 |
| Market and Consumer Research Records | CFPB.022 |
| Prize Competitions Program Records | CFPB.023 |
| Judicial and Administrative Filings Collection (Rescinded) | CFPB.024 |
| Civil Penalty Fund and Bureau-Administered Redress Program Records | CFPB.025 |
| Biographies | CFPB.026 |

The Bureau also publishes Privacy Impact Assessments (PIAs) that describe the Bureau's practices related to collection of PII.²⁵ The Bureau has published 30 PIAs.

TABLE 2: BUREAU PRIVACY IMPACT ASSESSMENTS

| PIA name |
|----------------------|
| Geocoder Service PIA |
| Social Media PIA |

²⁵ See Bureau of Consumer Fin. Prot., *Privacy Impact Assessments (PIAs)*, <https://www.consumerfinance.gov/privacy/privacy-impact-assessments/> (last visited Aug. 23, 2018).

| PIA name |
|---|
| Freedom of Information Act/Privacy Act System. |
| Scheduling and Examination System (SES) PIA (November 2012 update.) |
| Litigation and Investigation Support Toolset (LIST) PIA. |
| Matters Management System (MMS) PIA. (October 2012 update.) |
| Consumer Response PIA. |
| Consumerfinance.gov PIA. |
| Directory Database System PIA. |
| CFPB Business Intelligence Tool. |
| Nationwide Mortgage Licensing System & Registry PIA. |
| HUD Counselor Tool PIA. |
| Civil Penalty Fund PIA. |
| Market Analysis of Administrative Data Under Research Authorities PIA. |
| Republication of the Home Mortgage Disclosure Act Public Use Dataset PIA. |
| Consumer Experience Research PIA. |
| Certain Supervision, Enforcement, and Fair Lending Data used for Market Research. |
| Consumer Education PIA. |
| Extranet PIA. |
| Industry, Expert, and Community Input and Engagement PIA. |
| Market Research in the Field. |
| Cloud 2 General Support System. |
| EEO Database System – iComplaints. |
| Infrastructure General Support System |
| Compliance Tool PIA. |
| Publication of Consumer Response Complaint Narratives. |
| Supervision, Enforcement, and Fair Lending Data PIA. |
| Labor and Employee Relations System PIA. |

| PIA name |
|---|
| Home Mortgage Disclosure Act Platform PIA. |
| Home Mortgage Disclosure Act Data Collection PIA. |

The Policy on Information Governance sets forth the principles governing who may be granted access to what data, based on the sensitivity level of the data and the user's assigned duties. The Bureau manages access to data at the level of each individual data asset for all network users, including contractors. In addition, all users are subject to the same training requirements and background checks. The Bureau grants access to information consistent with the information's sensitivity level (as outlined in the Bureau's *Information Sensitivity Leveling Standard*), the authority under which the Bureau collected the information, the Bureau's information sharing standards, cybersecurity policies and procedures, and applicable law or contractual obligations. The Bureau's Office of Cybersecurity uses the NIST Risk Management Framework²⁶ to prioritize data according to its sensitivity. The same office continuously monitors systems for indications of a potential system compromise, and routinely identifies and blocks a number of potential exploit attempts. To date, the Bureau is not aware of any attacks from outsiders that resulted in third parties gaining access to non-public data without appropriate authorization. The Bureau also has not experienced a "major incident" as that term is defined by OMB and FISMA.²⁷

OMB defines "breach" broadly to include instances in which a person other than an authorized user accesses or potentially accesses PII.²⁸ The Bureau has experienced 371 such breaches through June 2018. More than half of the Bureau's discrete breaches of PII occurred in connection with the Bureau's consumer response function, through which the Bureau has handled more than 1.5 million complaints. Those confirmed breaches generally occurred in one of three ways:

²⁶ NIST, *Risk Management*, [https://csrc.nist.gov/projects/risk-management/risk-management-framework-\(RMF\)-Overview](https://csrc.nist.gov/projects/risk-management/risk-management-framework-(RMF)-Overview), (last visited Sept. 4, 2018).

²⁷ Memorandum for the Heads of Exec. Dep'ts and Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget, M-18-02, (Oct. 16, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-18-02%20%28final%29.pdf>; 44 U.S.C. § 3551 *et seq.*

²⁸ Memorandum for the Heads of Exec. Dep'ts and Agencies from Shaun Donovan, Director, Office of Mgmt. & Budget, M-17-12, (Jan. 3, 2017), available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-12_o.pdf (regarding Preparing for and Responding to a Breach of Personally Identifiable Information).

1. The Bureau fails to follow internal processes and provides an update to a consumer about his or her complaint prior to receiving three pieces of information that would validate the consumer's identity;
2. The Bureau attaches an incorrect document to a consumer's complaint; or
3. The Bureau sends an unencrypted email to the wrong consumer.

The breaches that occurred outside of the consumer response function typically were instances when a Bureau employee sent an email including PII to the wrong individual, either inside or outside the Bureau.

Almost all breaches (approximately 90 percent) involved one or more of the following data elements: first name, last name, email address, phone number, or account number. For almost all of these breaches, the number of individuals potentially impacted by each breach is most likely one. This means that those breaches each involve separate pieces of information and no multiple data lapses occurred for any breach.

It is also important to note that, as stated above, the Bureau uses the broad definition of PII promulgated by OMB when referring to confirmed breaches (meaning that PII encompasses any information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual).

2.4 External auditing

The Bureau's data governance, privacy programs, and information security have been subject to a number of recent audits or other third-party analyses that are relevant to this report.

2.4.1 U.S. Government Accountability Office

The U.S. Government Accountability Office (GAO) audited the Bureau's information and data practices, and published a report on its review on September 22, 2014.²⁹ The GAO audit stated that the "CFPB has taken steps to protect the privacy of consumers and comply with requirements, restrictions, and recommended practices in the Dodd-Frank Act, [PRA], Privacy Act, E-Government Act, and NIST guidelines." The GAO's report contained 11 recommendations for the Bureau, focused primarily on formalizing and documenting existing

²⁹ See Gov't Accountability Off., GAO-14-758, Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced, (Sept. 22, 2014), available at <https://www.gao.gov/assets/670/666000.pdf>.

privacy and security practices.³⁰ The GAO “closed” each recommendation by April 17, 2017, meaning that the GAO determined that the Bureau took actions that satisfy the intent of its recommendation, as described below and reflected on the GAO’s website.³¹ To help ensure consistent implementation of its current processes and practices, the GAO recommended that the Director of the Bureau should “...establish or enhance written procedures including...”

1. The data intake process, including reviews of proposed data collections for compliance with applicable legal requirements and restrictions and documentation requirements about PRA applicability and OMB review under the PRA;
2. Anonymizing data, including how staff should assess data sensitivity, which steps to take to anonymize data fields, and responsibilities for reviews of anonymized data collections;
3. Assessing and managing privacy risks, including documentation requirements to support statements about potential privacy risks in PIAs and for determinations that PIAs are not required;
4. Monitoring and auditing privacy controls; and
5. Documenting information security risk-assessment results consistently and comprehensively to include all NIST-recommended elements.

These recommendations were resolved by documenting the existing processes and practices in written policies and procedures.

To enhance the protection of collected consumer financial data, the GAO also recommended that the Director of the Bureau should fully implement the following five privacy and security steps:

1. Develop a comprehensive written privacy plan that brings together the existing privacy policies and guidance;
2. Obtain periodic reviews of the privacy program’s practices as part of the independent audit of Bureau’s operations and budget;
3. Develop, implement, and provide role-based privacy training;

³⁰ *Id.* at 65-66.

³¹ See *id.* at “Recommendations” tab.

4. Update remedial plans for the information system that maintains consumer financial data and related components to include all identified weaknesses and realistic scheduled completion dates that reflect current priorities and available resources; and
5. Include an evaluation of the plans related to priorities and resources. Evaluate compliance with contract provisions relating to information security in the Bureau's review of the for service provider that processes consumer providers of financial data for the Bureau.

These recommendations were resolved by:

- a. Creating a comprehensive written privacy plan;
- b. Including the privacy program in the independent audit. (The results of the 2017 audit are summarized below.);
- c. Conducting role-based privacy and cybersecurity training annually;
- d. Reviewing and enhancing internal documentation related to the plan of actions and milestones program; and
- e. Analyzing and updating the internal risk management process and updating the procurement language.

Finally, the GAO recommended that, to provide greater assurance of compliance with PRA, the Director of the Bureau should also consult further with the OMB about whether PRA requirements apply to its credit card data collection and information-sharing agreement with the OCC, and document the result of this consultation.

This recommendation was resolved by re-confirming with OMB that the credit card collection was compliant with PRA and the conversation and approval was documented.

2.4.2 Office of the Inspector General

The Bureau's Office of the Inspector General (OIG) reviews the Bureau's privacy program and information security on an annual basis. In its September 27, 2017, memorandum to the Bureau Director,³² the OIG noted:

³² Memorandum to Richard Cordray, Director, Bureau of Consumer Fin. Prot. from Mark BialekOff, Inspector Gen., 2017 List of Major Management Challenges for the CFPB, (Sept. 17, 2017), available at <https://oig.federalreserve.gov/reports/cfpb-major-management-challenges-sep2017.pdf>.

Information security continues to be a key risk in the federal government, and as is the case for most federal agencies, the CFPB faces challenges due to the advanced persistent threat to information technology (IT) infrastructures. Although the CFPB has assumed responsibility for its IT infrastructure (the U.S. Department of the Treasury was previously responsible for the CFPB's IT infrastructure) and continues to mature its information security program, the agency faces challenges in fully implementing its information security continuous monitoring program. Specifically, the CFPB should implement a data loss prevention program and ensure that automated feeds from all systems, including contractor-operated systems, feed into the CFPB's security information event management tool.

The CFPB has taken several steps to develop and implement an information security continuous monitoring program that is generally consistent with federal requirements. For example, the CFPB has implemented a centralized logging information tool for CFPB systems. CFPB management continues to face challenges, however, associated with maturing its information security continuous monitoring program across the agency; such challenges include establishing alerting capabilities and continuous monitoring metrics and further automating tools for several of its manual information security continuous monitoring processes.³³

The Bureau is in the process of enhancing the continuous monitoring program, consistent with OIG's recommendations.

In its latest Independent Audit of the Consumer Financial Protection Bureau's Privacy Program in February 2018,³⁴ the OIG stated:

Overall, we found that the CFPB has substantially developed, documented, and implemented a privacy program that addresses applicable federal privacy requirements and security risks related to collecting, processing, handling, storing, and disseminating sensitive privacy data. Further, we noted that the CFPB has documented privacy policies and procedures covering a wide range of topics, including privacy roles and responsibilities, privacy impact assessment (PIA) and

³³ *Id.* at 2.

³⁴ Off. of Inspector Gen., 2017-IT-C-008, *Report on the Independent Audit of the Consumer Financial Protection Bureau's Privacy Program*, (Feb. 14, 2018), available at <https://oig.federalreserve.gov/reports/cfpb-privacy-program-feb2018.pdf>.

system of records notice (SORN) management, training, breach notification and response, and monitoring and auditing.

Although the CFPB has substantially developed, documented, and implemented a privacy program with related policies and procedures, we identified two areas that require improvement: identification and maintenance of a comprehensive inventory of PII and physical controls over the CFPB's portable media.³⁵

The Bureau has accepted the OIG's findings. To resolve this recommendation, the Bureau agreed to include administrative data systems (such as Bureau's own financial data) in the PII inventory (which currently contains public, vendor, other agency, FI, and consumer data); provide locks for laptops stored in the secure building after works hours; and monitor the locking of laptops to desks within the secure building.

2.4.3 2018 White Hat Hacking Exercise

In January of 2018, the Bureau signed an Interagency Agreement with the Department of Defense to leverage Risk and Vulnerability Assessment (RVA) services as a mechanism to identify potential gaps in cybersecurity controls. This "white-hat hacking" effort is the same service the Department of Homeland Security (DHS) provides to other federal agencies to assess technical vulnerabilities beyond those identified in their Cyber Hygiene program, in which the Bureau also participates. RVA testing was completed in the spring of 2018 with no "Critical" findings identified by the assessors, and three technical recommendations. The Bureau has completed remediation of all three recommendations made by the assessors. The review concluded that overall the Bureau's security posture is well-organized and maintained.³⁶

³⁵ *Id.* at 2.

³⁶ The Bureau is not releasing the report because of the technical security details contained therein.

3. Sources of data

The Bureau has five main external sources of data: public sources, government agencies, commercial vendors, FIs,³⁷ and consumers.³⁸ The Policy on Information Governance directs the Bureau to, wherever reasonably possible, avoid requesting or receiving duplicative information (whether from the same or different sources).³⁹ Therefore, the first approach to acquiring data involves identifying whether the data the Bureau needs, or a reasonable approximation thereof, are already available within the Bureau, in the public domain, or — to the Bureau’s knowledge — from another agency. If so, the Bureau explores using those data rather than creating a new collection. When existing sources are not sufficient, the Bureau seeks to collect the data from an external source.⁴⁰

3.1 Obtaining public data

When available, the Bureau uses public data. Data may have been collected and made public by a government agency or by a private party such as a researcher. Appendix B lists 32 public data assets the Bureau obtained or downloaded, three additional data assets that combine public data with non-public data obtained from another agency, and one additional data asset that combines public data with data procured from a commercial vendor. This is a best effort to provide a comprehensive listing of public data assets the Bureau has obtained, although this listing may be incomplete because (as previously discussed) Bureau policy permits employees to obtain certain public data without approval from the CDO. Therefore, for example, this listing does not include instances in which a Bureau employee may have downloaded or otherwise obtained a copy of a public report, including statistical appendices to such a report. Approval is required, however, for public microdata (consumer-level or account-level data) and any large data assets intended for Bureau-wide use, and those data assets are included in Appendix B.

³⁷ For the purposes of this report, the term “financial institution” refers to organizations and firms engaged in offering or providing consumer financial products or services, including those firms defined as ‘covered persons’ in the Dodd-Frank Act, and service providers to such organizations or reporting information to the Bureau. This term also refers to organizations acting on behalf of financial institutions.

³⁸ For the purposes of this report, the term consumer also encompasses organizations acting on behalf of consumers, individuals or firms acting as whistleblowers, and financial educators.

³⁹ See Appendix A at A1, section II(A); *id.* at section II(A)(6).

⁴⁰ For law enforcement work, data are usually collected directly from financial institutions for evidentiary reasons, to track chain of custody, and to maintain confidentiality. However, to reduce burden, the Bureau does obtain information from other government agencies in accordance with MOUs or other agreements, and in accordance with applicable law.

Much of the Bureau’s public data assets consist of data assets released by government agencies including the Census Bureau’s decennial census, the American Community Survey, American Housing Survey, Current Population Survey, Quarterly Census of Employment and Wages, and others. Public data from other sources include consumer finance and housing data published on the Board of Governors of the Federal Reserve System’s public website, and records from public websites of state and municipal agencies.

3.2 Data sharing from and with other government agencies and regulators

In some cases, the Bureau may be aware that other government agencies collect data that meet the Bureau’s analytical, supervisory, enforcement, research, complaint handling or other needs. In these cases, the Bureau works with the other agencies to obtain the data. This method can help to reduce burden on industry and minimize overall government costs, while generally providing high quality data. In some cases, such as data collected under the Home Mortgage Disclosure Act (HMDA), some of the data are public while a subset of the data is restricted.

Appendix B lists 20 non-public data assets that the Bureau has obtained from other government agencies, most of which are financial regulators, three data assets which combine public data with non-public data obtained from another agency as noted above, and three data assets which combine data obtained from another agency with either data obtained from a vendor or data obtained from financial institutions.⁴¹ This listing does not include instances in which the Bureau may have obtained a non-public report or document from another agency which was of low sensitivity (as defined in the Bureau’s policy)⁴² because (as noted above) the Bureau does not centrally track instances in which employees obtain reports. This is a best effort to provide a comprehensive listing of data assets obtained by the Bureau from other agencies. However, the list may be incomplete because the determination of whether particular information is of low sensitivity as defined in the Bureau’s policy requires the exercise of judgment by individual or employees which obtain such material. A further limitation in providing a comprehensive list is that, pursuant to the Information Governance Policy, authority for some data intakes – including data intakes by Supervision and Enforcement – are not centrally recorded but managed under a delegated authority pursuant to the Information Governance Policy,⁴³ as

⁴¹ One of the data assets – the National Mortgage Database, which is discussed further in the section of this report on Core Data Assets – is a combination of data procured from commercial vendors with data obtained from other agencies. The Supervision and Enforcement data assets combine data obtained from FIs with data obtained from other agencies.

⁴² See Appendix A, at A3.

⁴³ See Appendix A, at A1, section I(F).

explained in the *Data Governance at the Bureau* section of the report. Finally, especially during the early years of the Bureau’s existence, some data assets may have been obtained from a government agency and not recorded.

For three data assets – specifically, Call Reports collected by the Federal Financial Institutions Examination Council (FFIEC) and by the National Credit Union Administration (NCUA), and data collected by the FFIEC pursuant to the Home Mortgage Disclosure Act – a subset of the data collected by an agency is public while other parts of the data collection are non-public and have been provided to the Bureau. In these instances, these data assets are listed as both public and agency data assets in Appendix B.

The Bureau’s government data assets consist largely of nonbank, housing, credit card, consumer complaint, and education data.

Data-sharing agreements, often referred to as Memoranda of Understanding (MOU), are used between agencies to ensure the secure handling and use of data. A list of the Bureau’s data-sharing MOUs is available in Appendix C. The Bureau intends to supplement this report with the text of its MOUs subject to obtaining the necessary approval of affected state and federal agencies.

An Interagency Access Request (IAR) is a request from another agency for confidential information collected by the Bureau (e.g., confidential investigative information (CII) or confidential supervisory information (CSI), typically collected by the Bureau during the course of an investigation or an examination and requested by another governmental agency as part of investigative or enforcement activity by that agency). The IAR process implements the Bureau’s regulations on sharing the Bureau’s confidential information with federal and state agencies. See 12 C.F.R. § 1070.43(b). Between Q3 of FY’ 2012 and Q3 of FY’ 2018, the Bureau processed 501 requests from 117 state, local, and federal agencies.

In addition, agencies that sign data-sharing agreements with Consumer Response can access consumer complaint data via the Bureau’s Government Portal. As of July 2018, there were 78 state agencies, nine federal agencies, one local agency, and one organization acting on behalf of state regulators, with access to the government portal. Also, Congressional offices that sign data-sharing agreements with Consumer Response can access information about the consumer complaints they submit on behalf of their constituents via a secure Congressional Portal. Each office has access only to those complaints for which they also submit signed privacy waivers. As of August 2018, there were 149 Congressional offices with access to the Congressional Portal.

The Bureau refers consumer complaints that are outside of the Bureau’s statutory authority to the prudential regulator responsible for the type of complaint.

The Bureau shares the restricted (*i.e.*, non-public) portion of HMDA data with the Federal Financial Institutions Examination Council agencies, U.S. Department of Housing and Urban Development, and the Federal Housing Finance Agency (FHFA).

3.3 Purchasing data from commercial vendors

If the data needed are not available within the Bureau and cannot be readily obtained from another government agency, they can sometimes be obtained through a commercial vendor. The Bureau’s Policy on Information Governance directs that the Bureau should seek to ensure that it does not place unnecessary burdens (technical, financial, etc.) on external parties in the course of requesting or receiving information.⁴⁴ Therefore, if the Bureau is aware of commercially available data that potentially can meet the Bureau’s needs in a timely and cost-effective manner, the Bureau makes reasonable efforts to purchase the data. This approach can also help to reduce industry burden and is generally more cost effective than conducting a new survey or collection.

Appendix B lists 31 data assets which the Bureau has purchased from vendors, two additional data assets which combine data collected from a financial institution with data purchased from a commercial vendor,⁴⁵ and one data asset which combines data obtained from other agencies with purchased data.⁴⁶ This listing does not include instances in which the Bureau may have purchased a research report or other low-sensitivity information from a third party, as such purchases are not centrally tracked by the Bureau’s data team. This is a best effort to provide a comprehensive listing of purchased data assets. However, as noted above, the listing may be incomplete because the determination of whether particular information is of low sensitivity as defined in the Bureau’s policy requires the exercise of judgment by individual employees. Further, especially during the early years of the Bureau’s existence, some small data assets may have been purchased from a third party and not centrally recorded with the Bureau’s data team.

Purchased data consist of: data aggregated at a geographic or industry level; data aggregated at the level of individual financial institutions; or de-identified (whenever appropriate) data at the account or consumer level. The Bureau purchases data that are off-the-shelf products that the vendor sells to any willing purchaser. Other procured data may be customized products

⁴⁴ See Appendix A, at A1, section II(A).

⁴⁵ To prepare a congressionally-mandated report on the value of remittance transfer history in predicting credit performance, (see 12 U.S.C. § 5602(e)), the Bureau collected transaction data from a remittance transfer provider and credit reporting data from a national credit reporting agency.

⁴⁶ See *supra* note, n.41.

compiled from data that the vendor has collected in the normal course of its business from financial institutions, consumers, or public records.

On several occasions, the Bureau or a Bureau vendor arranged to have data obtained from a vendor (specifically one of the three nationwide consumer reporting agencies) appended to data obtained from one or more financial institutions. Those instances are included in Appendix B. In all but one instance the financial institution provided the nationwide consumer reporting agency with information that enabled the agency to identify the individuals whose (de-identified) records had been provided to the Bureau or a Bureau vendor, as well as a match key. This enabled the consumer reporting agency to provide a file containing the (de-identified) relevant credit records and the match key to the Bureau so it could append the credit data to the financial institution data. In this way the financial institution's data remained with the Bureau or its vendor without direct identifiers.⁴⁷ In one instance the vendor that the Bureau used to collect the data on its behalf already had a de-identified set of credit records from a nationwide consumer reporting agency. The financial institutions provided the vendor with the match keys that the financial institutions used in furnishing data to the consumer reporting agency that enabled the vendor to append the credit records without obtaining any direct identifiers.

The Bureau also contracts with vendors from time to time to assist the Bureau in collecting data, or to collect data on behalf of the Bureau from FIs. These data collections are listed in Appendix B as data obtained from FIs and are discussed in the section of this report addressed to data collected from FIs. In two of these data collections, the vendor assisted in a mandatory data collection. As discussed in the section of this report on Core Data Assets, from 2012 through 2016 the Bureau collected credit card data pursuant to a supervisory request and contracted with a vendor who already collected credit card data from FIs. More recently, the Bureau has used a contractor to assist with collecting account-level data from a number of mortgage servicers pursuant to an order requiring the production of such data in connection with an assessment of a mortgage servicing rule.⁴⁸

The Bureau likewise has used vendors from time to time to assist the Bureau in collecting data from consumers or to collect data from consumers on behalf of the Bureau. This information is

⁴⁷ The first instance described in the text involved checking account data obtained by the Bureau to study the market for overdraft services in connection with a potential rulemaking. See the section of this report entitled “Data collected for supervision or enforcement used for research, monitoring, rulemaking or assessments of significant rules” for further discussion of these data. The second instance involved the credit card database, which is discussed in the section of this report on “Core Data Assets.” The third instance involved the remittance transfer report. *See supra* note, n.44.

⁴⁸ The Bureau is required to conduct assessments of significant rules. *See* 12 U.S.C. § 5512(d). The Bureau has determined that the RESPA mortgage servicing rule is a significant rule. *See* Request for Information Regarding 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment, 82 Fed. Reg. 21952 (May 11, 2017). The Bureau is authorized to require FIs to provide data in connection with such assessments. 12 U.S.C. § 5512(c)-(d).

collected through surveys, focus groups, or one-on-one interviews. The contractor may provide the raw data for the Bureau to analyze — de-identified where appropriate and requested by the Bureau — or the contractor may analyze the data and provide a summary report. Subject to the limitation previously noted, these data collections are listed in Appendix B as data obtained from consumers, and they are discussed in the section of this report that addresses data collected from consumers.

Some institutions, such as certain consumer reporting agencies, are both vendors of data and also financial institutions in their own right. To the extent that the Bureau obtains data from such an entity as an FI subject to the Bureau’s regulatory authority, this report treats such information as coming from an FI.

3.4 Collecting data from financial institutions

The Dodd-Frank Act expressly authorizes the Bureau to require FIs to provide data to the Bureau in response to consumer complaints;⁴⁹ supervisory requests;⁵⁰ civil investigative demands made in the context of enforcement investigations;⁵¹ and orders seeking information for monitoring market developments and risks to consumers, or for conducting assessments of significant rules issued by the Bureau.⁵² In addition, the Bureau collects data pursuant to four federal laws requiring FIs to provide certain specified data to the Bureau: the Home Mortgage Disclosure Act (HMDA) (application-level mortgage data);⁵³ the Credit Card Accountability Responsibility and Disclosure Act (CARD Act) (consumer credit card agreements and college credit card marketing agreements);⁵⁴ the Truth In Lending Act (TILA) (terms of credit card plans and related information);⁵⁵ and the Installment Land Sales Act (ILSA) (land sales agreements).⁵⁶ The Equal Credit Opportunity Act, as amended by the Dodd-Frank Act, also requires financial institutions to provide certain specified data to the Bureau with respect to

⁴⁹ 12 U.S.C. § 5534; *see also* 12 U.S.C. § 5493(b)(3).

⁵⁰ 12 U.S.C. §§ 5514-16.

⁵¹ 12 U.S.C. §§ 5562-63.

⁵² 12 U.S.C. § 5512(c)-(d).

⁵³ 12 U.S.C. § 2801 *et seq.*

⁵⁴ 15 U.S.C. §§ 1632(d)(2), 1637(r)(2).

⁵⁵ 15 U.S.C. § 1646(b).

⁵⁶ 15 U.S.C. § 1701 *et seq.*

applications for loans by small businesses and minority-owned and women-owned businesses, but that requirement will not become effective until the Bureau issues an implementing regulation.⁵⁷ Regulation E likewise has a mandatory disclosure requirement with respect to prepaid card agreements that has not yet taken effect.⁵⁸

In addition, the Dodd-Frank Act expressly authorizes the Bureau to obtain information voluntarily from FIs.⁵⁹

Appendix B lists 58 data assets that the Bureau has obtained from FIs, two data assets which combine data from an FI with data from a commercial vendor,⁶⁰ and two data assets that combine data from FIs with data from consumers.⁶¹ In addition, Appendix B also includes the following each as a single data asset: all data collected by Supervision which includes data from financial institutions and other sources; all data collected by Enforcement which also contains data collected from financial institutions as well as from other sources; and all data collected by Consumer Response which likewise includes data from FIs and from other sources. This listing does not include low-sensitivity information such as a presentation or handout provided to the Bureau voluntarily by FIs in the course of meetings, conversations, or other communications in the normal course of business. The listing likewise does not include information provided by FIs voluntarily in response to Requests for Information, an Advanced Notice of Proposed Rulemaking, or a Notice of Proposed Rulemaking.

This is a best effort to provide a comprehensive listing of data assets obtained from FIs. The Bureau is confident that all mandatory data collections are included in Appendix B. However, the listing may be incomplete because, as previously noted, the determination of whether particular information is of low sensitivity as defined in the Bureau's policy requires the exercise of judgment by individual employees. Further, especially during the early years of the Bureau's

⁵⁷ 15 U.S.C. § 1691c-2.

⁵⁸ Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 83934 (Nov. 22, 2016).

⁵⁹ 12 U.S.C. § 5512(c)(4)(B)(1).

⁶⁰ See *supra* note, n.45. See also the discussion of the Credit Card Database in the section of this report on core data assets.

⁶¹ In developing mortgage disclosure forms, the Bureau conducted disclosure testing with both consumers and mortgage professionals. See Kleimann Comm'n Grp, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures*, (July 9, 2012), available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf (report on consumer testing submitted to the Bureau of Consumer Fin. Prot.). For a pilot project examining the potential of e-closings to improve the mortgage closing process, the Bureau collected both administrative data and data from consumers for a report the Bureau issues. Bureau of Consumer Fin. Prot., *Leveraging technology to empower mortgage consumers at closing* (2015), available at https://files.consumerfinance.gov/f/201508_cfpb_leveraging-technology-to-empower-mortgage-consumers-at-closing.pdf.

existence, some small data assets may have been obtained from an FI and not centrally recorded.

In some instances, financial institutions have collected data from consumers and provided that data to the Bureau. These are treated as data provided by an FI for purposes of Appendix B.

3.5 Collecting data from consumers

The Bureau obtains data directly from consumers through its Consumer Response function; interviews with potential witnesses conducted by Enforcement; and through research conducted by RMR and CEE. Research can take the form of a survey (conducted by phone or mail, in-person, or online), focus groups, one-on-one interviews, or laboratory or user tests. The Bureau also collects general feedback from consumers via the Bureau’s “Tell Your Story” webpage. When the Bureau distributes money to victims of unlawful conduct through its Civil Penalty Fund, the Bureau may obtain information from individuals claiming to be or believed to be victims, to enable the Bureau to validate their entitlement to relief. Such information may include a claims form completed by the consumer or other documentation regarding the consumer’s relationship with a particular FI.

Appendix B lists 31 data assets collected from consumers, two data assets which include data collected from consumers and data collected from financial institutions, plus the Enforcement and Consumer Response data assets which were discussed previously.⁶² Appendix B does not currently include any data assets collected through focus groups, one-on-one interviews, user testing or small-scale, informal surveys; as noted in the *Introduction*, the Bureau plans to supplement Appendix B to include those data assets. The listing in Appendix B is a comprehensive listing of formal surveys of consumers conducted by the Bureau.

⁶² Enforcement regularly collects information from consumers as part of investigations and litigation so that the enforcement data asset includes consumer information. On one occasion, Supervision also has collected data assets from one or more consumers. See *supra* note, 61 (for a discussion of data collected from consumers and financial institutions).

4. Uses of data

As noted above, data informs much of the Bureau’s work. The following is a discussion of how the various sources of data are used. Often, data are obtained for only one purpose. The office or division requesting authorization to obtain data identifies how it will use such data when it acquires them. Some data assets, such as website usability results, are not useful for more than one purpose. Other data assets, such as Call Reports⁶³ (discussed in the Core Data Assets section), or Census data are brought in as general reference tools for use as the need arises or as an authoritative source for analyzing historical performance, following trends in a particular market and answering questions that may arise from time to time. Similarly, more than one Bureau office may participate in a single data collection, such as the *Financial Well-Being Survey in America* conducted by CEE with support from the Office of Research.⁶⁴ Data assets foundational to the Bureau’s work are described in more detail in the *Description of core data assets and their uses* section of this report.

Subject to the limitations previously stated, Appendix B describes each of the Bureau’s data assets. Where data were obtained for a specific purpose, the description explains that purpose. Where data were obtained as a resource to be used as needed, the description states the nature of the data without specifying a particular, single use. This section elaborates on the Bureau’s uses of its data assets.

4.1 Public domain data

The data the Bureau collects from public sources can be placed into a number of categories with different use cases for each category. Some data assets consist of information that was collected from consumers either by government agencies or private researchers and made public. The following data assets fall within this category:

- United States Census
- American Housing Survey (Census Dep’t)
- American Community Survey (Census Dep’t)

⁶³ See *supra* note, n.19.

⁶⁴ See Bureau of Consumer Fin. Prot., *Financial Well-Being Survey Data*, <https://www.consumerfinance.gov/data-research/financial-well-being-survey-data/> (last visited July 27, 2018).

- Quarterly Census of Employment and Wages (Bureau of Labor Stat.)
- Current Population Survey (Census Dep’t)
- Survey of Income and Program Participation (Census Dep’t)
- Consumer Expenditure Survey (Bureau of Labor Stat.)
- Longitudinal Employer-Household Dynamics (Census Dep’t)
- Panel Study of Income Dynamics (University of Michigan)
- Panel Study of Income Dynamics (University of Michigan)
- General Social Survey (NORC –University of Chicago)

These data assets are basic research tools that are used by Bureau researchers when relevant to address research questions of interest. For example, for research into credit invisibles, the Bureau combined Census data with data contained in one of its core data assets to estimate the incidence of consumers without a credit record and across different demographic groups.⁶⁵ To evaluate the definition of “rural” for purposes of special regulatory provisions available only to creditors operating predominantly in rural areas, the Bureau combined Census data with HMDA data to estimate the effects that alternative definitions of rural would have on the number of creditors that could take advantage of these special provisions.⁶⁶ For its pay day loan rulemaking, the Bureau combined data from the Consumer Expenditure Survey with data from the Current Population Survey to estimate the percentage of payday borrowers who would be able to satisfy an ability-to-repay requirement.

Two of the Bureau’s public data assets – the Survey of Consumer Finances and the Survey of Household Economics and Decisionmaking (SHED) – consist of consumer surveys conducted by the Federal Reserve Board focused specifically on consumers’ use of financial products and services. Bureau researchers use these data assets in addressing research questions relating to consumers’ decisions regarding, and use of, such products. For example, the Bureau used public data from the SHED in preparing a report on student loans held by older Americans.⁶⁷

⁶⁵ See Bureau of Consumer Fin. Prot., *Data Point: Credit Invisibles* (2015), available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

⁶⁶ See Escrow Requirements under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 4726 (Jan. 22, 2013); Amendments Relating to Small Creditors and Rural of Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 Fed. Reg. 59944 (Oct. 10, 2015).

⁶⁷ See Bureau of Consumer Fin. Prot., *Snapshot of Older Americans and Student Loan Debt* (2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf.

Another category of public data assets consists of data another agency collects from financial institutions and makes public. The following data assets fall in this category:

- Federal Financial Institutions Examination Council (FFIEC) Call Reports
- National Credit Union Administration Call Reports
- Home Mortgage Disclosure Act (HMDA) public data
- FDIC Summary of Deposits
- These data assets are also basic research tools used for a variety of research purposes as well as to monitor trends in the markets for consumer financial products and services, define the scope of the Bureau's supervisory and enforcement jurisdiction with respect to depository institutions, and prioritize supervisory examinations. For example, the Bureau's supervision program uses a risk-based approach to prioritize which entities should be examined in a given time period with respect to which product lines, and that analysis may differ depending on estimates as to the size of FI's businesses.⁶⁸ The Bureau arrives at such estimates using public FFIEC and NCUA Call Reports, non-public data from other government agencies, supervisory data obtained from FIs; the Bureau has also used a data asset culled from public records with respect to auto loans and purchased from a vendor. These data assets are listed in Appendix B.
- In addition to these data assets, from time to time the Bureau has obtained more specialized public data assets for use for a particular rulemaking, study, or Bureau program. For these data assets, the description in Appendix B explains the purpose for which the data were obtained.

4.2 Other agency data

Appendix B lists the data assets obtained from other agencies, including data assets that combine public and non-public data obtained from another agency.⁶⁹ The Bureau obtained some of those data assets to use on an ongoing basis, as needed, to support Bureau supervision,

⁶⁸ As required under 12 U.S.C. § 5514(b)(2).

⁶⁹ The combined public/non-public data are the FFIEC and NCUA Call Reports and a data asset listed in Appendix B comprised of public and non-public data from the Department of Education, with program-level information for post-secondary institutions, which the Bureau uses for its Paying for College tool. See Bureau of Consumer Fin. Prot., *Paying for College*, <https://www.consumerfinance.gov/paying-for-college/> (last visited Sept. 5, 2018).

enforcement, market monitoring, research, and rulemaking functions. This is true, for example, of FFIEC and NCUA Call Reports restricted data, and NMLS Mortgage Call Reports.

Other agency data assets listed in Appendix B were obtained for a specific rulemaking, research report, or other project. Appendix B lists these data assets and the purpose for which the data were obtained.

For example, in developing a definition of “qualified mortgage” under the Dodd-Frank Act, the Bureau obtained an extract from the Historical Loan Performance data asset from the Federal Housing Finance Agency and a separate loan file from the Federal Housing Authority to inform its understanding of the significance of debt-to-income ratios.⁷⁰ In conjunction with its work on a rule governing payday and auto title lending, the Bureau obtained data on the number and location of licensed storefront payday lenders from various states in order to estimate the impacts of the proposed rule.⁷¹ For its report to Congress on the use of arbitration agreements in consumer finance contracts, the Bureau obtained data from several states regarding class action settlements and also collected public data from court records regarding class action litigation and individual litigation.⁷²

4.3 Commercial vendor data

The Bureau has purchased a wide variety of data assets to meet a wide range of needs.

The Bureau’s Consumer Credit Panel, described in the *Description of core data assets and their uses* section of this report, consists of purchased credit reporting data to which other purchased and public data have been appended. The National Mortgage Database, also a core data asset described in the same section of the report, consists of purchased credit reporting data to which other purchased data and agency data are appended.

A number of the Bureau’s purchased data assets are off-the-shelf products that are widely viewed as industry-standard sources for studying historical trends and following

⁷⁰ Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408, 6525-6526 (Jan. 30, 2013).

⁷¹ See Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday, Payday Installment and Vehicle Title Loans, and Deposit Advance Products* (June 2016), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.

⁷² See Bureau of Consumer Fin. Prot., *Arbitration Study* (Report to Congress 2015), available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

current trends in particular markets. The following data assets fall within this category:

- Black Knight Home Price Index
- Mortgage Bankers Association National Delinquency Survey
- Mintel Comperemedia mailout survey data⁷³
- CoreLogic loan-level origination and performance data
- Blackbox Logic private label mortgage performance data
- Informa mortgage rates and fees⁷⁴
- Experian AutoCount (auto loan origination date from motor vehicle records)
- HSH mortgage rate data
- Black Knight mortgage loan-level origination and performance data⁷⁵
- Informa checking account rates and fees
- Measure One lender-level private student loan performance data
- Informa credit card rates and fees
- The Bureau also has purchased Strategic Business Insights MacroMonitor, a biannual survey covering consumers' use of financial products, for Bureau researchers to use as needed to address research questions that may arise. For example, in planning Bureau

⁷³ Mintel Comperemedia collects solicitations for various consumer financial products and services from a nationally representative panel of consumers and sells that data along with appended credit bureau data to allow its customers to follow marketing trends by consumer segment. The Bureau purchases the Comperemedia data without the credit appends and instead contracts separately with one of the three nationwide consumer reporting agencies to append credit records.

⁷⁴ In addition to enabling the Bureau to follow pricing trends in the mortgage market, the Bureau uses Informa's mortgage rates and fees data to power the Bureau's Owning a Home tool. See Bureau of Consumer Fin. Prot., *Explore Interest Rates*, <https://www.consumerfinance.gov/owning-a-home/explore-rates/> (last visited July 24, 2018). Bureau researchers also have used these data for research examining the returns to consumers for shopping for a mortgage. See, e.g., Alexei Alexandrov & Sergei Kouyalev, *No Shopping in the U.S. Mortgage Market: Direct and Strategic Effects of Providing Information* (Bureau of Consumer Fin. Prot., Working Paper 2017-01, 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2948491.

⁷⁵ Black Knight sells data that is similar to the data sold by Core Logic. The Bureau previously subscribed to Core Logic but recently has switched to Black Knight following a competitive procurement process.

research with respect to overdraft, Bureau researchers used the MacroMonitor data to inform their strategy in recruiting participants for the Bureau’s research.

- Similarly, the Bureau subscribes to Moody’s Analytics creditorecast.com and to S&P Global to obtain information as needed regarding financial institutions and credit trends.
- In addition to these data assets, the Bureau has purchased a number of data assets to meet specific needs in a particular rulemaking, research project, or other Bureau program. The description in Appendix B explains the purpose for which these data were acquired.

4.4 Financial institution data

When the Bureau obtains data from FIs, the use of the data depends on the means through which and purpose for which the data were obtained. Data that the Bureau obtains from FIs (including market monitoring, research, and financial education as well as supervisory and enforcement) is usually “confidential information” pursuant to 12 C.F.R. part 1070. This includes “confidential supervisory information” (CSI) and “confidential investigative information” (CII),⁷⁶ and it is protected in accordance with Bureau regulation.⁷⁷

Supervision collects data from FIs to: (1) assess compliance with federal consumer financial law; (2) obtain information about the activities and compliance systems or procedures of the FI; and (3) detect and assess risks to consumers and to markets for consumer financial products and services. Similar to other federal and state bank supervisors, Bureau examiners collect and/or review policies and procedures, written responses to examiner questions, advertising materials, template form letters, individual loan files, and data assets related to supervised activities. Examiners review these data to check for compliance with federal consumer financial law and to determine trends or prevalence of various company practices. These data are also used in the Bureau’s exam prioritization process.

After an enforcement matter is opened, Enforcement uses data obtained from FIs (among other sources) in investigating and, if necessary, litigating the matter. It may obtain such information during the investigatory stage through CIDs and via voluntary presentations or disclosures by

⁷⁶ “Confidential information” means “confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other [Bureau] information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b).” It does not include “information contained in records that have been made publicly available by the [Bureau] or information that has otherwise been publicly disclosed by an employee with the authority to do so.” 12 C.F.R. § 1070.2(f).

⁷⁷ See 12 C.F.R. §§ 1070.2, 1070.40.

FIs, or after the start of litigation through the discovery process. In the course of investigations, Enforcement investigators typically collect some combination of written answers to interrogatories, written reports, documents, and testimony.

The Office of Research and the various Markets Offices within RMR use data obtained from FIs for research and market monitoring, including research and monitoring that informs rulemakings and other policymaking. These data may be submitted either voluntarily or in response to orders issued by the Bureau. The following are general descriptions of data collections for research, market monitoring, and rulemaking. See Appendix B for more details.

RMR conducts surveys of financial institutions to provide evidence for the Bureau's assessments of significant rules. The Bureau also uses surveys to better estimate the costs of rules under consideration. Appendix B lists all the data assets collected from FIs for these purposes, subject to the limitations previously noted. Several illustrative examples are discussed below. Except where noted, all of these data collections were voluntary.

Before deciding whether to propose an extension of an exemption under its remittance rule, the Bureau conducted a survey of depository institutions to understand the extent to which these institutions were using the exemption.⁷⁸ Before issuing an Outline of Proposals Under Consideration with respect to debt collection, the Bureau conducted a survey of debt collectors to better understand their operations and costs.⁷⁹

RMR also obtains data from FIs to prepare research reports and to support the Bureau's policymaking. Appendix B lists all the data assets collected from FIs for these purposes, subject to the limitations previously noted. Several illustrative examples are discussed below.

To understand how the consumer financial markets, consumers, financial entities, or other economic factors might have changed as the result of Bureau rules on the manufactured housing market, the Bureau obtained application-level data from creditors engaged in manufactured housing lending. It used these data to prepare a white paper on this subject.⁸⁰

⁷⁸ See Electronic Fund Transfers, 79 Fed. Reg. 55970 (Sept. 18, 2014).

⁷⁹ See Bureau of Consumer Fin. Prot., *Study of Third Party Debt Collection Operations* (2016), available at <https://www.consumerfinance.gov/data-research/research-reports/study-third-party-debt-collection-operations/>.

⁸⁰ See Bureau of Consumer Fin. Prot., *Manufactured-housing Consumer Finance in the United States* (White Paper, 2014), available at https://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

In connection with a report that the Bureau was required to submit to Congress on the private student loan market,⁸¹ a number of FIs provided the Bureau de-identified account-level data through a third-party analytics firm the FIs selected and with which the FIs contracted.⁸² The firm also de-identified the individual lenders. For another required report,⁸³ a remittance transfer provider provided de-identified consumer-level transactional data to the Bureau and provided to one of the nationwide consumer reporting agencies information which enabled the agency to provide the Bureau with credit reporting data and a match key the Bureau could use to append the credit data to the transactional data. This enabled Bureau researchers to assess whether the reporting of remittance transfers could potentially broaden access to credit.⁸⁴ For a third required report,⁸⁵ the three nationwide credit reporting agencies each provided de-identified consumer-level data containing a number of different credit scores to enable Bureau researchers to study differences in scores sold to consumers and to creditors.⁸⁶

To help the Bureau evaluate how consumers and consumer financial markets might change as the result of potential regulation of certain short-term loan products, several FIs provided the Bureau with aggregate-level data on overdraft usage following the elimination of deposit advance products. The Bureau used these data for a report it issued⁸⁷ in conjunction with its payday proposal.⁸⁸

In addition to these data collections initiated by RMR, in response to requests by the Private Student Loan Ombudsman several servicers provided summary information about business

⁸¹ 15 U.S.C. § 1077(a)-(b).

⁸² See Bureau of Consumer Fin. Prot., *Private Student Loans* (2012), available at https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

⁸³ 12 U.S.C. § 5602(e).

⁸⁴ See Bureau of Consumer Fin. Prot., *Report on the Use of Remittance Histories in Credit Scoring* (2014), available at https://files.consumerfinance.gov/f/201407_cfpb_report_remittance-history-and-credit-scoring.pdf.

⁸⁵ 15 U.S.C. § 1708(a).

⁸⁶ See Bureau of Consumer Fin. Prot., *Analysis of Differences between Consumer- and Creditor-Purchased Credit Scores* (2014), available at https://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf.

⁸⁷ See Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday, Payday Installment, Vehicle Title Loans, and Deposit Advance Products* (2016), available at <https://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/>.

⁸⁸ See Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864 (July 22, 2016).

practices related to student borrowers' use of income driven repayment options and student loan performance. The Ombudsman analyzed these data in a special report.⁸⁹

As part of its program to engage with financial service innovators and promote consumer-friendly innovation, the Bureau from time to time has entered into research partnerships in which FIs shared de-identified data enabling the Bureau to study the effects of particular innovations. Appendix B lists all the data assets collected from FIs for these purposes, subject to the limitations previously noted. Several illustrative examples are discussed below.

One FI worked with the Bureau to conduct a randomized control trial of alternative methods of stimulating savings by prepaid card customers. The FI shared the test data, including de-identified data from surveying consumers, with the Bureau for analysis.⁹⁰ The Bureau currently is analyzing de-identified data supplied by another FI from a test of alternative methods to stimulate savings in connection with tax refunds.

- The Bureau has also required⁹¹ FIs to provide various types of data, as discussed in Appendix B. Appendix B lists all the data assets collected from FIs for these purposes, subject to the limitations previously noted. Several illustrative examples are discussed below:
- For its arbitration report, the Bureau required a number of FIs to provide samples of their standard customer agreements to enable the Bureau to study the prevalence and terms of arbitration agreements.⁹²

⁸⁹ See Bureau of Consumer Fin. Prot., *Update from the CFPB Student Loan Ombudsman: Transitioning from default to an income-driven repayment plan* (2017), available at <https://www.consumerfinance.gov/data-research/research-reports/update-cfpb-student-loan-ombudsman-transitioning-default-income-driven-repayment-plan/>.

⁹⁰ See Bureau of Consumer Fin. Prot., *Tools for Saving: Using Prepaid Accounts to Set Aside Funds* (2016), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/092016_cfpb_ToolsForSavingPrepaidAccounts.pdf.

⁹¹ See generally 12 U.S.C. § 5512(c)(4)(B)(ii).

⁹² See Bureau of Consumer Fin. Prot., *Arbitration Study* (Report to Congress 2015), available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf. The Bureau relied on this report in issuing a rule regulating the use of predispute arbitration agreements in consumer finance contracts, 82 Fed. Reg. 33210 (July 17, 2017), but Congress enacted a joint resolution of disapproval pursuant to the Congressional Review Act, 5 U.S.C. § 801 *et seq.* and the Bureau thereafter published a Federal Register notice revoking the rule, 82 Fed. Reg. 55500 (Nov. 22, 2017).

- In connection with the mandated 2015 and 2017 credit card industry reports, the Bureau required a number of credit card issuers to provide aggregate-level data regarding various metrics such as application and approval rates.⁹³ The Bureau also required those issuers to provide additional information (including policies, sample marketing materials, sample disclosures) it used for deeper analyses conducted as part of these reports. The Bureau required several issuers that specialized in offering subprime credit cards to provide aggregate-level data as well.
- In connection with its consideration of potential rulemaking relating to overdraft services the Bureau required a number of core processors to produce, on an anonymized basis, certain information regarding overdraft policies and outcomes for the depository institutions supported by these processors to understand the market.
- To understand developments with respect to person-to-person payments, the Bureau required a service provider to provide certain information to the Bureau regarding its offering.

4.5 Consumer data

Consumer Response handles complaints and inquiries about financial products and services submitted by consumers about companies. Consumer Response conducts analyses of consumer complaint data with respect to FIs, financial products, and issues described in the complaint, and shares such analysis within the Bureau. The Bureau uses this analysis for supervisory purposes; for investigative or other enforcement purposes; for rulemaking and market monitoring purposes; and to inform work to meet the financial education needs of the public and needs or challenges faced by certain special populations identified in the Dodd-Frank Act, such as students, servicemembers, and older Americans.⁹⁴

The Bureau also collects data from consumers and a variety of professionals and entities who serve them (such as financial educators, credit counselors, social workers) through focus groups, interviews, user testing, and informal surveys. As previously explained, except with respect to

⁹³ See, e.g., Bureau of Consumer Fin. Prot., *The Consumer Credit Market* (2015), available at <https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market/>; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (2017), available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.

⁹⁴ See Bureau of Consumer Fin. Prot., *How We Use Complaint Data*, <https://www.consumerfinance.gov/complaint/data-use/> (last visited July 24, 2018).

data collections that informed disclosure testing, Appendix B does not currently include these data collections. The Bureau intends to supplement Appendix B to do so. The discussion below summarizes the purposes for which data is collected from consumers with some illustrative examples.

The Bureau has collected data from consumers in connection with a number of rulemakings or potential rulemakings. For example, the Bureau conducted focus groups among prepaid card users prior to initiating work on the prepaid card rulemaking,⁹⁵ and in conjunction with a potential rulemaking involving debt collection. The Bureau likewise has conducted user testing of model disclosure language in connection with rulemakings or potential rulemakings, including the prepaid rulemaking⁹⁶ and a potential debt collection rulemaking. Generally, this testing takes the form of iterative rounds of one-on-one interviews, conducted by a vendor, in which consumers are exposed to model forms under development and asked questions designed to elicit their understanding of the forms.

Other data collections from consumers support the Bureau’s work to design and improve financial education initiatives and to measure the reach or how the consumer financial markets, consumer behavior, financial entity behavior, or other economic factors might change as the result of its financial education programs. For example, the Bureau gathers metrics related to materials visited on the Bureau’s website to help understand what information consumers access. In addition, the Bureau has conducted a series of focus groups and one-on-one interviews to understand consumers’ knowledge and experiences with respect to various consumer financial products and services. These data collections resulted in a series of “Consumer Voices” reports.⁹⁷ Other data collections include user testing of contemplated consumer education materials and tools.

The Bureau also has conducted a number of formal quantitative surveys. Appendix B lists all such surveys. Several illustrative examples are discussed below.

⁹⁵ See, e.g., Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and Truth in Lending Act (Regulation Z), 81 Fed. Reg. 83934, 83944-45 (Nov. 22, 2016).

⁹⁶ See ICF Int’l, *Final Report of Findings: Post Proposal Testing of Prepaid Card Disclosures* (submitted to the Bureau in Oct. 2015), available at http://business.ceh.com/BFLD/201510_cfpb_report-findings-testing-prepaid-card-disclosures.pdf.

⁹⁷ See, e.g., Bureau of Consumer Fin. Prot., *Consumer Voices on Credit Reports and Scores* (2015), available at https://files.consumerfinance.gov/f/201502_cfpb_report_consumer-voices-on-credit-reports-and-scores.pdf.

In connection with a potential debt collection rulemaking, the Bureau conducted the Survey of Consumer Experiences with Debts in Collection.⁹⁸ This was a mail survey sent to a nationally representative sample of consumers selected from the Bureau’s Consumer Credit Panel, which is discussed in the Core Data Assets section of this report. Before issuing the TILA-RESPA Integrated Disclosure Rule,⁹⁹ the Bureau conducted a quantitative test comparing consumer comprehension using the contemplated new disclosure forms with consumer comprehension using the preexisting forms.¹⁰⁰

The 2017 National Financial Well-Being in America Survey,¹⁰¹ conducted for the Offices of Financial Education and Financial Protection for Older Americans, was an online survey conducted to measure the financial well-being of adults in the United States. These data were created as a foundation for internal and external research into financial well-being and are relevant to work being done by researchers in the Office of Research who have access to the (de-identified) data.

5. Data reused within the Bureau

This section discusses instances in which data has been obtained by one part of the Bureau for one purpose and then used by another part of the Bureau for a different purpose. The discussion below first clarifies what is covered in this section.

The analysis or insights derived from the data one Bureau office collects can be useful to help inform the work of other offices in the Bureau. Therefore, after analyzing the data that it has

⁹⁸ See Bureau of Consumer Fin. Prot., *Consumer Experiences with Debt Collection* (2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

⁹⁹ See Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act, 79 Fed. Reg. 79730 (Dec. 31, 2013).

¹⁰⁰ See Bureau of Consumer Fin. Prot., Testing “Know Before You Owe Mortgage Forms: Qualitative and Quantitative Tests Show New Forms Improve Consumer Understanding, Aid Comparison Shopping, and Help Prevent Surprises” (Nov. 20, 2013), available at https://files.consumerfinance.gov/f/201311_cfpb_factsheet_kbvo_testing.pdf.

¹⁰¹ See Bureau of Consumer Fin. Prot., *Financial Well-Being in America* (2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_financial-well-being-in-America.pdf.

collected, a Bureau office may share its analysis within the Bureau. The office conducting the analysis may share it proactively or in response to a question from another office. Additionally, one Bureau office may request another office to conduct an analysis of data the office receiving the request has collected and share findings or insights from such analysis. The Bureau does not centrally track these types of sharings and they are not considered a “reuse” for purpose of this report.

For example, to prepare its annual calendar of supervisory examinations, Supervision regularly consults with Markets to obtain information to help inform Supervision’s risk-based prioritization and to define the scope of contemplated examinations. On an ad hoc basis, Supervision may also consult the relevant Markets Office prior to conducting a particular examination to discuss market trends that may be relevant to the examination.

In addition, periodically data is obtained for multiple purposes. The Call Reports, whose uses are noted in the Core Data Assets section of this report, are an example of data assets that are brought in for multiple purposes. The Bureau does not define these as reuses. The Bureau also distinguishes between “reuse” and instances in which two or more Offices within the Bureau work jointly on a particular project and jointly use data in that context. For example, the Research regularly supports Supervision with respect to fair lending examinations requiring complex econometric analyses of supervisory data; the Research also supports Enforcement from time to time on request to provide analyses of complex data assets obtained in the course of an investigation. CEE and the Office of Research collaborate on a number of research studies by exchanging ideas with respect to a research topic, research design, or a data collection instrument and share data in such endeavors. For example, the Office of Research collaborated with Financial Education in connection with the *Financial Well-Being Survey in America*.¹⁰²

In contrast to the above examples, and as noted above, data obtained for a particular purpose may prove relevant to work being conducted by another division for a different purpose. This has occurred most frequently with respect to data collected by Supervision for purposes of supervisory exams and later considered potentially relevant for research, market monitoring, rulemaking, or the assessment of significant rules, all of which is led by Research, Markets and Regulation. Consequently, in 2013 Supervision and RMR developed an information sharing framework, a copy of which is included in Appendix A, pursuant to which RMR has from time to time been able to reuse Supervision data as discussed below.

¹⁰² See *id.*

Enforcement data has been much less commonly shared, but on two occasions, discussed below, Enforcement and RMR entered into agreements to share specific data assets. These agreements also are contained in Appendix A.

The Bureau is currently working to centralize the process of authorizing and cataloging reuse requests through the Data Intake Group and the Chief Data Officer.

5.1 Public domain data

Public data are, by definition, available to any member of the public and any governmental agency. The Bureau does not track the reuse of these data because, as public data, they are available for and intended for a variety of analyses by anyone within government or the general public and they generally do not contain sensitive data.

5.2 Other agency data

Reuse of other agency data depends upon the nature of that data. Certain agency data, while non-public, is intended to be used on an ongoing basis by employees in multiple parts of the Bureau who have a need to know information contained in the data asset. This is true, for example, of the restricted version of the FFIEC and NCUA Call Reports, NMLS Mortgage Call Reports, or the non-public elements of the HMDA data asset, which may be used by certain employees in the SEFL and RMR.

Where the data constitutes another agency's confidential information, such as confidential supervisory or investigative information, the Bureau treats it in accordance with its and other agency's applicable regulations regarding the treatment of confidential information.¹⁰³ Generally, the Bureau and the agency providing information have an MOU or another form of agreement — such as a FFIEC interagency agreement or letter authorizing usage — which governs how the Bureau can use and reuse the data it obtains from the agency or its representatives. Access to, and reuse of, these data are restricted in accordance with the MOU or agreements.

5.3 Commercial vendor data

As previously explained, the Bureau purchases data from vendors. Some of these purchases are “off the shelf” products that are available for purchase by anyone in the private sector or

¹⁰³ See 12 C.F.R. part 1070.

government. Other products, described further in the section of this report on Core Data Assets, are customized for the Bureau from data that the vendor collects for sale. All of those data assets are listed in Appendix B, subject to the limitations previously discussed.

Most of the data assets the Bureau has procured from vendors were procured to be used generally as relevant to understand historical patterns or current trends in particular markets or in consumers' preferences and uses regarding consumer financial products and services. The uses of these data assets thus falls outside the definition of "reuse." The Bureau is not aware of any instance in which it purchased data for a specific and limited purpose and then reused for another purpose.

Additionally, access to, and reuse of, these data are restricted in accordance with the applicable license agreements.

5.4 Financial institution data

As previously noted, the Bureau collects data from FIs to support different aspects of the Bureau's work. To avoid re-collecting the same or similar data, the Bureau can use data collected for a particular purpose for a different purpose if authorized and consistent with governing law. The sub-sections that follow describe the types of data the Bureau has obtained from FIs and how it reuses that data.

5.5 Data collected for supervision, used for enforcement

Enforcement and the Office of Fair Lending's Enforcement team access CSI to (1) ensure consistent application of the enforcement and supervisory tools, and (2) consider, through the ARC¹⁰⁴ process, whether Enforcement or Supervision should address a potential violation. Supervision shares information, including CSI, with Enforcement if that information is relevant to the duties of the Enforcement employees who will receive and use that information, including: to support a matter that has been referred to Enforcement through the ARC process, to support an ongoing investigation or litigation, or when sharing Supervision prioritization information. The information Supervision shares with Enforcement includes any information that would support the finding of a violation of federal consumer financial law, including reports

¹⁰⁴ "ARC" refers to "Action Review Committee" and is the process SEFL uses to decide whether an Examination Report or Supervisory Letter should be referred to the Office of Enforcement for investigation.

of examination, supervisory letters, and relevant materials from an institution (*e.g.*, marketing materials, disclosures, account statements, etc.).¹⁰⁵

The process by which information is shared is outlined in SEFL governance documents and is part of the routine operation of the division. Current SEFL practice limits Enforcement access to Supervision work-papers to those Enforcement employees who require the information for specific tasks related to their job functions.

5.5.1 Data collected for supervision or enforcement used for research, monitoring, rulemaking, or assessments of significant rules

Data that the Bureau obtains for its supervision and enforcement work is generally considered CSI or CII, respectively, and is protected in accordance with Bureau regulation.¹⁰⁶ Bureau requirements regarding CSI and CII govern how the Bureau reuses this information internally.¹⁰⁷

In a number of instances, Supervision and RMR collaborated to develop data collections intended to support supervisory activities, which also could potentially be of value for market monitoring and/or research. These data collections are discussed below:

- *Credit card database* – As discussed in the Core Data Assets section of this report, from 2012 through 2016, the Bureau used its supervisory authority to collect, on a monthly basis, de-identified account-level data from credit card issuers. The data specifications

¹⁰⁵ See SEFL Integration 3.3, Appendix A13. When Enforcement accesses supervisory information Bureau policies require that such information be maintained separately from other sources of data collected by Enforcement. The Bureau is not releasing the policy documents containing this requirement because those documents contain other policies whose release would reveal either confidential law enforcement processes or techniques followed by Enforcement in conducting investigations and confidential information regarding SEFL's file structures. If file structures were released publicly it could create data security risk. If confidential law enforcement processes were released publicly, a potential wrong-doer would be able to structure their activities in a manner that might enable them to circumvent the Bureau's ability to detect those activities through use of its standard investigative techniques.

¹⁰⁶ See 12 C.F.R. §§ 1070.2, 1070.40.

¹⁰⁷ Bureau of Consumer Fin. Prot., *Policies and Procedures Manual* (Office of Enforcement, Version 3.0, 2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710_cfpb_enforcement-policies-and-procedures-memo_version-3.0.pdf.

for this data collection paralleled a preexisting data request by the OCC. The Bureau used these data for research and market monitoring as well as supervisory activities.¹⁰⁸

- *Payday* – In 2012, the Bureau collected account-level data on pay day loans in connection with a series of supervisory examinations. De-identified versions of these data were also used to study payday loan products and consumers' use of them and resulted in a number of research reports¹⁰⁹ and papers.¹¹⁰
- *Deposit advance products (DAP)* – The Bureau collected a random sample of checking account data and transaction-level data from a sample of FIs offering DAP in connection with a series of supervisory examinations. De-identified versions of these data were also used to understand consumers' experiences with the product; in addition, these data provided insights into consumers' experiences with related products. These data were used in two research publications that were relied on in the Bureau's rulemaking,¹¹¹ and several research papers.¹¹²
- *Overdraft* – The Bureau collected aggregated, de-identified data regarding overdraft usage at a number of large FIs and de-identified transaction-level data for a random sample of de-identified checking accounts from these banks. It used these data to analyze the market for overdraft services and consumer choices and outcomes and this

¹⁰⁸ This data collection was reviewed by the General Accountability Office. See Gov't Accountability Off., GAO-14-758, *Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced*, (Sept. 22, 2014), available at <https://www.gao.gov/assets/670/666000.pdf>.

¹⁰⁹ See, e.g., Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products* (White Paper on Initial Data Findings, 2013), available at https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf; Bureau of Consumer Fin. Prot., *CFPB Data Point: Payday Lending* (Office of Research, 2014), available at https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf; Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday, Payday Installment and Vehicle Title Loans and Deposit Advance Products* (2016), available at https://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.

¹¹⁰ See, e.g., Kathleen Burke, Jesse Leary & Jialan Wang, *Information Disclosure and Payday Lending in Texas*, (May 2016), available at <https://drive.google.com/file/d/0B-xlEFaWMd6IczNhQzRSRmJfSiQ/view>.

¹¹¹ See Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products* (White Paper on Initial Data Findings, 2013), available at https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf; Bureau of Consumer Fin. Prot., *Online Payday Loan Payments* (2016), available at https://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf.

¹¹² See e.g., Charles J. Romeo, *Estimating the Change in Surplus From the Elimination of Deposit Advance Products* (Off. of Research Working Paper No. 2018-02, 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3135496.

resulted in several research reports.¹¹³ The Bureau subsequently contracted with one of the three nationwide consumer reporting agencies to provide credit data along with a match key that enabled the Bureau to match the credit data to the transaction data.¹¹⁴ Bureau researchers used these de-identified data to produce a research report.¹¹⁵

- *Credit card*— In 2013, Supervision obtained aggregate-level data from nine card issuers that were used for credit card industry reports that the Bureau was required to produce. In 2015, Supervision obtained match keys from nine credit card issuers for accounts in the Credit Card Database, discussed in the Core Data Assets section of this report, which enabled the Bureau to identify accounts in the database with a rewards feature and Supervision obtained certain aggregate-level data from five issuers in connection with supervisory prioritization efforts. RMR developed these data requests in collaboration with Supervision. In addition, these five issuers and four other issuers received orders pursuant to the Bureau’s market monitoring authority¹¹⁶ seeking aggregate-level information comparable to the information obtained in 2013 and four other issuers received orders seeking a different set of aggregate-level information. For the 2017 report, all requests were made using the market monitoring authority.

As discussed above, data that Supervision collected in the normal course of its examination work has proven to be relevant for work undertaken by RMR and has been shared pursuant to the previously-referenced data-sharing framework established in 2013 by SEFL and RMR. See Appendix A. The framework was established to enable RMR to use CSI (where appropriate) to support its work, to minimize burden on industry, and to ensure the confidential nature of the information.

Of note, the framework allows RMR to access CSI when such access would further RMR’s mission of informing the public, policymakers, and the Bureau’s own policy-making with data-driven analysis of consumer finance markets and consumer behavior. The framework also contains access restrictions and approval requirements to protect the confidential nature of such information.

¹¹³ See, e.g., Bureau of Consumer Fin. Prot., *CFPB Study of Overdraft Programs* (White Paper of Initial Data Findings, 2013), available at https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf; Bureau of Consumer Fin. Prot., *CFPB Data Point: Checking Account Overdraft* (2014), available at https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

¹¹⁴ For more details, see the section of this report on data purchased from commercial vendors.

¹¹⁵ See Bureau of Consumer Fin. Prot., *CFPB Data Point: Frequent Overdrafters* (2017), available at <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-frequent-overdrafters/>.

¹¹⁶ See 12 U.S.C. § 5512(c)(4).

From time to time, data Supervision has collected in the normal course of conducting examinations has proven relevant for particular research or market monitoring projects of the Bureau. Specifically:

Rulemaking and potential rulemakings. The Bureau has used supervisory information to inform a number of rulemakings. To enhance their understanding of the payday market in connection with the payday rulemaking, members of the rulemaking team reviewed certain data collected through supervisory examinations of payday lenders. Similarly, in connection with a potential debt collection rulemaking, members of that team reviewed certain data collected through supervisory examinations of debt collectors. In preparation for a potential rulemaking regarding the collection and reporting of small business lending data, which is a rule as required by the Dodd-Frank Act,¹¹⁷ members of the team reviewed certain data collected from small business fair lending examinations. In the HMDA rulemaking,¹¹⁸ RMR used supervisory data from fair lending examinations to evaluate the incremental benefits that certain potential data points would have in furthering the statutory objectives. In connection with a potential overdraft rulemaking, members of the team examined supervisory data regarding opt-in rates for overdraft services.

- *Assessments of significant rules*— Bureau researchers who are preparing statutorily mandated assessments of the Bureau’s significant rules use data collected in the course of supervisory examinations of market participants for assessment purposes.¹¹⁹ Reviewing the data also has enabled the researchers to identify data gaps that are being filled through other means.
- *Credit card industry report*— In preparing the 2017 credit card industry report,¹²⁰ Markets staff examined information collected by Supervision relating to deferred interest offers.

¹¹⁷ 15 U.S.C. § 1691c-2.

¹¹⁸ See Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128 (Oct. 26, 2015).

¹¹⁹ The Bureau’s obligation to conduct assessments as required by 12 U.S.C. § 5512(d). The Bureau has determined thus far that three of its rules are significant: 1) Request for Information Regarding Remittance Rule Assessment, 82 Fed. Reg. 15009 (Mar. 24, 2017); 2) Request for Information Regarding 2013 Real Estate Settlement Procedures Act Servicing Rule Assessment, 82 Fed. Reg. 21952 (May 11, 2017); and 3) Request for Information Regarding Ability-to-Repay/Qualified Mortgages Rule Assessment, 82 Fed. Reg. 25246 (June 1, 2017).

¹²⁰ See Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (2017), available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.

- *Paperwork Reduction Act estimates* – To inform the Bureau’s estimate of the burden associated with paperwork requirements under the Fair Credit Reporting Act, Research reviewed related information collected in supervisory examinations.
- *Proxy methodology* – Bureau researchers used data Supervision collected from mortgage lenders through fair-lending examinations to prepare a report assessing the effectiveness of a methodology developed by the Bureau to proxy the race and ethnicity of consumers when that information is unknown.¹²¹
- *Mortgage-related data* – Bureau researchers have used supervisory data from mortgage examinations and the restricted (non-public) HMDA data for several research projects in conjunction with Bureau policymaking work. On one occasion, researchers examined supervisory mortgage data to determine whether the data could be used to evaluate potential effects of the Bureau’s mortgage rules on manufactured housing lending, but the data proved not to be useful for that purpose. In a second instance, researchers analyzed supervisory mortgage data to explore variations in origination points and fees but again the data proved not to be useful. Researchers likewise were unsuccessful in seeking to use supervisory data to develop an alternative means of calculating the Average Prime Offer Rate, which is embedded in certain regulatory provisions.¹²² On one occasion, researchers were able to use certain information collected through Supervision as part of a study on the returns to consumers from mortgage shopping.¹²³
- *Student lending* – To develop data specifications for a data request to student loan servicers, Research and Markets staff examined certain examination information regarding data collected by servicers. The Bureau has not made the then-contemplated data request to servicers to date.
- *Consumer-permissioned access to data* – To inform policy-making relating to consumers’ ability to access transactional data about their accounts through third-party

¹²¹ Bureau of Consumer Fin. Prot., Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity (2014), available at https://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

¹²² 12 C.F.R. § 1026.35.

¹²³ Alexei Alexandrov & Sergei Kouyalev, *No Shopping in the U.S. Mortgage Market: Direct and Strategic Effects of Providing Information* (Bureau of Consumer Fin. Prot., Working Paper 2017-01, 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2948491.

aggregators,¹²⁴ the Markets team working on this issue reviewed certain agreements that Supervision had obtained through supervisory requests.

- *Auto finance research* – Bureau researchers are using supervisory data from auto finance exams to conduct three separate research projects on issues in the auto finance market. None of these projects has reached the point of a published research paper.

The sharing of enforcement data for research, market monitoring, and rulemaking has been rare. There have been some instances in which data collected by Enforcement in the normal course of an investigation have proven relevant to other work at the Bureau, and the data were reused for these purposes. Specifically:

- *Installment and automobile title lender data* – In the course of an investigation, Enforcement obtained data from certain companies which shed light on the size of the market for vehicle title and installment loans and the market share of certain participants in that market. These data were used by researchers and analysts who were working on a potential rulemaking to define larger participants in the market for personal loans. The Bureau has subsequently suspended work on that rulemaking.¹²⁵
- *Payday* – The Bureau used standard-form agreements (*i.e.*, the text of the contracts), some of which were secured from payday lenders as part of Enforcement investigations, for a report¹²⁶ that the Bureau was required to submit to Congress¹²⁷ regarding mandatory pre-dispute arbitration. The Bureau used the agreements in conducting its analysis of the prevalence and terms of arbitration agreements in the payday market.
- *Small dollar lending* – Through Enforcement investigations of a number of different types of liquidity lenders, as well as through an order directed to certain lenders for risk-assessment purposes, the Bureau obtained loan-level data that the Bureau used to better understand risks to consumers. The Bureau published two reports based in part upon

¹²⁴ See 12 U.S.C § 533.

¹²⁵ Off. of Mgmt. and Budget, *Bureau of Consumer Fin. Prot. - Agency Rule List – Spring 2018*, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3470&Image58.x=36&Image58.y=25&Image58=Submit (last visited Aug. 27, 2018).

¹²⁶ See Bureau of Consumer Fin. Prot., *Arbitration Study* (Report to Congress, 2015), at section 2, available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

¹²⁷ 12 U.S.C. § 5518(a).

these data,¹²⁸ which were used in the Bureau’s rulemaking¹²⁹ regarding vehicle title loans.

5.5.2 Data collected by the Division of Research, Markets, and Regulations and used for other purposes

Although insights developed by RMR from data obtained by RMR and analyses of those data can be relevant to Supervision and Enforcement, the sharing of such insights and analyses falls outside the scope of “reuse” as defined for this report. Supervision and Enforcement do not generally use, in exams or cases, raw data obtained from RMR. The Bureau is aware of two instances, however, in which such data has been reused:

- RMR shared with Enforcement a subset of arbitration agreements – originally obtained for the arbitration study the Bureau was required to conduct¹³⁰ – to facilitate intra-Bureau feedback and input on the arbitration rule, and to help build institutional knowledge about trends in contract provisions.
- On another occasion, a subset of data that were originally obtained for the 2015 Credit Card Report,¹³¹ relating to debt collection, were shared with Supervision for the purpose of educating staff on market trends.

5.6 Consumer data

As previously explained, this Report covers certain types of data collections from consumers. Appendix B will be supplemented with information with respect to data collections from

¹²⁸ See Bureau of Consumer Fin. Prot., *Single Payment Vehicle Title Lending* (2016), available at <https://www.consumerfinance.gov/data-research/research-reports/single-payment-vehicle-title-lending/>; Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans and Deposit Advance Products* (2016), available at <https://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/>. These reports also used data obtained by the Bureau through orders issued pursuant to section 5514(c)(4) of the Dodd-Frank Act and data voluntarily supplied by a research firm which had obtained loan-level data from several lenders.

¹²⁹ See Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, (Nov. 17, 2017).

¹³⁰ See Bureau of Consumer Fin. Prot., *Arbitration Study* (Report to Congress, 2015), available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

¹³¹ See Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (2015), available at https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

consumers on a voluntary basis through focus groups, one-on-one interviews, user testing, and small-scale informal surveys. The Bureau is not aware of any instances in which it has reused such data collections, which tend to be of a very small scale and for a limited purpose.

Appendix B does list data collected from consumers through surveys as well as through disclosure research. As previously noted, RMR and CEE have jointly worked on a number of these surveys and have shared the data from those surveys. The Bureau is not aware of any instance in which data from any of these surveys has been reused.

The Bureau also is not aware of any instance in which data collected from consumers through investigative interviews by Enforcement have been reused. The same is true with respect to the one instance in which Supervision collected data from consumers.¹³²

The Bureau views data collected through Consumer Response as intended to be collected for multiple purposes beyond simply resolving additional complaints, and therefore does not consider multiple uses of this data to be reuse. With that said, this section describes how consumer complaint data is accessed and used within the Bureau.

Bureau staff that do not need access to direct personal identifiers use a de-identified version of consumer complaint data for the following purposes:

- Supervisory activities including examination prioritization and scoping of exams;
- Enforcement investigations;
- Market monitoring; and
- Research to support rulemaking and other policymaking by RMR, to inform the financial education work of the Office of Financial Education and the work of other offices within CEE servicing specific consumer populations, such as servicemembers, older Americans, students, and traditionally underserved consumers.

The Private Student Loan Ombudsman uses the complaint data involving students to monitor the resolution of individual complaints, to obtain additional information by speaking directly to

¹³² See *supra* note, n.62.

complainants, to publish reports based upon the complaint data,¹³³ and to review and attempt to resolve informally complaints related to student loans — all as required by statute.¹³⁴

The Office of Servicemember Affairs uses the complaint data involving current and former servicemembers to support its work monitoring complaints by service members and their families and responses to those complaints as required by statute.¹³⁵

In addition, in some cases Enforcement needs to contact consumers who have submitted complaints to obtain evidence for an investigation or witnesses for a judicial proceeding. Designated employees within Enforcement may access the complaint data asset that includes direct identifiers.

6. Description of core data assets and their uses

There are several data assets that the Bureau considers to be foundational to its work, and these core data assets are summarized below. The Bureau obtains these assets from a variety of sources, as discussed above, including the public domain, vendors, FIs, or consumers. They are considered foundational because they provide insight into consumer financial markets or support regulatory activities and are persistent rather than a one-time collection. Access to these data assets is restricted pursuant to Bureau policy as described above and in accordance with applicable law, including 12 C.F.R. part 1070 and the Privacy Act of 1974, 5 U.S.C. § 552a.

- *Consumer complaints* – As noted above, Consumer Response receives consumer complaint data from consumers describing their issues with companies providing financial products or services. Consumer Response also receives complaint data in the form of company responses to those consumers. It also receives inquiries and feedback from consumers.

¹³³ See, e.g., Bureau of Consumer Fin. Prot., *Annual Report of the CFPB Student Loan Ombudsman* (2017), available at https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf.

¹³⁴ 12 U.S.C. § 5535.

¹³⁵ 12 U.S.C. § 5493(e)(1)-(2).

As discussed above, the Bureau primarily uses complaint data for the purpose of responding to consumer complaints, as well as market monitoring, supporting the supervision of FIs, Enforcement activities, and for trends analysis for consumer financial education and engagement (*e.g.*, servicemembers, older Americans). Where appropriate, Bureau staff use a de-identified version of the data asset that does not contain direct personal identifiers.

- *Enforcement activities data* – Data collected in the course of Enforcement activities. This is not one data asset, but rather a number of data assets maintained separately for each Enforcement matter, each with access restrictions. These data are considered CII, and they are governed by regulation and Bureau requirements regarding CII.¹³⁶ If any of these data are shared with RMR as discussed above, access restrictions apply to such data.
- *Supervisory activities data* – Data collected in the course of supervisory activities. This is not one data asset, but rather a number of data assets maintained separately for each supervisory matter, each with access restrictions. These data are considered CSI, and they are governed by regulation and Bureau requirements regarding CSI.¹³⁷ If any of these data are shared with RMR as discussed above, access restrictions apply to such data.
- *Consumer Credit Panel (CCP)* – The CCP is a nationally representative panel (1 in 48 sample) of approximately five million de-identified consumer credit records that is updated monthly and dates back to 2001.¹³⁸ The Bureau procured these data through a competitive procurement process from one of the three nationwide credit reporting agencies, each of which is in the business of selling such data. The CCP data also includes marketing data (such as estimated income) which the Bureau’s vendor sells for marketing purposes. The CCP excludes direct identifiers and the vendor does not provide the name of the lender, or other furnisher of data contained in the vendor’s records, but instead provides a unique identifier for each data furnisher.

¹³⁶ See 12 C.F.R. § 1070.40.

¹³⁷ See *id.*

¹³⁸ For any record randomly chosen to be part of the CCP, the CCP also includes the deidentified record of co-borrowers or joint account holders. The total number of records in the CCP is approximately 11 million.

The Bureau's vendor matches the records in the CCP to a public database of servicemembers maintained by the Department of Defense so that records pertaining to servicemembers are flagged. The Bureau also procured, from a separate vendor, income data at the nine-digit (zip +4) zip code level and arranged to have the CCP vendor match that data to records in the CCP.

The Bureau uses these data primarily for research and market monitoring and have been used for a number of research reports,¹³⁹ the Bureau's biennial reports to Congress on the credit card industry,¹⁴⁰ and to inform rulemakings. These data are also used for the monthly publication of Consumer Credit Trends.¹⁴¹

The Bureau also uses the CCP as a "sampling frame" for conducting certain surveys. The Bureau provides sampling criteria to the nationwide consumer reporting agency that provides the CCP data and it selects individuals to receive such surveys and mail them. The agency in turn strips the responses of any direct identifiers and provides the responses to the Bureau with a match key that the Bureau can use to match the response to the CCP but without any direct personal identifiers. This enables the Bureau's researchers to use the CCP data to weight responses and adjust for non-response bias and to study results for discrete segments such as segments defined by credit tier. The

¹³⁹ Research reports prepared using the CCP include: Bureau of Consumer Fin. Prot., *CFPB Data Point: Medical Debt and Credit Scores* (2014), available at https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf; Bureau of Consumer Fin. Prot., *Consumer Credit Reports: A Study of Medical and Non-medical Collections* (2014), available at https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf; Bureau of Consumer Fin. Prot., *CFPB Data Point: Credit Invisibles* (2015), available at https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf; Bureau of Consumer Fin. Prot., *CFPB Data Point: Becoming Credit Visible* (2017), available at <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-becoming-credit-visible>; Bureau of Consumer Fin. Prot., *CFPB Data Point: Student Loan Repayment* (2017), available at <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-becoming-credit-visible>; Bureau of Consumer Fin. Prot., *Quarterly Consumer Credit Trends: Public Records* (2018), available at <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-public-records/>; Bureau of Consumer Fin. Prot., *Quarterly Consumer Credit Trend: Growth in Longer-Term Auto Loans* (2017), available at <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-growth-longer-term-auto-loans/>.

¹⁴⁰ See, e.g., Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (2017), available at https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.

¹⁴¹ See Bureau of Consumer Fin. Prot., *Consumer Credit Trends*, <https://www.consumerfinance.gov/data-research/consumer-credit-trends/> (last visited July 25, 2018).

Bureau used this approach to conduct the first nationally representative survey of consumers with debts in collection.¹⁴²

- *National Mortgage Database (NMDB)* – The NMDB is a joint project with the Federal Housing Finance Agency and is a source of information about the U.S. mortgage market based on a 5 percent sample of residential mortgages. It consists of three primary components: (1) account-level origination and loan performance data along with credit information associated with the accounts; (2) the quarterly National Survey of Mortgage Originations (NSMO); and, (3) the annual American Survey of Mortgage Borrowers (ASMB). To construct the NMDB, one of the three nationwide consumer reporting agencies provides quarterly mortgage account-level data and associated credit data for a nationally representative sample (5 percent) of mortgages active at any time since January 1998. The credit records start prior to the time the mortgage was first reported (but no earlier than 1998). The consumer reporting agency updates the account and credit data quarterly and adds a 5 percent sample of new mortgages to the database. The records are de-identified and the identities of creditors, servicers, or other furnisher of data to the consumer reporting agency are de-identified as well before the data is provided to the FHFA or the Bureau. The NMDB includes approximately 12 million residential mortgages.¹⁴³

For loans represented in the NMDB that were purchased or guaranteed by Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Department of Agriculture, the nationwide consumer reporting agency appends to the NMDB records administrative data reported to the purchaser or guarantor. That consumer reporting agency also appends HMDA data and additional servicing and property records procured from a vendor. All matches and appending is conducted by the nationwide consumer reporting agency behind a firewall. The details of the processes used to append the data while protecting consumer privacy are explained in a technical paper on the construction of the NMDB.¹⁴⁴

¹⁴² See Bu reau of Consumer Fin. Prot., *Consumer Experiences with Debt Collection* (2017), available at <https://www.consumerfinance.gov/data-research/research-reports/consumer-experiences-debt-collection-findings-cfpsb-survey-consumer-views-debt/>.

¹⁴³ The NMDB includes the deidentified records of co-borrowers; in total, it includes 18.6 million credit records. See Robert B. Avery, et al., *Technical Report 1.2* (Nat'l Mortg. Database, Bureau of Consumer Fin. Prot., and Fed. Housing Fin. Agency, Technical Report Series, 2017) at p.14, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/Documents/NMDB-Technical-Report_1.2_10302017.pdf.

¹⁴⁴ See *id.*

On a quarterly basis, the consumer reporting agency responsible for providing the data in the NMDB selects a random sample of NMDB borrowers who recently obtained new mortgages and mails a survey to those selected regarding their origination experiences. Once a year, the consumer reporting agency selects a random sample of existing borrowers, using criteria for selecting the sample provided by the FHFA and the Bureau, and mails a survey seeking information regarding the borrowers' mortgage servicing experience. When it receives the responses, the consumer reporting agency provides the FHFA and the Bureau with the de-identified responses and a match key that can be used to match back to the data in the NMDB.

The Bureau is using the NMDB for market monitoring and assessments of significant rules, and it makes data publicly available on a periodic basis regarding mortgage performance trends.¹⁴⁵ There have also been four "NMDB Technical Reports" issued with results from the originations surveys,¹⁴⁶ and Bureau researchers used the survey data to prepare a report on the extent to which consumers shop for mortgages.¹⁴⁷ In addition, two "NMDB Staff Working Papers"¹⁴⁸ jointly prepared by staff of the FHFA and the Bureau have been published.

- *Home Mortgage Disclosure Act (HMDA)* – HMDA requires many FIs to maintain, report, and publicly disclose information about applications for and originations of mortgage loans.¹⁴⁹ Beginning with HMDA data collected in 2017 and submitted in 2018, responsibility to collect and process HMDA data transferred from the Board of Governors of the Federal Reserve System to the Bureau. For prior years, the Bureau has obtained the data collected by the Board including the small number of fields that were

¹⁴⁵ See Bureau of Consumer Fin. Prot., *Mortgage Performance Trends*, <https://www.consumerfinance.gov/data-research/mortgage-performance-trends/> (last visited July 25, 2018).

¹⁴⁶ See NMDB, *National Mortgage Database*, <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Mortgage-Database.aspx> (last visited July 25, 2018).

¹⁴⁷ See Bureau of Consumer Fin. Prot., *Consumers' Mortgage Shopping Experience* (2015), available at <https://www.consumerfinance.gov/data-research/research-reports/consumers-mortgage-shopping-experience/>.

¹⁴⁸ See NMDB, *National Survey of Mortgage Originations*, <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Survey-of-Mortgage-Originations.aspx> (last visited July 25, 2018).

¹⁴⁹ See 12 C.F.R. part 1003.

excluded from the public data asset. Appendix B contains an entry for the public dataset and a separate entry for the restricted data asset.

HMDA's purposes are to provide the public and public officials with sufficient information to enable them to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located, to assist public officials in distributing public sector investments in a manner designed to improve the private investment environment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.¹⁵⁰ In the context of home mortgage lending, the Bureau (like other financial regulators) uses HMDA data to identify possible discriminatory lending patterns and to enforce anti-discrimination statutes like the Equal Credit Opportunity Act. As part of supervising very large banks and nonbank mortgage lenders, the Bureau reviews the accuracy of HMDA data and the adequacy of HMDA compliance programs.

The Bureau also uses HMDA data for market monitoring and research purposes, including research to inform rulemakings.

- *Credit Card Database (CCDB)* – The CCDB is a sample of de-identified account-level (such as account balance) credit card data. The CCDB does not contain transaction level data pertaining to consumer purchases.

In 2012, the Bureau began collecting account-level data on credit card accounts maintained by nine credit card issuers covering 25 million to 75 million accounts.¹⁵¹ The collection's specifications mirrored a collection that the Office of the Comptroller of the Currency (OCC) had been conducting since 2008 from 16 large national banks covering approximately 520 million accounts.¹⁵² The Bureau's initial collection included data back to 2008. The combined collections covered approximately 85 percent of the market. Both collections involved credit card accounts of the FIs involved and the collections were performed by a contractor who already collected and maintained credit

¹⁵⁰ *Id.*

¹⁵¹ See Gov't Accountability Off., GAO-14-758, *Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced*, at 16, (Sept. 22, 2014) available at <https://www.gao.gov/assets/670/666000.pdf>. The Bureau provided this range to GAO, rather than an exact number, in order to limit the risk that the identity of particular credit card issuers providing data could be inferred from a more exact number. Subsequent to the GAO report there was a change in the composition of the issuers participating in the data collection, which increased the number of accounts.

¹⁵² See *id.* at 22.

card data from FIs. Both collections took place using the respective agencies' supervisory authority. Neither collection captured data about individual purchases. The FIs also provided the contractor with a match key that enabled the contractor to match the records to a de-identified set of records from a nationwide consumer reporting agency.

Neither the Bureau nor the OCC nor the contractor received data containing any direct personal identifiers. Pursuant to the MOU between the OCC and the Bureau, each agency shared its data with the other agency through their common vendor.

In early 2016, the OCC ceased its data collection of account-level credit card data, and at the end of 2016, the Bureau did the same. In 2017, the Bureau arranged to obtain similar de-identified account-level data, (Reporting Form FR Y-14M), from the Board of Governors of the Federal Reserve System.¹⁵³ The Y-14M data do not include any personal identifiers nor do they include the linkages to the credit reporting data and do not include any personal identifiers. The data covers the period starting in 2012. The Board's data covers approximately 500 million accounts representing 75 percent of the market.¹⁵⁴ For some institutions, the Bureau currently retains the ability to run aggregate reports off the full data asset through the Board's vendor, and the Bureau retains a 40 percent sample of the de-identified account-level data (*i.e.*, approximately 200 million accounts).

The Bureau has used the CCDB for market monitoring, including the preparation of a biennial report to Congress on the credit card market¹⁵⁵ and to inform decisions about priorities for supervisory examinations and the scope of such examinations. It has also used the CCDB for a number of working papers prepared by Bureau researchers,¹⁵⁶ as well as for research that has informed rulemakings and supervision.

¹⁵³ Board of Governors of the Fed. Res. Sys., *FRY-14M*, (for more information on the Y-14M collection), <https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sQoYJ+5BzDYnbJw+U9pk23sMtCMopzoV> (last visited September 13, 2018).

¹⁵⁴ See *id.*

¹⁵⁵ See Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (2017), available at https://files.consumerfinance.gov/f/documents/cfpb_econsumer-credit-card-market-report_2017.pdf.

¹⁵⁶ See, e.g., Ryan Sandler & Charles J. Romeo, *The Effect of Debt Collection Laws on Access to Credit* (Office of Research, Working Paper No. 2018-01, 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3124954; Alexei Alexandrov, Daniel Grodzicki & Özlem

- *Call Reports* – These include the Reports of Condition and Income from FIs in various financial markets. The data are collected by prudential regulators (by the FFIEC or the NCUA) and state regulators (through the Conference of State Bank Supervisors (CSBS)). The Bureau uses these data in a variety of research and analysis contexts. For example, these data provide the authoritative basis for determining which depository institutions have assets over \$10 billion and thus fall within the Bureau’s supervisory and enforcement jurisdiction.¹⁵⁷ The Bureau likewise has used Call Report data to monitor the market for overdraft services and to report on the amount of overdraft fees paid by consumers and the fees’ contribution to bank earnings.¹⁵⁸ The Bureau used Call Report data in combination with HMDA data (as well as Census data and data from the Bureau’s Consumer Credit Panel) to estimate the effect that alternative definitions of “small creditor” and “small servicer” would have in conjunction with several of the Bureau’s mortgage rulemakings under title XIV of the Dodd-Frank Act.¹⁵⁹

7. Conclusion

The Bureau is issuing this report in order to provide transparency with respect to the Bureau’s data governance program and its data collections. The Bureau is issuing concurrently with this report a Request for Information in which it seeks public comment on the program and collections, including ways to improve their efficiency and effectiveness.

Bedrie-Defolie, *Consumer Demand for Credit Card Services* (Office of Research, Working Paper No. 2018-03, 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3135421.

¹⁵⁷ See Letter from Steven L. Antonakes, Assistant Director, Bureau of Consumer Fin. Prot., to Chief Executive Officer (regarding Interagency Statement for Determining Asset Size of Institutions for Federal Consumer Financial Law Supervisory and Enforcement Purposes), available at https://files.consumerfinance.gov/f/2012/01/CFPB_Institutions_Size_Letter_11-17-2011.pdf.

¹⁵⁸ Gary Stein, New Insights on Bank Overdraft Fees and 4 Ways to Avoid Them, Bureau of Consumer Fin. Prot. Blog (Feb. 25, 2016), available at <https://www.consumerfinance.gov/about-us/blog/new-insights-on-bank-overdraft-fees-and-4-ways-to-avoid-them/>.

¹⁵⁹ See Escrow Requirements under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 4726 (Jan. 22, 2013); Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 Fed. Reg. 59944 (Oct. 10, 2015); Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z), 79 Fed. Reg. 65300 (Nov. 3, 2014).

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APPENDIX A:

Data governance policies and charters and data-sharing procedures

Introduction

The policies, charters, and data-sharing procedures included below are formatted so that members of the public with disabilities are able to access and use the information contained in this report as required by federal law.¹⁶⁰ In addition, the Bureau is posting on its website concurrently with the release of this report PDF copies of the original documents contained in this Appendix.

¹⁶⁰ Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. §794d, generally requires each federal agency using electronic and information technology to ensure that the technology allows persons with disabilities seeking information from the agency to access and use the information. This includes, but is not limited to, computers, Web sites, multimedia, software and web-based software, electronic documents and forms, and office equipment.

A1: Policy on information governance

Policy on information governance at the CFPB

I. Overview and scope

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), Public Law No. 111-203, title X, which created the Consumer Financial Protection Bureau (CFPB or Bureau), establishes that the Bureau “shall seek to implement and, where applicable, 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 [such] markets ... are fair, transparent, and competitive.”¹⁶¹

In the normal course of carrying out its statutory mandates, the Bureau collects information from consumers who seek the Bureau’s help through the consumer response function and from the institutions involved in the complaints; from covered persons who are the subject of supervisory examinations or enforcement activity, as well as from whistleblowers and third parties who may have information relevant to an enforcement action; from individuals or third parties in the performance of market monitoring or research activities; and for other purposes authorized by law.

The policy contained in this document will set in place rigorous guidelines and processes, as well as recognize and account for existing procedures, which:

- Inform what information the Bureau can and should intake, and how that information intake shall occur in order to ensure compliance with applicable laws, contractual obligations, and Bureau policy requirements.
- Facilitate the assignment of a sensitivity level that may afford additional guidelines and policies on its access, use, and overall management.
- Ensure information is adequately secured and responsibly used in accordance with applicable laws, contractual obligations, and Bureau policy requirements.
- Inform what information can and should be disclosed by the Bureau and its program offices, subject matter experts, and data owners, either to the general public or to other government entities.
- Describe the rules, roles, and responsibilities related to the retention, archiving, and destruction of electronic and physical information and related assets.

¹⁶¹ 12 U.S.C. § 5511, Pub. L. 111-203, title X, § 1021 (2010).

A. Information governance documentation

Information-related activities at the CFPB are governed by a hierarchical collection of documents that provides increasingly specific requirements, guidelines, and rules for information-related behaviors within the Bureau.

Policies

Policies describe the Bureau's broad rules and guidelines for particular stages in the information lifecycle (Intake, Management, Disclosure, and Disposition), and define the high-level boundaries of acceptable information-related behaviors. The Chief Information Officer (CIO) is responsible for developing Bureau-wide information governance policies for executive review and Director sign-off.

Standards

Standards provide specific guidance around components of the information lifecycle and are supported by specific procedures. The CIO is responsible for reviewing and approving information governance standards.

Procedures

Procedures describe the specific activities that the Bureau employs to execute information-related policies and standards, make decisions, and communicate with stakeholders. They also define the technical steps for executing components of information management. Procedures are developed by the operational bodies responsible for implementation.

B. Scope

All information received, created, stored, or disclosed by the Bureau or by a third party on behalf of the Bureau, regardless of format, is subject to this policy unless otherwise noted below. Information may be qualitative or quantitative. Information formats include but are not limited to structured databases, unstructured files, text/narratives, physical documents/media, and audio or video media. Subsets, extracts, aggregations, or other transformations of information that is subject to this policy are themselves subject to the policy.

Out of scope

Bureau employees' electronic communications such as emails, voicemails, text messages, etc. are considered information transmission mechanisms, not covered information, and are generally not subject to this policy. To the extent that any electronic communication contains information that is in scope for this policy (e.g., an Excel spreadsheet attached to an email, an embedded table with account numbers, a discussion of statistics in an email, etc.),

the transmission of that information may be treated as an activity implicating the information lifecycle under this policy.

Any classified information received by the Bureau is not governed by this policy and will be handled in accordance with governing law.

Financial information related to Bureau operations is also considered outside the scope of this policy. This information is managed by the Office of the Chief Financial Officer. The CIO will have final responsibility for determining what types and sources of information are subject to this policy, and may grant policy exceptions as deemed appropriate.

C. Bureau-wide, office, or division-specific policies

Existing Bureau-wide, office, or division-specific information governance policies that do not conflict with this policy will remain in effect, until and unless they are found to be in conflict with this policy, at which point they will be reviewed by the Data Governance Board (“DGB”, defined below, or “Board”) and CIO with input from the DGB.

To the extent that any Bureau-wide or office or division-specific policy is found by the CIO to be in conflict with this policy, this policy governs. The CIO, with advice from the DGB, will be responsible for reviewing, clarifying, and/or revising said policies to bring them into alignment.

D. Applicable law controls

To the extent that this policy conflicts with any applicable law, that law governs over the policy.

E. Data governance board

The DGB is a committee chaired by the CIO. This Board has responsibility for assessing the benefits and risks associated with managing the Bureau’s information. The DGB will advise the CIO on decisions regarding intake, management, disclosure, and disposition of information in accordance with this policy.

Responsibilities of the DGB

The responsibilities of the DGB include, but are not limited to, advising the CIO in making the following decisions:

1. Determining whether given information should be brought into the Bureau

2. Categorizing information as Public, Low, Medium, or High sensitivity
3. Developing and enforcing standards for managing Public, Low, Medium, and High sensitivity information
4. Reviewing and approving information governance standards
5. Reviewing and approving decisions to delegate authority to individuals or committees
6. Reviewing decisions made by delegated authorities
7. Reviewing policy exceptions granted by the CIO.

Ultimately, it is the responsibility of the CIO to make all decisions regarding information governance, or to delegate those decisions to another authority.

F. Delegation of responsibilities

The CIO may for operational purposes, and at his/her discretion, delegate any information governance oversight responsibilities to any Associate, Deputy Associate or Assistant Director in the various CFPB offices, the DGB, and/or operational committee established by the DGB.¹⁶² The CIO (with the assistance of the DGB) will be required to specify criteria under which certain delegated information activities must be reviewed by the DGB or approved directly by the CIO.

In cases where this responsibility is delegated, the responsible Associate, Deputy Associate or Assistant Director, DGB, or operational committee will be required to provide the CIO with a regular, detailed report on information-related activities.

All major decisions approved by a delegated authority (whether an individual or an operational committee) will be reviewed by the CIO and the DGB no less than once per year.

G. Definitions

Please refer to the *Information Governance Definitions* document for relevant definitions.

II. Information Intake

This section of the policy provides the principles that guide Bureau decision-making regarding information intake, describes the responsibility and authority of the CIO to oversee and approve

¹⁶² Unless specified otherwise, the CIO also retains the delegated authorities.

information intake, and establishes the role of the Data Governance Board in assisting the CIO with these responsibilities.

A. Information intake guiding principles

The ability to intake and analyze information is fundamental to the Bureau's mission. Analysis informs Enforcement and Supervisory decisions, guides policy development and rule-making, provides critical information about the condition of consumer financial markets, and supports decision-making about the Bureau's internal policies and operations. In order to ensure that the Bureau is careful, consistent, and responsible in its intake of these critical information assets, the decision to intake information must be governed by several guiding principles:

1. Ensure proper authority – any information received by the Bureau must be acquired under authorities established in the Dodd-Frank Act and/or other applicable law.
2. Adhere to applicable law – the Bureau must at all times comply with existing law governing the intake and use of information.
3. Demonstrate due diligence – the Bureau should assess the reliability of a source before requesting or receiving information from it.
4. Avoid undue burden – the Bureau should seek to ensure that it does not place unnecessary burdens (technical, financial, etc.) on external parties in the course of requesting or receiving information
5. Validate reasonableness – the Bureau should request or receive only information that is likely to be reasonably necessary to fulfill the Bureau's responsibilities, and that has value in light of any risks of that collection to the consumers or entities to whom the information relates. Care should be taken to ensure that the volume and specific data elements requested are reasonable in light of the purposes that will be served.
6. Avoid redundancy – the Bureau should, wherever reasonably possible, avoid requesting or receiving information (either through the same source or from different sources) that is duplicative.
7. Align with bureau goals & objectives – any decision to receive information should align with the Bureau's purpose, objectives, and functions; its strategic goals; its responsibility to protect the privacy or confidentiality of consumers' and financial institutions' proprietary, personal, or confidential information; and its responsibility to maintain the public trust.
8. Standardization – whenever reasonably possible, information should be brought on board with formats, field names, and definitions consistent with preexisting usage and standards that have been set across the Bureau.

B. Responsibility for information intake decisions

All decisions to intake information must be approved by the Bureau's CIO (or by parties to whom the CIO has delegated responsibility for intake activities in accordance with Section 1.F) in accordance with the guiding principles listed above.

C. Responsibility for information intake standards and procedures

The Bureau's CIO (or by parties to whom the CIO has delegated responsibility for intake activities in accordance with Section I.F) shall, at a minimum, determine the following at the time of intake of information:

1. The sensitivity level for that information (See *Information Sensitivity Leveling Standard*)
2. The owner of the information asset, for High Sensitivity information
3. Any restrictions on use or disclosure for that information as defined by applicable law and/or contractual obligations

III. Information Management

This section of the policy, concerning information management, is comprised of three primary subsections:

1. Information Storage – Establishes guidelines regarding the storage of information (Public, Low, Medium, or High sensitivity) within the CFPB data environment; and
2. Intra-Bureau Information Sharing & Information Access: – Establishes guidelines regarding access to information by CFPB employees and contractors; and
3. Information Use – Establishes guidelines regarding acceptable use of CFPB information.

A. Information storage

1. Centralized storage

Regardless of the sensitivity of any information or the authority under which it was received, all Bureau information shall be properly secured, tracked for performance and usage, updated, and stored consistently.

Care will be taken to design a storage system where records subject to federal laws such as the Privacy Act of 1974, 5 U.S.C. § 552a, or other relevant laws, are identified and managed in accordance with those laws.

Medium and High Sensitivity information should not be stored locally on user laptops or desktop computers, or other non-centralized physical media (such as CD/DVDs, external hard drives, or non-CFPB-issued thumb drives), and CFPB information (regardless of sensitivity) shall *never* be stored on non-CFPB computers or computers that have not been approved by the CFPB for this purpose.

When Medium or High Sensitivity information is received on non-encrypted physical media, it shall be moved to a secure, centralized location (or to a CFPB-approved, encrypted device if this is not possible). Once copied over, the original physical media shall be properly sanitized, returned to the originator, or securely stored per Bureau records retention rules. In the event that a computer or storage device containing information is lost or stolen (or there is suspicion of a potential loss or theft), the CFPB Service Desk must be notified immediately (see *Information Security Program Policy* and *Privacy Incident Response Procedures* for additional detail on information leaks and breaches).

2. Local Storage Exceptions for High Sensitivity Information

When local storage of high sensitivity information is unavoidable (*e.g.*, when performing an on-site examination where access to the Bureau's central information storage locations is unavailable), exception approval must be granted by the CIO and relevant Associate Director (AD) in writing. While exceptions may be granted for certain categories of information, these exceptions must be reviewed and approved by the CIO and relevant AD at least annually.

In the event that a local storage exception has been granted, information will be moved to an approved storage location and removed from the non-secure media/location as soon as practicable.

3. Information Protection/Encryption

Information stored in centralized, secure, access-restricted locations will not be required to be encrypted. All medium or high sensitivity information held (even temporarily) in non-secure locations must be password-protected and/or encrypted when not in use. This must be accomplished by using CFPB-approved devices such as CFPB-issued laptops and CFPB-issued thumb drives. All medium or high sensitivity physical information (including paper files) shall be stored in an access-restricted location.

4. Source Masking

In the course of its supervisory, enforcement and other activities, the Bureau receives certain information the existence of which is confidential and may not be disclosed either to the general public or to other individuals within the Bureau. In order to ensure this confidentiality, this information may be ‘masked’ (e.g., by using numeric identifiers to name folders instead of institution names, etc.) when it is received by the Bureau, or as soon as practicable after such receipt. The CIO, with the advice of the DGB, shall be responsible for reviewing and approving standards and procedures for properly masking data.

5. Information Restrictions

In the event that the Bureau receives information that contains data elements (e.g., social security numbers), the internal access to which is restricted by applicable law, including but not limited to Section 1022(c)(4)(C) of the Dodd-Frank Act; by contractual agreement; or by Bureau policy; the information shall be treated in accordance with such restrictions.

6. Third-party Information Storage

Information held by third parties on behalf of the CFPB is generally subject to all of the same rules and restrictions as information held directly by the CFPB. When a third party is a government contractor, the contract should include the requirements regarding information storage and related topics. Because authority to issue and make changes to the contract lies with the Contracting Officer, the CIO will coordinate with the Contracting Officer on any concerns or issues that arise. With respect to other types of third-party agreements, the CIO may, as authorized by law, approve exceptions to specific information management provisions as appropriate.

B. Intra-Bureau Information Sharing & Information Access

Access to information will be consistent with the sensitivity level of the information (see *CFPB Information Sensitivity Leveling Standard*), the authority under which the information was received, the Bureau’s information sharing standards, and applicable law or contractual obligations. This policy will be documented by information access standards and procedures that will clearly define which Offices/Divisions may access information based on the above factors.

1. Intra-Bureau Information Sharing

Sharing of information across business areas within the Bureau is governed by specific rules based on the sensitivity level of the information and the authority under which the information was received.

In the event that neither office or division-specific policies nor the established Bureau information sharing standards cover an instance of desired information sharing, the issue will be referred to the DGB which will be responsible for both resolving the immediate instance and amending, as necessary, the standards to cover the situation in the future.

2. Information Access Permissions Rules

- a. Public and low sensitivity information may be shared internally without restriction or acquired through request without additional approval(s).
- b. Medium sensitivity information access will be granted to users with certain roles.
- c. Access to high sensitivity information will require demonstrated business need.

The CIO, with the advice of the DGB, shall have the responsibility for reviewing and approving standards and procedures that provide detailed information access rules, requirements, and processes.

Note that in the event that a user is acting as a service provider for another office or division, that user will be deemed to be a member of the group they are supporting for purposes of access permissions.

3. Access Permissions Request Escalation

In the event that the permissibility of access for an individual is unclear or contested, the request will be referred to the CIO with advice from the DGB for review and clarification.

4. Information Read/Write Privileges

The CIO and any delegated authorities will calibrate the level of read/write/modify privileges it grants to individuals requesting information based upon the nature and extent of the need that the requesting individual demonstrates in his or her request, as well as the user's role. In general, the CFPB will provide the minimal level of privilege necessary to perform assigned duties.

5. Revocation of Information Access Rights

Information access rights shall be reviewed, suspended and/or revoked in a number of cases, including:

- When the business or role-based need that justified access to the medium or high sensitivity information no longer exists
- When an employee/contractor leaves the CFPB
- When there is a real or suspected risk of breach, or the need for fuller investigation of information activities
- In response to certain disciplinary actions
- In response to certain ethics opinions

6. Information Access Audit

Periodic audits of access rights related to High Sensitivity information will be performed in order to ensure that appropriate access has been granted, and that information access rights have been revoked timely and appropriately. These audits will include review with information owners.

C. Information Use

The CIO and delegated authorities will determine permissible use of information primarily by taking into account the sensitivity level of the information, the authority under which the information was received, applicable laws, contractual obligations, and the applicable information sharing standards. Permissible use of information may also be informed by other factors, such as the input of information owners.

Note that in the event that a user is acting as a service provider for another office or division, that user will be deemed to be a member of the group they are supporting for purposes of identifying permissible uses.

This policy will be documented by a *Permissible Information Use Matrix* that will clearly define how information may be used based on the above factors.

1. Identifying Permissible Uses

Identifying the permissible use(s) for information occurs at the time of intake and is the responsibility of the CIO with advice from the DGB, operational bodies charged by the CIO and/or DGB with information intake oversight, and/or divisional or office representatives to whom the CIO has delegated authority. Additional acceptable uses may be evaluated after intake, but must comply with this policy and may require review and/or approval from the CIO.

2. Desired Use Escalation

In the event that the permissibility of the desired use of given information is unclear or contested, the request will be referred to the CIO who will, with advice from the DGB, review and clarify. The outcome of this review should be used to amend the *Permissible Information Use Matrix* in order to inform similar requests going forward.

3. User Acknowledgement

Users may be required to provide affirmative acknowledgement of information usage restrictions. In these cases, the need for affirmative acknowledgement will also be determined at the time of information intake by the person or governance body with applicable oversight responsibilities.

4. Use of Transformed Information

In certain cases information that is, in its raw form, restricted from particular uses may be appropriate for those uses when transformed. This transformation may be achieved through a number of methods, including aggregation, sampling, removal of certain data elements, etc. Transformed information should be evaluated against all information use criteria (e.g., the implied sensitivity level of the resulting transformed information, the authority under which the information was received, applicable laws, contractual obligations, and the applicable information sharing standards) to determine if additional uses are permissible. In cases where permissible uses of the transformed information are unclear, users should consult with the CIO or the appropriate delegated authority for review and approval.

IV. Information Disclosure

This section describes the responsibility and authority of the CIO to oversee and approve disclosures¹⁶³ within the scope of the CIO's authority, and establishes the role of the Data Governance Board in assisting the CIO with these responsibilities. It provides the principles that guide the CIO decision-making regarding discretionary disclosures of information to the public or other external entities.¹⁶⁴

A. Disclosure Guiding Principles

The ability to disclose information, whether in its raw form, in aggregation, or as part of reports, studies, or other analytical outputs, is fundamental to the CFPB's mission. In order to ensure that the Bureau is careful, consistent, and responsible in its disclosure of information, the decision to disclose must be governed by several guiding principles:

1. Ensure Proper Authority – any information disclosed by the CFPB must be disclosed under or for the purpose of exercising authorities established in the Dodd-Frank Act and/or other applicable law.
2. Adhere to Applicable Law – the Bureau must at all times comply with existing law governing the disclosure of information.
3. Comply with Contractual Restrictions – the CFPB shall comply with all restrictions on disclosure specified in any contract, agreement, MOU, or other legally-binding document that governed the receipt of the information.
4. Risk-Benefit Analysis – when deciding whether to disclose information, the CFPB should weigh the benefits of disclosure against any potential risks to consumers or to other entities.
5. Align With Bureau Goals & Objectives – any decision to disclose information should align with the Bureau's purpose, objectives, and functions; its strategic goals; its responsibility to protect the privacy of consumers' and financial institutions' proprietary, personal, or confidential information; and its responsibility to maintain the public trust.

¹⁶³ Disclosure is defined as transmission of information outside the Bureau. Transmission of information from one Bureau office or division to another is considered information sharing, not disclosure.

¹⁶⁴ Nothing in this policy shall be construed to modify the delegations of authority made in 12 C.F.R. part 1070 that pertain to decision-making related to the disclosure of information.

B. Public, Inter-governmental, and other Third-Party Disclosures

Special considerations may exist depending on whether an anticipated disclosure is to the general public, to other governmental entities, or to other non-governmental third parties.

Public Disclosures

When disclosing information to the general public, the CFPB shall evaluate the risk that individual consumers or their financial information may be identified by the disclosure of information. This risk evaluation must take into account not only the specific information being disclosed by the Bureau, but any existing publicly available information that, when combined with the disclosed data, could result in increased consumer identification risk.

In addition to individuals' privacy interests, any decision to disclose information should protect institutions' commercially sensitive or proprietary information, and the identities of persons to whom "confidential information" pertains (*e.g.*, the identities of supervised institutions when the information is received under supervisory authority).

Inter-Governmental Disclosures

Any disclosures of Medium or High Sensitivity information between the CFPB and another governmental entity shall be governed by appropriate legal sharing documentation (*e.g.*, Memorandum of Understanding, Access Request, etc.) that defines who may have access to the information, how the information may be used, and any restrictions on further disclosure by the receiving entity.

In addition, any agreement to disclose information to another entity must include assurances that the receiving entity will treat the information as described in the governing legal documentation.

Other Third Parties

Any agreement between the CFPB and other non-governmental third parties under which the CFPB discloses information shall be governed by appropriate legal sharing documentation (*e.g.*, contracts, etc.) that defines who may have access to the information, how the information may be used, and any restrictions on further disclosure by the receiving entity. Agreements that are Federal Government Contracts may be subject to additional requirements and should be evaluated in consultation with the Procurement Office and/or assigned Contracting Officer.

In addition, any agreement to disclose information to another entity must include assurances that the receiving entity has information governance policies and procedures as described in the governing legal documentation.

C. Disclosure of Transformed Information

In certain cases, information that is restricted from disclosure in its raw form may be disclosed when transformed. This transformation may be achieved through a number of methods, including aggregation, sampling, removal of certain data elements, etc. In all cases, however, the disclosure of transformed information must adhere to the rules laid out in section D below.

D. Responsibility for Disclosure Decisions

All decisions to disclose information within the CIO's scope of authority must be approved by the Bureau's CIO (or by parties to whom the CIO has delegated responsibility for Disclosure activities in accordance with Section I.F) in accordance with the guiding principles and rules listed above.

Bureau Clearance

Nothing in this policy shall be construed to modify or ameliorate the requirement that work product that discloses information adhere to the clearance procedures in effect at the Bureau.

V. Information Disposition

This section of the policy, concerning information disposition, provides the principles that guide Bureau decision-making regarding the retention, archiving, and destruction of information; describes the responsibility and authority of the CIO related to information disposition; and establishes the role of the Data Governance Board in assisting the CIO with these responsibilities.

This information disposition policy considers the important distinction between official Bureau ‘records’, and non-record information. While many of the requirements and restrictions defined for records and non-records may be similar or identical, the legal impetus, underlying policy goals, and detailed operational processes may differ in significant ways.

A. Responsibility for Information Disposition Decisions

The CFPB Records Management Office has primary responsibility for decisions related to disposition of information, as directed by applicable laws. The CIO will have the responsibility to support, and where applicable, enforce these decisions, and will be assisted in these responsibilities by the Data Governance Board.

B. Bureau Records vs. Non-Records

In accordance with the Federal Records Act of 1950, Federal Records are,

"...all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them." (44 U.S.C. § 3301, Definition of Records).

All other information received, created, stored, or disclosed by the Bureau or by a third party on behalf of the Bureau is considered non-record information and is subject to corresponding disposition policy requirements.

Employees and third parties (other than Federal Government contractors) should consult with the CFPB Records Management Office to determine the appropriate classification of information. For Federal Government contractors, the status of the records will be determined by the terms of the contract, applicable provisions of the Federal Acquisition Regulation, and the Federal Records Act if applicable.

C. Bureau Record and Non-Record Disposition

The rules around identification, classification and scheduling of official records are defined and enforced by the CFPB Records Management Office. These rules are set forth in the Bureau's *Agency File Code Policy*, and are consistent with Federal law and National Archives and Records Administration (NARA) directives.

When possible, retention (archival and disposal) requirements for records and non-records should be identified at the time of information intake or creation, and should be maintained as part of related information metadata.

Additional details concerning the retention, archiving and/or destruction of non-record information may be found in the Bureau's *Agency File Code Policy*.

D. Third-Party Record and Non-Record Retention

All legal agreements with third parties should provide disposition requirements where applicable. The Bureau shall document any contractual disposition requirements and

adhere to those requirements wherever practicable. For Federal Government contractors, disposition of records will be addressed by the contract, applicable guidance specified in the Federal Acquisition Regulation, and the Federal Records Act if applicable.

E. Disposition of Physical Information Assets

Physical information assets (whether paper or electronic assets such as external hard drives or thumb drives) are subject to the same policy considerations as their electronic counterparts. In the event that information held on a physical electronic device is to be destroyed, the device shall be completely erased to ensure that information cannot be reconstructed at a later date. In the event that medium or high sensitivity information contained on paper is to be destroyed, the paper shall be placed in a secure shred bin for proper disposal.

VI. Revision History

| Action | Date | Approval Authority |
|-----------------------|---------------|---------------------------------|
| Initial version | June 10, 2014 | Richard Cordray, Director, CFPB |
| Technical corrections | July 22, 2014 | Richard Cordray, Director, CFPB |

VII. Effective and expiration dates

This Policy will become effective on September 30, 2014

A2: Public information intake & management policy exception

Public information intake & management policy exception

A. Overview

CFPB's *Information Governance Policy* sets in place rigorous guidelines and processes around the intake of information. The CIO has developed this exception to the *Information Governance Policy* as related to certain types of publicly available information.

A. Excepted guidelines and processes

Information intake

Certain public information (as outlined in section D) may be brought into the Bureau at the discretion of individual Bureau employees or contractors and without the need for approval from the CIO or other delegated authority.

Information management

Public information may be stored in any CFPB-approved location or device. Access may be provided to any Bureau employee or contractor without additional approvals.

B. Guidelines and processes NOT excepted

Disclosure and disposition

Information, which qualifies for this exception, is only exempted from the Intake and Management guidelines, but said information is *not* exempted from CFPB's *Information Governance Policy* Disclosure and Disposition policy requirements.

C. Other Bureau policies

Nothing in this memo shall be construed as an exception to adhere to the requirements of any applicable law or regulation, including but not limited to the Dodd-Frank Act, the Right to Financial Privacy Act, e-Government Act, and the Privacy Act, or any Bureau policy other than the *Information Governance Policy*.

D. Public information excepted from intake requirements

In general, information that is small, unstructured and legally available to the public for use is eligible for this exception. Examples include:

- Free newsletters (electronic or paper)
- Publicly available studies and academic papers
- Text from websites
- Newspaper or magazine content
- Direct identifiers of public figures that have been made public as part of the content being acquired (*e.g.*, journalists' bylines, names of business executives, individual images or audio/video files of public figures, etc.), unless such direct identifiers are being gathered, stored, or used in a way that would implicate the Privacy Act
- Data tables from publicly available sources
- Information received with no material contractual or legal restrictions on collection, access, distribution, or use

E. Public information NOT excepted from intake requirements

Certain information, even though publicly available, requires review and approval due to legal, privacy, operational or other reasons.

- Any public information which the Bureau does not have a clear authority to intake or is of a nature that other federal laws may restrict us from collecting (*e.g.*, First Amendment protected activities such as religious affiliation)
- Data from social media sources (*e.g.*, Twitter feeds, Facebook posts), other than social media information specifically directed at the Bureau (*e.g.*, responses to Tweets from @CFPB)
- Any microdata (consumer-level or loan-level) data in structured datasets
- Any information that has been made public illegally (*e.g.*, classified or proprietary information that has been leaked to the public)
- Any information that implicates compliance actions under applicable information law (*e.g.*, creating a new Privacy Impact Assessment, System of Records Notice, Paperwork Reduction Act Information Collection Request)
- Any information where the data rights or other limitations associated with the data restrict the Bureau from collecting or intaking said information
- Information with significant contractual, MOU-based, legal or other restrictions on collection, access, distribution, or use

- Large information assets which are intended for Bureau-wide use (*e.g.*, Census Bureau data, geographic mapping files)¹⁶⁵
- Information which, if misused or inappropriately disclosed, would likely cause significant harm to individuals, entities or the Bureau

F. Applicability of exception

It is the responsibility of the individual/office wishing to intake public information under this exception to: a) ensure that the desired information clearly falls within the scope of the exception; and, b) be able to articulate or demonstrate applicability. The Data Governance Lead or Data Intake Group Coordinator must be consulted if there is any uncertainty about the applicability of this exception. The Data Governance Lead or Data Intake Group Coordinator will consult with subject matter experts regarding whether there are any applicable laws or regulations that would restrict the use of the exception.

G. Term of exception

This exception will become effective on September 30, 2014, and is granted for a period of one year, at which time it may be renewed by the CIO. If not renewed, this exception will expire. The CIO may, at his/her discretion, rescind this exception at any time.

The CIO will retain the right to exercise any authority that is excepted under this document, and to review any activities excepted under this document.

Signature: _____ Date: _____

Ashwin Vasan, Chief Information Officer, Consumer Financial Protection Bureau

¹⁶⁵ For additional information on what data assets are available or intended for Bureau-wide use, contact the Data Governance Team at CFPB_DataPolicy@cfpb.gov.

A3: Low sensitivity information intake policy exception

Low sensitivity information intake policy exception

A. Overview

CFPB's *Information Governance Policy* sets in place rigorous guidelines and processes around the intake of information. The CIO has developed this exception to the *Information Governance Policy* as related to certain types of low sensitivity information.

A. Excepted guidelines and processes

Information intake

Certain Low sensitivity information (as outlined in section D) may be brought into the Bureau at the discretion of individual Bureau employees or contractors and without the need for approval from the CIO or other delegated authority.

Guidelines and processes NOT excepted

Management, Disclosure and Disposition

Information, which qualifies for this exception, is only exempted from the Intake guidelines, but said information *is not* exempted from CFPB's *Information Governance Policy* Management, Disclosure and Disposition policy requirements.

B. Other Bureau policies

Nothing in this memo shall be construed as an exception to adhere to the requirements of any applicable law or regulation, including but not limited to the Dodd-Frank Act, the Right to Financial Privacy Act, e-Government Act, and the Privacy Act, or any Bureau policy other than the *Information Governance Policy*.

C. Low sensitivity information excepted from intake requirements

In general, information that is small or unstructured, and does not have significant restrictions, is eligible for this exception. Examples include:

- Public information that has been sampled, aggregated, consolidated, or otherwise altered by the Bureau
- Non-public or proprietary information from widely available sources which does not have significant contractual or legal restrictions on access, distribution or use (*e.g.*, periodicals, subscription-based web site content)
- Small procured datasets or information intended for a specific purpose, such as research reports on particular companies, industries, products, or consumer segments

D. Low sensitivity information NOT excepted from intake requirements

Certain information, even though low sensitivity, requires review and approval due to legal, privacy, operational or other reasons.

- Any low sensitivity information which we do not have a clear authority to intake or is of a nature that other federal laws may restrict us from collecting (*e.g.*, First Amendment protected activities such as religious affiliation)
- Proprietary datasets which have significant contractual or legal restrictions on access, distribution or use
- Data from social media sources (*e.g.*, Twitter feeds, Facebook posts), other than social media information specifically directed at the Bureau (*e.g.*, responses to Tweets from @CFPB)
- Any microdata (consumer-level or loan-level) data in structured datasets
- Any information obtained as part of an information collection effort which requires review by Cybersecurity (*e.g.*, a collection performed by a third-party which requires review of the third-party's systems)
- Any information that implicates compliance actions under applicable information law (*e.g.*, creating a new Privacy Impact Assessment, System of Records Notice, Paperwork Reduction Act Information Collection Request)
- Any information where the data rights or other limitations associated with the data restrict the Bureau from collecting or intaking said information
- Large information assets which are intended for Bureau-wide use (*e.g.*, certain procured datasets)
- Information which, if misused or inappropriately disclosed, would likely cause significant harm to individuals, entities or the Bureau

E. Applicability of exception

It is the responsibility of the individual/office wishing to intake Low sensitivity information under this exception to: a) ensure that the desired information clearly falls within the scope of the exception; and, b) be able to articulate/demonstrate applicability. The Data Governance Lead or Data Intake Group Coordinator must be consulted if there is any uncertainty about the applicability of this exception. The Data Governance Lead or Data Intake Group Coordinator will consult with subject matter experts regarding whether there are any applicable laws or regulators that would restrict the use of the exception.

F. Term of exception

This exception will become effective on September 30, 2014, and is granted for a period of one year, at which time it may be renewed by the CIO. If not renewed, this exception will expire. The CIO may edit or rescind this exception at any time.

The CIO will retain the right to exercise any authority that is excepted under this document, and to review any activities excepted under this document.

Signature: _____ Date: _____
Ashwin Vasan, Chief Information Officer, Consumer Financial Protection Bureau

A4: Local information storage policy exceptions

Local information storage policy exceptions

A. Overview

CFPB's *Information Governance Policy* states that Medium and High Sensitivity information should not be stored locally on user laptops or desktop computers, and must be stored in centralized, CFPB-approved locations. The *Information Governance Policy* also recognizes that in certain circumstances temporary local storage of high sensitivity information may be necessary. Accordingly, this document provides exceptions to the centralized storage requirements in certain situations.

A. Local storage exception conditions

Connectivity to CFPB network unavailable

When Medium or High Sensitivity information is received by a CFPB employee or contractor who temporarily does not have access to the CFPB network, the information may be stored locally on the user's computer. When the task is complete and the user has access to the CFPB network, the user must move the information back to the appropriate centralized storage area and remove it from local storage as soon as reasonably practical.

Information required locally for work or business reasons

Certain tasks require information to be available locally on a user's laptop (*e.g.*, when information will be needed offline, when performance issues make using centralized storage impossible or impractical). When performing such tasks, users are permitted to temporarily store Medium and High sensitivity information locally. When the task is complete or the issue resolved, the user must move the information back to the appropriate centralized storage area and remove it from local storage as soon as reasonably practical.

Physical information

Physical information (*e.g.*, paper, CD/DVDs) is excepted from the centralized storage requirement in section III.A.1 of the Bureau's *Information Governance Policy*. It

must, however, be stored in accordance with Bureau policy and any applicable law or regulation.¹⁶⁶

B. Division or office-specific procedures

Divisions and offices within CFPB may establish additional local information storage procedures. Any such procedures must be at least as restrictive as this Local Information Storage Exception.

C. Other Bureau policies

Nothing in this memo shall be construed as an exception to adhere to the requirements of any applicable law or regulation, or any Bureau policy other than the *Information Governance Policy*.

D. Term of exception

This exception will become effective on September 30, 2014, and is granted for a period of one year, at which time it may be renewed by the CIO and relevant Associate Directors. If not renewed, this exception will expire. The CIO may edit or rescind this exception at any time.

The CIO will retain the right to exercise any authority that is excepted under this document, and to review any activities excepted under this document.

Signature: _____ Date: _____
Ashwin Vasan, Chief Information Officer, Consumer Financial Protection Bureau

Signature: _____ Date: _____
Steve Antonakes, Associate Director for Supervision, Enforcement & Fair Lending,
Consumer Financial Protection Bureau

¹⁶⁶ See Bureau of Consumer Fin. Prot., *CFPB Internal Policies*, http://team.cfpb.local/wiki/index.php/CFPB_Internal_Policies <http://team.cfpb.local/wiki/index.php/Category:Policy> (last visited Sept. 6, 2018 (for additional information on Bureau policies)).

A5: Voluntarily supplied contact information intake policy exception

Voluntarily supplied contact information intake policy exception

A. Overview

CFPB's *Information Governance Policy* sets in place rigorous guidelines and processes around the intake of information. The CIO has developed this exception to the *Information Governance Policy* as related to certain types of voluntarily supplied contact information.

A. Excepted guidelines and processes

Information Intake

Voluntarily supplied contact information (as outlined in section D) that qualifies under this Exception may be brought into the Bureau at the discretion of the individual Bureau employees or contractors, and without CIO (or other delegated) approval.

B. Guidelines and processes NOT excepted

Management, disclosure, and disposition

Information which qualifies for this exception is only exempted from the Intake portion of the *Information Governance Policy*, and is *not* exempted from CFPB's *Information Governance Policy* Management, Disclosure and Disposition policy requirements.

C. Other Bureau policies

Nothing in this memo shall be construed as an exception to adhere to the requirements of any applicable law or regulation, including but not limited to the Dodd-Frank Act, the Right to Financial Privacy Act, e-Government Act, and the Privacy Act, or any Bureau policy other than the *Information Governance Policy*.

D. Voluntarily supplied contact information excepted from intake requirements

An individual's or financial institution's contact information is not subject to the review and approval process as long as the individual or institution who is supplying the information has done so voluntarily, and understands the reasonably foreseeable purposes for which the Bureau may use the information. This information may include items such as:

- Full Name
- Title
- Company
- Phone number
- Email address
- Address

In order to be eligible for this exception, the above information must not be associated with any additional data about that individual or institution (*e.g.*, personal financial information, demographics, survey responses etc.). The contact information must be used for administrative purposes only, and not for market research or other analyses.

E. Voluntarily supplied contact information NOT excepted from intake requirements

As noted above, if contact information is associated with any additional information about that individual or institution, it no longer qualifies under this exception and must be reviewed and approved. This includes but is not limited to:

- An individual's social security number or financial account numbers
- Any other information which, if misused or inappropriately disclosed, would likely cause significant harm to individuals, business entities or the Bureau.

F. Applicability of exception

It is the responsibility of the individual/office wishing to intake contact information under this exception to: a) ensure that the desired information clearly falls within the scope of the exception; and, b) be able to articulate/demonstrate applicability. The Data Governance Lead or Data Intake Group Coordinator must be consulted if there is any uncertainty about the applicability of this exception. The Data Governance Lead or Data Intake Group Coordinator will consult with subject matter experts regarding whether there are any applicable laws or regulations that would restrict the use of the exception.

G. Term of exception

This exception will become effective on September 30, 2014, and is granted for a period of one year, at which time it may be renewed by the CIO. If not renewed, this exception will expire. The CIO may, at his/her discretion, rescind this exception at any time.

The CIO will retain the right to exercise any authority that is excepted under this document, and to review any activities excepted under this document.

Signature: _____ Date: _____
Ashwin Vasan, Chief Information Officer, Consumer Financial Protection Bureau

A6: Information sensitivity leveling standard

Information sensitivity leveling standard

Background and overview

All information held by (or on behalf of) the CFPB is assigned a Sensitivity level. The Sensitivity level determines important rules, guidelines and expectations around the storage, access, use, and disclosure of information. The CIO, or any other individual or committee to whom the CIO has delegated authority, is responsible for determining the appropriate Sensitivity level of information.

Given the complex and often subjective nature of sensitivity determination, this document does not attempt to provide detailed, prescriptive rules for assigning sensitivity levels. Rather, it is intended to guide the Bureau in the process of making those decisions. As such, it will continue to evolve as proscriptive rules are identified and guidelines evolve.

Limitations

Sensitivity levels under this Standard are not intended to either parallel or replace any categories of classified national security information (*e.g.*, Classified, Secret, Top Secret).

Sensitivity levels under this Standard do not align with or have any direct bearing on whether a given piece of information would be released under a FOIA or Privacy Act request.¹⁶⁷

Sensitivity levels under this Standard do not align with or have any direct bearing on whether a given piece of information constitutes a Record under the Federal Records Act.¹⁶⁸

Sensitivity levels under this Standard do not align with or have any direct bearing on whether a given piece of information is classified under the Control Unclassified Information program.¹⁶⁹

¹⁶⁷ See Bureau of Consumer Fin. Prot., *FOIA*, <http://team.cfpb.local/wiki/index.php/FOIA> (last visited Sept. 6, 2018) (for additional information on FOIA).

¹⁶⁸ See Bureau of Consumer Fin. Prot., *Records Management Information Center*, http://team.cfpb.local/wiki/index.php/Records_Management_Information_Center (last visited Sept. 6, 2018) (for additional information on Records).

¹⁶⁹ See Exec. Order No. 13,556, 3 C.F.R. part 2002 (2010) (for more details on Controlled Unclassified Information).

There is no direct correlation between the Sensitivity levels under this Standard and the security categorization of CFPB information systems under National Institute of Standards and Technology (NIST) publications or the Federal Information Security Management Act (FISMA).¹⁷⁰

Determining information sensitivity levels

All information received by the Bureau will be assigned a sensitivity level (Public, Low, Medium, or High). The sensitivity level can be based on a number of factors, but is primarily determined by:

- The authority under which the information was received
- Legal restrictions related to the information
- Any contractual restrictions, such as MOUs, non-disclosure agreements, contracts, etc.
- Presence and sensitivity of PII or Direct Identifiers, or level of re-identification risk
- The commercial sensitivity of the information
- Whether the information is available to the general public
- Bureau policy considerations arising from the content of the information

A. Public information

Public Information is information that is available to the general public through sources other than the CFPB (*e.g.*, other governmental bodies, universities, free publications, etc.).

Characteristics of public information

Is Not Public if:

- Includes raw data acquired through Enforcement or Supervisory authorities, or otherwise constitutes confidential investigative information, confidential supervisory information, or confidential consumer complaint information
- Contains Direct Identifiers of an individual who has not provided consent for its provision, use, or disclosure (*e.g.*, SSN, address, full name, account numbers etc.), unless such Direct Identifiers are of public figures and have been made public as part of the content being acquired (such as journalists' bylines, names of business executives, individual images or audio/video files of public figures, etc.)

¹⁷⁰ See Bureau of Consumer Fin. Prot., *Cybersecurity*, <http://team.cfpb.local/wiki/index.php/Cybersecurity> (last visited Sept. 6, 2018) (for additional information on Cybersecurity, including policies, processes, standards, and templates).

- Contains confidential, proprietary or commercially sensitive information
- Was made available to the public via illegal means (*e.g.*, leaked documents)

Is Public if:

- Available to the general public by legal means with no restrictions regarding access or use

Sample implications of public leveling

- Bureau employees, contractors, or consultants may be granted access without the need for additional approvals
- Information may generally be shared internally without restrictions
- May be exempted from data intake governance requirements; see *Public Information Intake Exception* for more details

Examples of public information

- Publicly released macroeconomic data such as employment statistics, GDP, etc.
- News articles from publicly available sources

B. Low sensitivity information

Low sensitivity information is generally information that is not generally available to the public, but which would not likely cause significant harm if misused.

Characteristics of low sensitivity information

Is Not Low Sensitivity if:

- Includes raw data acquired through Enforcement or Supervisory authorities, or otherwise constitutes confidential investigative information, confidential supervisory information, or confidential consumer complaint information
- Contains Direct Identifiers of an individual who has not provided consent for its provision, use, or disclosure (*e.g.*, SSN, address, full name, account numbers etc.), unless such Direct Identifiers are of public figures and have been made public as part of the content being acquired (such as journalists' bylines, names of business executives, individual images or audio/video files of public figures, etc.)
- Contains information which could cause significant harm to individuals if improperly used or disclosed (*e.g.*, SSN, account numbers, etc.)
- Contains information which could cause significant harm to business entities if improperly used or disclosed (*e.g.*, trade secrets)

- Received from a third party under contract or other agreement with significant restrictions regarding use, access, or disclosure

Is Low Sensitivity if:

- Is commercially available to the general public without material restrictions on access or use (*e.g.*, magazine subscriptions)

May Be Low Sensitivity if it:

- Contains PII with low re-identification risk
- Contains Direct Identifiers of an individual who has provided explicit consent for its provision, use, or disclosure, assuming the information will be used in a manner consistent with the purpose for which the consent was provided
- Derived from information received through Enforcement or Supervisory authorities and through aggregation, source masking, or other techniques, does not reveal the identity of any consumer or business entity involved

Sample implications of low sensitivity leveling

- Bureau employees, contractors, or consultants may be granted access without the need for additional approvals
- Information may generally be shared internally without restrictions
- May be exempted from data intake governance requirements; see *Low Sensitivity Information Intake Exception* for more details

Examples of low sensitivity information

- Purchased periodicals or industry reports that do not contain PII or trade secrets
- General Bureau-wide information that is intended to be available to all employees

C. Medium Sensitivity Information

Medium sensitivity information is generally information that is confidential, but that does not contain highly sensitive data such as Direct Identifiers concerning individuals or sensitive proprietary information concerning business entities.

Characteristics of medium sensitivity information

Is Not Medium Sensitivity if:

- Includes raw data acquired through Enforcement or Supervisory authorities, or otherwise constitutes confidential investigative information, confidential supervisory information, or confidential consumer complaint information
- Contains Direct Identifiers of an individual who has not provided consent for its provision, use, or disclosure (*e.g.*, SSN, address, full name, account numbers, etc.), unless such Direct Identifiers are of public figures and have been made public as part of the content being acquired (such as journalists' bylines, names of business executives, individual images or audio/video files of public figures, etc.)
- Contains information which could cause significant harm to individuals if improperly used or disclosed (*e.g.*, SSN, account numbers, etc.)
- Contains information which could cause significant harm to business entities if improperly used or disclosed (*e.g.*, trade secrets)

May Be Medium Sensitivity if:

- Is commercially available with restrictions on access or use
- Poses a risk of re-identification, either on its own or when there is a reasonable expectation of re-identification when combined with other information
- Derived from information received through Enforcement or Supervisory authorities and through aggregation, source masking, or other techniques, does not reveal the identity of any source of data or of any consumer or business entity involved
- Certain types of confidential Bureau information (such as certain sensitive and pre-decisional documents)

Sample implications of medium sensitivity leveling

- Access may be granted to users with relevant roles
- Should be stored in a central, access-controlled location

Examples of medium sensitivity information

- Commercially-available loan-level data that does not contain direct identifiers
- Procured data with significant contractual or MOU-based restrictions

D. High sensitivity information

High sensitivity information is information which carries with it a significant legal, reputational or financial risk to the Bureau, individuals and/or business entities, should it be improperly accessed, used, or disclosed.

Characteristics of high sensitivity information

Is High Sensitivity if:

- Includes raw data acquired through Enforcement or Supervisory authorities, or otherwise constitutes confidential investigative information, confidential supervisory information, or confidential consumer complaint information
- Contains Direct Identifiers of an individual who has not provided consent for its provision, use, or disclosure (e.g., SSN, address, full name, account numbers etc.), unless such Direct Identifiers are of public figures and have been made public as part of the content being acquired (such as journalists' bylines, names of business executives, individual images or audio/video files of public figures, etc.)
- Contains information which could cause significant harm to individuals if improperly used or disclosed (e.g., SSN, account numbers, etc.)
- Contains information which could cause significant harm to business entities if improperly used or disclosed (e.g., trade secrets)
- Otherwise deemed to carry a significant legal, reputational, operational or financial risk to the Bureau

Sample implications of high sensitivity leveling

- To receive access, users must have a demonstrated business need
- Should be stored in a central, access-controlled location

Examples of high sensitivity information

- Raw Supervisory Exam information
- Raw Enforcement information
- Raw consumer complaint information
- CFPB employee names and home addresses when presented together

Sign & Date

This Standard shall become effective on September 30, 2014.

Signature: _____ Date: _____

Ashwin Vasan, Chief Information Officer, Consumer Financial Protection Bureau

A7: Data Governance Board Charter

Consumer Financial Protection Bureau

Data Governance Board Charter

I. Purpose of the Data Governance Board

The ability to intake, analyze and publicly release information is fundamental to the Consumer Financial Protection Bureau’s (CFPB) mission. The Consumer Financial Protection Bureau’s (CPFB or Bureau) Data Governance Board (“DGB”) is a committee chaired by the Chief Data Officer (CDO).¹⁷¹ The DGB has responsibility for assessing the benefits and risks associated with managing the Bureau’s data. The DGB will advise the CDO on decisions regarding intake, management, disclosure, and disposition of data in accordance with Bureau policies. The DGB is established in accordance with the *Policy on Information Governance at the CFPB*.

II. Membership

A. Members

The DGB will consist of members from the following Divisions and Offices:

1. The CDO, Chair of the DGB
2. A representative from the CDO Policy Team
3. A representative from the Office of Consumer Response
4. A representative from the Consumer Education and Engagement Division
5. A representative from the Supervision, Enforcement and Fair Lending Division
6. A representative from the Research, Markets and Regulations Division
7. A representative from the Privacy Team
8. A representative from the Cybersecurity Team
9. A representative from the Legal Division
10. A representative from the External Affairs Division
11. A representative from the Office of the Director

¹⁷¹ Per the *Policy on Information Governance at the CFPB*, the Chief Information Officer (CIO) may for operational purposes, and at his/her discretion, delegate information governance oversight authority to individuals or to operational committees. The CIO has delegated the authority to chair the DGB to the CDO. The CIO may still exercise his/her information governance oversight authority at his/her discretion.

12. A representative from the Operations Division Front Office

B. Delegates

DGB members may, as needed, send a delegate to a meeting in their place. Delegates of members will have the same authority as the member they are representing. The DGB may invite other attendees to attend meetings or engage on topics of interest, as they deem appropriate.

C. Membership selection

The members shall be identified by the senior leadership in the areas identified in Section 1.B. It is ideal for members to have the ability to weigh in on substantive information governance issues and to have knowledge of the related issues for their Office or Division. Leadership may change their choice of appointed representative at any time by notifying the CDO Policy Team.

III. Meeting support and facilitation

The Data Policy Team is responsible for:

- Scheduling and facilitating regular meetings
- Planning meeting agendas
- Compiling and sharing materials for DIG member review, prior to the meeting
- Facilitating the collection and submission of recommendations to the CDO
- Facilitating the escalation of appropriate issues to the DGB, as necessary
- Recording all decisions, and
- Maintaining relevant DGB documentation (*e.g.*, meeting presentations, minutes, recommendations) in a central location

IV. Responsibilities of the DGB

Facilitated by the Data Policy Team, it is the role of the DGB is to advise the CDO on any decisions regarding information governance. The responsibilities of the DGB include, but are not limited to, advising the CDO in making the following decisions:

- Determining whether given information should be brought into the Bureau or released by the Bureau, where the Data Intake Group or Data Release Group elevates a request to the DGB
- Developing and implementing sensitivity leveling standards for managing Bureau information
- Reviewing and approving certain information governance standards

- Reviewing and approving decisions to delegate authority to individuals or committees
- Reviewing summaries of work conducted by delegated authorities
- Reviewing policy exceptions
- Advising the CDO on general information governance related issues
- Providing timely review, feedback and recommendations of issues brought before the DGB.

V. DGB process & authorities

A. Meeting schedule

The DGB will generally meet no less than once every two months. Meetings shall be held at a time convenient to as many members as possible.

B. Advising the CDO

The DGB is responsible for advising the CDO on all parts of the *Policy on Information Governance* at the CFPB, along with certain required consultations as enumerated below.

C. Required consultations on certain decisions

Certain decisions as described below will require either post-hoc or ante-hoc consultation with the DGB.

1. Reviewing decisions prior to CDO approval

While final authority for the decisions below lies with the CDO, the decisions below shall generally be reviewed with the DGB prior to the CDO making a decision. The CDO may bypass this requirement in extraordinary circumstances (e.g., when timelines do not permit ante-hoc review), but will still ensure post-hoc review in cases where review prior to the decision is not reasonably possible.

- a) **Delegation of authority.** Any and all authorities contained in the *Policy on Information Governance at the CFPB*, may be further delegated to any individual or operational committees. The CDO shall consult with the DGB on decisions to delegate authority prior to finalizing any formal delegation.
- b) **Review and approval of data governance standards or governance body charters.** The CDO has the authority to approve or reject any Bureau Data Governance Standards and to charter new Bureau governance bodies.

The CDO shall review any Bureau Data Governance Standard or charter with the DGB prior to the CDO approving or rejecting the Standard or charter.

- c) **Bureau-wide policy exceptions.** The CDO may approve exceptions to the aforementioned policy as appropriate. The DGB shall review Bureau-wide policy exceptions granted by the CDO. This review is not required for limited exceptions that may impact only a single dataset or a single user or small group of users.

2. Oversight of delegated decisions

Summaries of major data-related information management processes and practices made by delegated authorities shall be reviewed by the DGB at year-end. Divisions or Offices with a delegated authority may seek assistance from the Data Policy Team, the DGB or the CDO should any questions arise. The DGB may set guidelines around what constitutes a “major data-related decision” for the purposes of this requirement. Examples may include, but are not limited to, revising existing Standards, intake new datasets, managing access controls, and data disclosure processes.

Each individual or committee with delegated authority shall provide information to the DGB summarizing major data-related information management processes and practices which the individual or committee has undertaken. The DGB will prescribe the frequency and format by which the decisions will be reviewed.

The DGB will not have authority to overturn any of the decisions made by delegated authorities, but may use the information reviewed to inform recommendations to the CIO or CDO as to the scope of the delegations or changes to future delegated information management processes and practices.

D. Documentation

The CDO Policy team will maintain and circulate, as needed, documentation about Data Governance Board decisions. This includes recommendations to the CIO or CDO about approving or rejecting proposed delegations of authority, new Standards, and exceptions to the *Policy on Information Governance* at the CFPB.

VI. Revision History

| Action | Date | Approval Authority |
|-----------------|-------------------|-------------------------|
| Initial version | July 29, 2014 | Ashwin Vasan, CIO, CFPB |
| Second version | November 14, 2017 | Jerry Horton, CIO, CFPB |

VII. CIO Signature and Effective Date

Approved: _____ Date: _____
Jerry Horton, Chief Information Officer

This Charter will become effective when signed.

A8: Data Intake Group Charter

Consumer Financial Protection Bureau Data Intake Group Charter

I. Purpose of the Data Intake Group

The ability to intake and analyze information is fundamental to the Consumer Financial Protection Bureau's (CFPB) mission. This analysis informs Supervision, Enforcement and Fair Lending decisions, guides policy development and rulemaking, provides critical information about the condition of consumer financial markets, and supports decision-making about CFPB's internal policies and operations. The DIG is established in accordance with the *Policy on Information Governance* at the CFPB.

The Data Governance Board (DGB) formed the Data Intake Group (DIG) as an operational committee to 1) coordinate CFPB data intake compliance and 2) ensure that the CFPB is responsible for its intake of information.

II. Membership

A. Members

The DIG consists of the following members:

- A representative from the Data Policy Team
- A representative from the Legal Division
- A representative from the Privacy Team
- A representative from the Cybersecurity Team
- A representative from the Enterprise Data Team
- A representative from the Paperwork Reduction Act Office
- A representative from the Records Management Office
- A representative from the Freedom of Information Act Office

B. Delegates

DIG members may, at their own discretion, have a delegate from their office or Division attend a meeting in their place. Delegates will have the same authority as the member they are representing. The DIG may invite other CFPB stakeholders to attend meetings or engage in relevant topics.

C. Membership selection

Members shall be identified by senior leadership in the areas identified above. Leadership may change their choice of appointed representative at any time by notifying the Data Governance Board or Data Policy Team.

III. DIG Coordinator

The Data Policy Team will appoint a DIG Coordinator to facilitate CFPB data intakes and manage the DIG process. The DIG Coordinator is responsible for determining the appropriate path by which the CFPB may consider intaking information, including whether proposed intakes:

- Require DIG review
- May be brought in under a delegation of authority
- May be brought in under an exception to, or are otherwise exempt from requirements
- May be brought in after a determination that compliance assessments and requirements have otherwise been completed

The DIG Coordinator, with support from the Data Policy Team, is responsible for:

- Scheduling regular meetings
- Planning meeting agendas
- Working with staff who would like to request data intakes
- Compiling and sharing materials for DIG member review, prior to the meeting
- Facilitating the collection and submission of recommendations from each DIG member
- Facilitating the approval, and/or escalation to the DGB, as necessary
- Recording all decisions, and
- Maintaining relevant DIG documentation (*e.g.*, meeting presentations, minutes, recommendations) in a central location

IV. Responsibilities of the DIG

Facilitated by the Data Policy Team, the DIG is responsible for assessing whether and how data should be brought into the CFPB in accordance with the *Policy on Information Governance at the CFPB*, other relevant CFPB policies, and appropriate legal concerns. As part of this assessment, the DIG will provide recommendations to the CDO.¹⁷²

Each DIG member is responsible for providing timely review, feedback and recommendations of data intakes brought before the DIG.

V. DIG process

A. Meeting schedule

The DIG will generally meet no less than once a month. Meetings shall be held at a time convenient to as many members as possible.

B. Required reviews

If the DIG Coordinator, Data Policy Team, or the CDO determines that a DIG review is required, relevant information about the proposed intake is provided to the DIG for review. The DIG reviews generally include:

- A review for compliance with applicable laws and regulations.¹⁷³
- A review for compliance with applicable CFPB Policies, Standards, Procedures, and Processes.
- A review of proposed plans for each data intake request, including; the purpose, ownership and access, storage, intended use, method of intake and whether the information needs to be de-identified before its proposed use.
- A written recommendation.

¹⁷² Per the *Policy on Information Governance* the Bureau, the Chief Information Officer (CIO) may for operational purposes, and at his/her discretion, delegate information governance oversight authority to individuals or to operational committees. The CIO has delegated the authority to make data intake decisions to the CDO. The CIO may still exercise his/her information governance oversight authority at his/her discretion.

¹⁷³ These include, but not limited to, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Paperwork Reduction Act, E-Government Act, Privacy Act, Federal Information Security Management Act, Federal Records Act, and Freedom of Information Act.

C. Required recommendations and approval

For each data intake for which DIG review is required, DIG representatives provide their recommendation as to whether or not the CFPB should intake the data. These recommendations may include reservations or conditions and should be conducted in a timely manner.

Each DIG member is responsible for conducting an independent review of intakes under the laws, regulations, and Federal policies that govern their respective areas of compliance. Individual DIG members, unless otherwise delegated, do not have the individual authority to approve an intake of information into the CFPB.

During the CDO review process, the CDO may request more information from the DIG, or discuss the proposed intake with the Data Governance Board or other advisors. The CDO ultimately approves or rejects the proposed data intake request, and may indicate reservations, require conditions of approval or restrictions on use.

D. Timing of data intake or collection

Data subject to review by the DIG may not be brought into the CFPB or collected on behalf of the CFPB until it is approved. In extenuating circumstances, the CDO may approve or reject a given data intake without DIG review. The CDO informs the Data Policy Team, who in turn informs the DIG, of any such decision, and any such data intake may be subject to post-hoc DIG review.

E. Documentation and reporting requirements

The DIG Coordinator, with support from the Data Policy Team, will maintain and circulate, as needed, documentation about DIG recommendations and decisions.

The Data Policy Team will provide read-outs to the DGB on DIG activity generally on a quarterly basis, but no less than annually. These read-outs will include also summaries of determinations, when requests have been received and approved by the DIG Coordinator, CDO, for intakes of information other than through the DIG process.

VI. Revision History

| Action | Date | Approval Authority |
|-----------------|-------------------|-------------------------|
| Initial version | June 25, 2015 | Ashwin Vasan, CIO, CFPB |
| Revised version | November 14, 2017 | Linda Powell, CDO |

VII. Signature and Effective Date

Approved: _____ Date: _____

Linda Powell, Chief Information Officer

This Charter is effective when signed.

A9: Data Release Group Charter

Consumer Financial Protection Bureau

Data Release Group Charter

I. Purpose and guiding principles of the Data Release Group

As a data-driven Agency, the Bureau understands the value and potential for publicly releasing certain data sets that we collect and manage. To this end, the Data Release Group (“DRG”) was formed to 1) coordinate the review of potential Bureau data releases to the public and 2) facilitate the appropriate level, if any, of disclosure of public use datasets by the Bureau. The Bureau’s DRG will assess proposed data releases based on the following principles:

- Datasets should be made publicly available, where legally permissible and appropriate.¹⁷⁴
- Information should be managed as an asset throughout its life cycle to promote openness and interoperability, and sufficient security of information and information systems.
- Effective de-identification techniques should be applied when necessary to reduce risks associated with the public disclosure of datasets.
- Effective communication about the data before and after the data release, where possible, improves its usefulness to the public and helps to safeguard the Bureau
- Data releases should be released on the Data & Research page of the Bureau and should follow the guidelines and principles of www.consumerfinance.gov
- Data releases should align with Bureau-wide priorities informed by resource capacity and ability.

The DRG works with Bureau stakeholders to review and refine requests for data release. The DRG then makes recommendations regarding the requests to the Chief Data Officer (CDO)¹⁷⁵, who has the authority to decide whether or not to release the data.

II. Membership

¹⁷⁴ See Bureau of Consumer Fin. Prot., *The CFPB Strategy Plan, Budget, and Performance Plan and Report*, at 89-90 (Feb. 2015), available at https://files.consumerfinance.gov/f/201502_cfpb_report_strategic-plan-budget-and-performance-plan_FY2014-2016.pdf.

¹⁷⁵ Under the *Policy on Information Governance*, the CIO may for operational purposes, and at his/her discretion, delegate information governance oversight authority to individuals or to operational committees. The CIO has delegated the authority to determine what data the Bureau publicly releases to the CDO. The CIO may still exercise his/her information governance oversight authority at his/her discretion.

A. Members and delegates

The standing members of the DRG include the following members:

- A representatives from the Data Policy Team
- A representative from the Legal Division
- A representative from the Privacy Office, and
- A representative from External Affairs
- A representative from the Office of Research

B. Delegates

DRG members may, at their own discretion, have a delegate attend a meeting in their place. Delegates will have the same authority as the member they are representing. The DRG may invite other Bureau stakeholders to attend meetings or engage in relevant topics. The DRG Coordinator may invite the Data Steward and other Bureau partners to review the data release request, as necessary.

C. Membership selection

Members shall be identified by senior leadership in the areas identified above. Leadership may change their choice of appointed representative at any time by notifying the Data Governance Board or Data Policy Team.

III. DRG Coordinator

The Data Policy Team will appoint a DRG Coordinator to facilitate review of potential public data releases by the Bureau, and to manage the DRG review process. The DRG Coordinator is responsible for determining the appropriate path by which the Bureau may consider releasing information.

The DRG Coordinator, with support from the CDO Data Policy Team, is responsible for:

- Scheduling regular meetings
- Planning meeting agendas
- Working with staff who would like to request to release data publicly
- Compiling and sharing materials for DRG member review, prior to the meeting
- Facilitating the collection and submission of recommendations from each DRG member
- Facilitating the approval, and/or escalation to the DGB, as necessary
- Recording all decisions
- Notifying Design & Development that the request has been approved for release, and

- Maintaining relevant DRG documentation (*e.g.*, meeting presentations, minutes, recommendations) in a central location

IV. Roles and responsibilities

Facilitated by the CDO Data Policy Team, the DRG is responsible for assessing whether and how data should be publicly released by the Bureau in accordance with relevant Bureau policies and applicable laws. As part of this assessment, the DRG will provide recommendations to the CDO, or his or her delegate. Each DRG member is responsible for providing timely review, feedback and recommendations related to the potential public release of data brought before the DRG.

The DRG does not review data releases that are made pursuant to a delegation of authority. For example, the DRG does not review trial exhibits in Enforcement actions. The office or division that releases data pursuant to a delegation of authority will report the data release to the Data Governance Board as part of the annual delegation of authority review process.

Other specific responsibilities:

Chief Data Officer (CDO) – Reviews the recommendations of DRG Members, and the DGB if necessary, and makes a final decision regarding the data release request.

DRG Coordinator – Provides relevant guidance and documentation to the Requester; acts as a liaison between the Requester and DRG members; guides the requester through the process, proactively identifies any issues for discussion, and partners with the Requester and DRG members to review. Convenes the DRG and relevant Bureau partners; meets with the Requester for an initial data release consultation to discuss the process, desirability and feasibility of the request; helps the Requester identify information to gather and tasks to consider; and identifies additional resources that may be necessary and connects the requester with any additional resource processes. If significant policy, legal, privacy, reputational, operational or other concerns are identified during the review by DRG members and Data Governance Lead, the DRG Coordinator elevates the request to the DGB for consultation.

DRG Member – Reviews and provides recommendation regarding the data release request to the CDO. Includes invited Bureau members that advise on data release requests.

Data Governance Board (DGB) – In its role as the advisory body that assesses risks and benefits associated with managing the Bureau’s data assets, the DGB reviews and provides a recommendation to the CDO on the data release request, when necessary, such as when significant policy, legal, privacy, reputational, operational or other concerns are identified during the review process.

Data Governance Lead – Facilitates escalations and discussions with the DGB members.
Data Steward – If different from the Requester, the Data Steward is the primary point of contact for the data. For example, the Data Steward is generally listed as the point of contact in the Bureau’s Data Catalog. The Data Steward participates in the review of the data release.

Requester – Develops and drafts a data release request; collects supporting documentation for review; and obtain support and confirmation that the work is a priority from the Requester’s Office/Division management. As needed, the Requester socializes and seeks feedback on proposal across the Bureau. The Requester and other Bureau partners consult with DRG members to discuss data release request and present a final data release request to the DRG.

IV. DRG Process

A. Meeting schedule

The DRG will meet, as needed, to respond to Bureau staff requests. Meetings shall be held at a time convenient to as many members as possible.

B. Required reviews

If the DRG Coordinator, Data Policy Team, or CDO determines that a DRG review is required, relevant information about the proposed data release is provided to the DRG for review.

C. Required recommendations and approval

For each data release for which DRG review is required, DRG representatives provide their recommendation as to whether or not the Bureau should publicly release the data. These recommendations may include reservations or conditions and should be conducted in a timely manner.

Each DRG member is responsible for conducting an independent review of releases under the laws, regulations, and Federal policies that govern their respective areas of compliance. Individual DRG members, unless otherwise delegated, do not have the individual authority to approve a release of information from the Bureau.

During the review process, the CDO may request more information from the DRG members or the Requester, or discuss the proposed data release with the Data Governance Board or other

advisors. The CDO ultimately approves or rejects the proposed data release request, and may indicate reservations, require conditions of approval or restrictions on release.

D. Timing of data release

Data subject to review by the DRG may not be publicly released by the Bureau until it is approved. In extenuating circumstances, the CDO may approve or reject a given data release without DRG review. The CDO informs the Data Policy Team, who in turn informs the DRG, of any such decision, and any such data release may be subject to post-hoc DRG review.

E. Documentation and reporting requirements

The DRG Coordinator, with support from the Data Policy, maintains and circulates, as needed, documentation about each data release request. The data release request should include, but is not limited to, the description, purpose, and anticipated use of the data. The DRG Coordinator will maintain documentation of recommendations from DRG members and the DGB and the ultimate decision on each data release request.

The Data Policy Team will provide read-outs to the DGB on DRG activity generally on a quarterly basis, but no less than annually. These read-outs will include summaries of determinations when requests have been received and approved by the DRG Coordinator, CDO, for releases of information other than through the DRG process.

V. Revision history

| Action | Date | Approval Authority |
|-----------------------|----------|--------------------|
| Initial pilot version | 11/01/16 | Reviewed by DGB |
| Revised version | 11/14/17 | Linda Powell, CDO |

VI. Signature and Effective Date

Approved: _____ Date: _____
Linda Powell, Chief Data Officer

This Charter is effective when signed.

A10: Policy for the Sharing of Certain Confidential Supervisory Information with Employees in Research, Markets and Regulations

Policy for the Sharing of Certain Confidential Supervisory Information with Employees in Research, Markets and Regulations

These principles are designed to assure that appropriate employees within RMR can obtain access to confidential supervisory information (as defined in 12 CFR 1070.2(i)(1)) that has already been obtained by Supervision during the course of its examination work. This sharing will occur as needed in order both to provide support to Supervision and also to further RMR's mission of informing the public, policy-makers, and the CFPB's own policy-making with data-driven analysis of consumer finance markets and consumer behavior while at the same time protecting the confidential nature of such information. This policy does not address the sharing of confidential supervisory information with other Bureau divisions by Supervision or RMR.

The following policies and procedures will govern the sharing of confidential supervisory information with RMR employees:

1. The Associate Director, Deputy Associate Director, Assistant Directors, Deputy Assistant Directors, Program Managers, and Supervisory Economists within RMR will have access to standardized reports prepared by SPARC, including the institution and product level information. For example, this includes monitoring reports (and the confidential portions thereof), and supervisory prioritization information. Any of those individuals may designate in writing other individuals within their respective Offices who require access to such information to perform their responsibilities either on an ongoing or ad hoc basis. Any individuals with access to this information must undergo training related to confidential supervisory information, per Paragraph 7 below.
2. When providing analytic support in connection with an examination, the economists, analysts, research assistants, and other employees working on the exam will have access to the data obtained in connection with the examination for the duration of the examination process.

3. At the written request of the Associate Director, Deputy Associate Director, Assistant Director, a Supervisory Economist in the Office of Research, a Managing Counsel in the Office of Regulations, or a Program Manager in a Markets Office, the Supervision Deputy Assistant Director for SPARC (or a designee) will provide the employees identified in the request specified data and/or documents needed to undertake research or analysis with respect to a specified purpose such as analysis of a particular market or trends or behaviors across markets. This might include, for example, a request for data secured by Supervision for purposes of risk assessment using the Compliance-ease tool or similar tools. This generally would *not* include examination work papers, draft examination reports and other similar documents. In limited circumstances, this may include certain work papers, such as a work paper consisting of interview notes if, for example, Supervision and RMR are jointly assessing implementation challenges or analyzing costs and benefits in connection with CFPB's regulatory work or if interview notes contain information necessary to enable RMR to interpret data RMR is analyzing. Any individuals with access to this information must undergo training related to confidential supervisory information, outlined in Paragraph 7 below. Furthermore, any such sharing will be subject to restrictions outlined in Paragraph 8, regarding personally identifiable information.
4. RMR may use such information to prepare white papers and related other public documents or presentations on behalf of the Bureau so long as such white papers and related documents do not identify, either directly or indirectly, any particular person (as defined in 12 C.F.R. § 1070.2(n)) to whom the confidential information pertains or discuss the information in such a way that one could infer the identity of the person. Before undertaking work on such a paper or other document, RMR will review its plans for using supervisory information with the Office of Supervision Policy, the SEFL Front Office, and the Legal Division, and any disagreements as to the appropriateness of the plan will be escalated and resolved as appropriate. Such discussion will also include consideration of whether any confidential supervisory information is subject to the terms of a memorandum of understanding, as outlined in Paragraph 9 below. Drafts of white papers and related documents will be reviewed with the Office of Supervision Policy, the SEFL Front Office, and the Legal Division, in the normal course, and any disagreements as to the appropriateness of any publication or any content within a publication will be escalated and resolved as appropriate.
5. Economists in the Office of Research may use supervisory information to prepare independent research papers so long as such papers do not identify, either directly or indirectly, any particular person to whom the confidential information pertains or discuss the information in such a way that one could infer the identity of the person. A Research Paper Review Committee (Committee) with a representative from the Office of

Research, the Office of Supervision Policy, the SEFL Front Office and the Legal Division will be created to ensure compliance with this requirement. This committee will discuss whether any confidential supervisory information is subject to the terms of a memorandum of understanding, as outlined in Paragraph 9 below. The Legal Division's participation will be limited to assisting the Committee with applicable federal law and/or the restrictions of applicable information sharing agreements.

Before undertaking work on such a paper, the economist will review his/her plans for using supervisory information with the Committee and concerns about CSI resolved or elevated to the Associate Director for SEFL. Final drafts of the research paper will likewise be cleared by the Committee, solely to assure that the use of the supervisory information is consistent with the research plan and with the limitations on the use of such information (and not to exercise editorial control over the content of independent research). It is incumbent on the economists to identify any CSI used in the paper, including the source of the CSI, to assist the Committee review.

6. To the extent that employees of RMR are conducting aggregation, normalization, and/or analysis of the data, employees of RMR will share the aggregated, normalized, or analyzed data with Supervision in the normal course of business. RMR will identify a point of contact who will facilitate this sharing.
7. In general, any bureau employee who receives CSI must be trained on the proper handling of CSI. Employees receiving supervisory information will have an obligation to adhere to CSI data protection standards and take appropriate measures to protect the information. At a minimum, such measures include complying with specific procedures for safeguarding paper and electronic information (including proper disposal), appropriately labeling confidential information, and reporting any unauthorized use. Employees receiving the information will work with Supervision Examinations and T&I to adopt additional safeguards, if appropriate. Consistent with 12 C.F.R. § 1070.41(a), such employees will not disclose such information to persons outside the Bureau. Similarly, such employees will not disclose confidential information to persons within the Bureau unless the information is relevant to the performance of the other employee's assigned duties, his or her access to the information has been properly requested and approved, and such person is trained in the proper handling of CSI. In instances for which sharing the information is relevant to performance of assigned duties, the RMR employee sharing such confidential information shall obtain written approval from his or her supervisor before doing so.
8. Whenever practicable, any confidential supervisory information that the Office of Supervision Examinations disseminates to RMR shall exclude information that identifies

specific consumers, except where the RMR Office determines that access to identifiable data is necessary to data collection planning or to the general role of markets and research personnel to advise Supervision or the Director in understanding the products in question or in assessing risks to consumers. RMR shall not disclose any information that contains any personably identifiable information about specific consumers outside of the Bureau without the approval of the Office of Privacy.

9. To the extent that RMR requests confidential supervisory information that originates from or is the property of another agency, the terms and conditions of any applicable memoranda of understanding or other agreements between the CFPB and the agency will apply to RMR's use of the information. RMR must maintain the identity of the original source of any confidential supervisory information that is used directly or as reference for derivative works for any document that will be made public to allowthe reviewers to ensure that the information is being used in accordance with any applicable information sharing agreements.

A11: Use of CII by RMR – Installment and Auto Title Lenders' Financial Information

Use of CII by RMR - Installment and Auto Title Lenders' Financial Information

February 6, 2017

The Office of Enforcement obtained confidential investigative information (CII) related to the size and financial resources of [redacted] installment and auto title lenders in the normal course of [redacted] investigations. RMR is seeking to use this CII for installment and auto title loan market monitoring activities and to further initial scoping and other activities for the larger participant rulemaking. To further the Bureau's market monitoring and rulemaking activities in the installment and auto title loan markets. The Office of Enforcement, the Office of Markets, the Office of Regulations, T&I, and the Legal Division have agreed on certain protocols for the protection and handling of CII by RMR in the market monitoring and rulemaking process.

The Bureau's investigation activities, including the scope of any civil investigative demands, are based on law enforcement needs and purposes as determined by Enforcement. Pursuant to the Bureau's Rules on Investigation, CIDs may be used only to gather information in support of investigations into conduct that may constitute a violation of law, 12 C.F.R. § 1080.5. CIDs shall not be used to gather information for other Divisions of the Bureau. Consistent with the Bureau's Policy on Information Governance, 12 C.F.R. § 1070.41 and 12 C.F.R. § 1070.45, Enforcement may share the information obtained in the course of investigations with RMR staff when such disclosure is needed for the latter's assigned duties. Any individuals with access to this information must comply with the same confidentiality policies and practices observed by Enforcement. Any staff receiving CII will have an obligation to adhere to appropriate data protection standards and take appropriate measures to protect the information from unauthorized disclosure. Protective measures include segregating and labeling CII in electronic and paper files, appropriately labeling confidential information, complying with procedures for proper disposal, and reporting any unauthorized use or disclosure. To help facilitate appropriate treatment of CII, RMR will schedule training for staff on handling CII, as necessary.

RMR staff receiving CII will not share the information with any other division within the Bureau, except consistent with the Bureau policies, including the *Policy on Information Governance at the CFPB*; pursuant to 12 C.F.R. §1070.41(a), RMR staff will not disclose CII to persons outside the Bureau, except as required by law and in consultation with the Legal Division.

RMR will not use any direct identifiers that may exist in the information for any purpose. Within RMR, staff receiving CII will not share that information further in RMR without first discussing the potential sharing with Enforcement. Before any staff may use the information, RMR will coordinate with T&I to determine whether a redaction plan is needed to remove any direct identifiers. T&I will coordinate with RMR and Enforcement to develop a plan and gain approval for any needed redactions. T&I will perform the redaction, and review the redacted information before releasing it to RMR for analysis.

In consultation with the Legal Division, RMR and Enforcement have agreed that to the extent that the Bureau relies on CII in the course of its installment and auto title loan market research and rulemaking activities, RMR will, to the extent possible handle the information in ways that protect the confidentiality of enforcement activity and the identity of the subjects of enforcement investigations. For example, in the event that it is used in a rulemaking RMR will, to the extent possible, consider the information in such a fashion that the administrative record contains only aggregated or summary information, rather than the underlying CII itself. RMR, Enforcement, T&I, and the Legal Division will continue to consult during the preparation of deliverables to ensure CII is handled consistent with this principle. They may agree on departures from it as appropriate.

Christopher D'Angelo, Associate Director, SEFL

David Silberman, Deputy Director and Associate Director, RMR

Mary McLeod, General Counsel

Linda Powell, Chief Data Officer

A12: Use of CII by RMR – Small-Dollar Lending

Use of CII by RMR – Small-Dollar Lending

June 23, 2014

The Office of Enforcement currently has [redacted]open investigations into companies that extend high-cost credit where RMR staff may be able to provide useful assistance to the enforcement activity or where the confidential investigative information (CII) obtained in the normal course of the investigation may be informative to the Bureau's rulemaking on small-dollar lending. Pursuant to 12 C.F.R. § 1070.41(a)(2), staff in Regulations and Research have been receiving CII in order to assist Enforcement in carrying out investigations; RMR is now seeking to use CII for the upcoming small-dollar lending rulemaking. To further the Bureau's rulemaking activities related to small-dollar loans, the Office of Enforcement, the Office of Regulations, and the Legal Division have agreed on certain protocols for the protection and handling of CII by RMR in the rulemaking process.

The Bureau's investigation activities, including the scope of any civil investigative demands, are based on law enforcement needs and purposes as determined by Enforcement. Consistent with 12

C.F.R. § 1070.41 and 12 C.F.R. § 1070.45, Enforcement may share the information obtained in the course of investigations with RMR staff when such disclosure is relevant to their assigned duties. Any individuals with access to this information must comply with the same confidentiality policies and practices observed by Enforcement. Any staff receiving CII will have an obligation to adhere to appropriate data protection standards and take appropriate measures to protect the information from unauthorized disclosure. Protective measures include segregating and labeling CII in electronic and paper files, appropriately labeling confidential information, complying with procedures for proper disposal, and reporting any unauthorized use or disclosure. To help facilitate appropriate treatment of CII, RMR will schedule training for staff on handling CII.

RMR staff receiving CII will not share the information with any other division within the Bureau, except consistent with the Bureau's Data Governance Policy; pursuant to 12 C.F.R. § 1070.41(a), RMR staff will not disclose CII to persons outside the Bureau, except as required by law and in consultation with the Legal Division. Within RMR, where CII has been provided to staff to support an enforcement investigation, that information will not be shared with others working on the small-dollar rulemaking without first discussing the potential sharing with Enforcement. In addition, such sharing will occur only if the information is relevant to the

performance of the other employee's assigned duties and he or she is trained in the proper handling of CII. RMR staff who are already providing investigative support for Enforcement will redact any direct identifiers before sharing with other RMR staff. When CII is provided to RMR and there are no RMR staff supporting Enforcement activities related to the same information, RMR will designate appropriate personnel to remove the direct identifiers. RMR will not analyze CII that contains direct identifiers for any purpose other than supporting an investigation.

In consultation with the Legal Division, Regulations and Enforcement have agreed that to the extent that the Bureau relies on CII in the course of the small-dollar lending rulemaking, Regulations will seek to handle the information in ways that protect the confidentiality of enforcement activity and the identity of the subjects of enforcement investigations. For example, Regulations will seek to consider the information in such a fashion that the administrative record contains only aggregated or summary information, rather than the underlying CII itself. As another example, rulemaking publications will ordinarily describe the information as confidential information gathered in the course of statutory functions without specifically identifying the channel through which the Bureau obtained the information. Regulations, Enforcement, and the Legal Division will continue to consult during the preparation of materials in support of the small-dollar lending rulemaking to ensure CII is handled consistent with this principle. They may agree on departures from it as appropriate.

Steve Antonakes, Deputy Director and Associate Director, SEFL

David Silberman, Associate Director RMR

Meredith Fuchs, General Counsel

Ashwin Vasan, Chief Information Office

A13: SEFL Integration 3.3

Internal Use Only

June 30, 2016

SEFL Staff Memorandum 2016-03

Updates SEFL Staff Memorandum 2016-01

TO All SEFL Staff

FROM David Bleicken
Acting Associate Director – Supervision, Enforcement, and Fair Lending

SUBJECT SEFL Integration 3.3

Summary

This memorandum updates SEFL Integration 3.2 to reflect changes to the calculation of deadlines throughout the exam report process. As a result of these changes, all internal deadlines will be structured as business days rather than calendar days.

The effective date of SEFL Integration 3.3 is July 1, 2016.

Discussion

SEFL Integration 3.2 sets out a 54 calendar day timeline for “Full Track” reports and a 61 calendar day timeline for “Expedited Track” reports. The calendar day based approach can result in as little as 34 workdays for the completion of reports, depending on the amount of holidays and weekends that fall within the report period. This SEFL 3.3 revision converts internal deadlines to a business day based approach, which will bring consistency to the process, align deadlines with available work days to complete the task, and provide relief to certain “pain points” in the current process.

In addition to a direct translation of 30 calendar days to 20 business days and seven calendar days to five business days, these revisions also reallocate days from specific parts of the process

that have historically taken less time to complete to other parts of the process that have proven to take more time. For example, less time is now allotted for final review and issuance to the Prudential Regulator or entity. Instead, those days have been reallocated to steps earlier in the process, allowing more time for review and approval within the Regions for Expedited Track reports, and for HQ feedback during the Full Track process.

Staff Contacts

Any questions on SEFL Integration 3.3 should be addressed to:

Janani Yates, Lead for Business Analytics, SEFL Front Office and

Kerry Morse, Senior Program Manager, Office of Supervision. Examinations.

Attachments

Attachment 1: SEFL Integration 3.3

Attachment 2: SEFL Integration 3.3 - redline to 3.2

ATTACHMENT 1: SEFL INTEGRATION 3.3

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PART I: SEFL COORDINATION AND PRIORITIZATION

1. Scope

This policy outlines how Supervision Policy, Supervision Examinations, Enforcement, and Fair Lending (SEFL) will jointly coordinate its prioritization of examinations and investigations. The policy is written with the recognition that SEFL has finite resources with which to oversee financial institutions. Thus, it seeks to eliminate inefficiencies by clarifying the roles and equities of each Office¹, and creating substantial “free space” for each Office¹⁷⁶ to operate. The policy builds on existing prioritization efforts occurring in each of the Offices, while also outlining new measures that will foster better integration and streamlined decision making. The policy consists of four parts: strategy, information sharing and scheduling, tool choice, and conflict resolution.

2. Strategy

The Offices will coordinate their overall strategies (Decision O.1- see Playbook for detail), both among and within product markets, as they refresh them. This coordination will occur with annual re-setting, supplemented more frequently through periodic meetings, and will be

¹⁷⁶ The Offices are the Offices of Supervision Policy, Supervision Examinations, Enforcement, and Fair Lending and Equal Opportunity. For the purposes of this policy, “examination” means either an examination (resulting in a rating) or a target review, which does not.

enhanced by the information sharing described below. The Offices will share prospective resource allocations in various product markets, and resolve any disagreements in the course of regular discussions. SEFL will present each of its Office's strategies to the Director.

For example, the Office of Supervision Examinations (OSE) will seek input from the Office of Supervision Policy (OSP), Enforcement (ENF) and Fair Lending (FL) on its assessment of market risk for each market, and on the resulting proportion of examination work devoted to that market. The FL and OSP Assistant Directors (ADs) make the decision (Decision O.2- see Playbook for detail) about specific examination priorities in their respective areas. Fair Lending Supervision's assessment of risks will be used to determine the fair lending institution product lines (IPLs) selected for targeted fair lending reviews. Enforcement and Fair Lending Enforcement will also assess risk in each market. SEFL Offices will also seek input from all other CFPB Divisions as part of their ongoing risk assessments.

3. Information Sharing and Scheduling

- a. Offices will schedule examinations¹⁷⁷ and open research matters on the basis of their respective strategies. Additionally, Offices will coordinate in advance to harmonize their examination schedule and list of research matters. This coordination will generally occur on an IPL basis, although some matters may necessitate coordination focused on a specific practice or type of consumer harm. The FL and OSP ADs make decisions on examination/IPL priorities based on inputs captured through the process facilitated by OSE's RAMPS team. SEFL will present each of the Office's strategies to the Director and ratification will occur per the conflict resolution guidance in Section 5.
- b. Annually, OSE will create an examination schedule for a 24-month period. The Regional Director (RD) will create a region-specific schedule (Decision O.3- see Playbook for detail), and the Offices ADs ratify it. In the course of creating this schedule, OSE will consult with FL and ENF and consider their input, making modifications as appropriate.
- c. Similarly, on no less than a monthly basis, OSE will share with FL and ENF an updated examination schedule, reflecting any changes that have occurred to the original 24-month schedule. FL and ENF have ratify rights for changes to scheduling.
- d. On a monthly basis, ENF will share with relevant OSP, OSE, and FL Headquarters (HQ) staff a report of open research matters that includes relevant updates. This list will include research matters opened on behalf of FL. OSP will share this information with

¹⁷⁷ For the purposes of this policy, "examination" means either an examination (resulting in a rating) or a target review, which does not.

regional management, particularly as it relates to supervised institutions within their regions.

- e. The Offices will also share with each other any risk information about specific institutions and IPLs, including any information relevant to examination scoping. This risk information may include field and market intelligence (FMI), complaints, civil litigation, tipsters and whistleblowers, and any other information that is gathered about institutions and IPLs on a regular or periodic basis. The Offices will be responsible for distributing the information within their respective office. This information will be utilized in the scoping of examinations and planning of investigations.

4. Tool Choice

Given the significant amount of compliance oversight work to be done, and SEFL's finite resources, it is essential for Supervision and Enforcement to each have substantial "free space" in which to operate while ensuring collaboration. Accordingly, the following parameters will apply when any SEFL office identifies a matter that requires oversight attention and a tool choice is required:

- a. **Presumption for Supervision:** If OSE has scheduled an examination of the relevant IPL within the next **12 months**, there will be a strong presumption that the oversight inquiry will occur through an examination for all issues scoped and addressed. For fair lending matters, proposed enforcement actions would be subject to the presumption only if the planned IPL is a targeted Equal Credit Opportunity Act (ECOA) review. In these instances, if Enforcement/Fair Lending Enforcement has information related to an IPL, it will provide input through the OSP, or Fair Lending Supervision if the IPL is a targeted ECOA review, regarding the scope of the examination or through the Bi-Weekly Updates (as described in Part III.3 of this policy). This presumption does not preclude the opening of an enforcement investigation if Supervision becomes resource-constrained and Enforcement/Fair Lending Enforcement has sufficient capacity. However, for issues ultimately not scoped and addressed by the examination, approval must be provided by the SEFL Associate Director and Director prior to distributing an Enforcement Action Process (EAP) approval to open a formal investigation.
- b. **Presumption for Enforcement:** For an IPL that does not have a scheduled examination within the next **12 months**, there will be a strong presumption that Enforcement/Fair Lending Enforcement can initiate an investigation through the EAP. In these instances, Supervision will generally already be aware of matters likely to result in an investigation due to the process for sharing information about ongoing research matters outlined above. This presumption does not preclude the scheduling of an examination if Enforcement is resource constrained and Supervision has sufficient capacity.

- c. **Supervised Institution 4-Day Notice:** Enforcement/Fair Lending Enforcement will provide at least **4 calendar days** internal courtesy notice to the Supervision and Fair Lending Assistant Directors for any investigation of a supervised institution (i.e., any institution that has been examined before or has an IPL on Supervision's schedule), prior to initiating an EAP investigation.
 - i. The above notice does not apply to matters that, pursuant to a decision through the Action Review Committee (ARC), are being addressed by enforcement.
- d. **Strategy Adherence:** Once Supervision has set its examination schedule, it will not use information shared by Enforcement about research matters to change its examination schedule, without approval by the SEFL ADs. Similarly, Enforcement/Fair Lending Enforcement will not open new research matters or investigations based on information provided by Supervision in the course of refreshing its examination schedule until Supervision has determined whether or not to add specific IPLs to the examination schedule.
- e. **Post-Examination Limitation:** Enforcement/Fair Lending Enforcement will not open an EAP investigation at a recently examined IPL until **4 months** after the on-site portion of an examination is completed, without the approval of the SEFL ADs.¹⁷⁸
 - i. The above limitation does not apply to matters that, pursuant to a decision through the Action Review Committee (ARC), are being addressed by enforcement.
 - ii. For fair lending matters, the above limitation applies only to matters where the recently examined IPL was a targeted ECOA review.

5. Conflict Resolution

- a. The Offices will work closely together to agree on overall strategy, market risk, institution and IPL risk, scheduling, tool choice, and examination and investigation scope. Any disagreements within these processes should be resolved among the SEFL ADs within two weeks.
 - i. If necessary, disagreements on any of these aspects can be escalated to the SEFL Associate Director. In these instances, offices will be permitted to provide briefing

¹⁷⁸ An investigation may be opened within the 4 month period if unforeseen circumstances arise and a course of action is agreed upon by the SEFL Assistant Directors. Any disagreements will be resolved pursuant to Section 5 entitled "Conflict Resolution."

memoranda (memos) to the SEFL Associate Director of no more than two pages for disposition.

- ii. The SEFL Associate Director will report any disagreements raised pursuant to this section and confer with the Director about any proposed resolutions.

PART II: SEFL DECISION RIGHTS IN THE EXAMINATION PROCESS

This policy describes decision rights, roles, and responsibilities in the examination process.

Further details on decision rights roles and responsibilities may be found in the SEFL Integration Playbook, which is designed to provide guidance to decision makers on key decisions identified throughout the examination process and each decision maker's roles and responsibilities. The Playbook will be complemented by the Exam Workbook, a tool each exam is strongly encouraged to use to track key decisions throughout the exam process. Updates may be provided as improvements are made to the examination decision making process.

Types of decision rights are:

- Input: Right to provide input or be consulted before a decision is made
- Make Decision: Right to make decisions in light of key input gathered
- Ratify: Right to veto or overturn a decision
- Notify: Right to be notified of a decision outcome after it has been made or ratified

Decision Rights may be delegated for general purposes at the discretion of SEFL Leadership, or in specific instances at the discretion of specific Decision Right-holders. Decision Rights outlined in the Playbook are not intended to replace chain of command or limit collaboration; those involved in key decisions should keep supervisors abreast of decisions and collaborate across CFPB as needed. The Playbook also contains notify rights, which are not listed below.

The decision rights detailed in this policy do not release decision-makers from responsibilities provided by other policies.

1.1a. FL Data Request and Analysis: Preliminary development of examination scope and information request for Fair Lending Targeted Examinations¹⁷⁹ approximately **125 business days** prior to on-site exam.

The FL Point-of-Contact (POC) makes the decision, after receiving inputs and incorporating feedback on the data request letter from the Examiner-in-Charge (EIC),¹⁸⁰ Field Manager/Senior Exam Manager (FM/SEM) and Office of Research (OR) Economist. The FL AD and OR Section Chief¹⁸¹ ratify the FL POC's decision.

1.2a. FL Risk Assessment and Examination Focal Point Identification: Analysis by Fair Lending Supervision attorneys and economists prior to on-site examination to identify focal points for Fair Lending Targeted Examinations 40 business days prior to on-site exam.

The FL POC makes the decision on focal points of examinations based on review of OR's regression analysis, FL priorities, and other relevant supervisory information. The EIC, FM/SEM, and OR Economist provide appropriate input from OR Reports, FMI, and Entity Data to FL POC. The FL Assistant Director and OR Section Chief ratify the FL POC's decision.

1.3a. FL Scope Summary and Info Request: For Fair Lending Targeted Examinations, development of scope summary document and preparation of the information request for additional information required 20-30 business days prior to on-site exam.

The EIC makes the decision, after reviewing input from FL POC, OSP POC, ENF Staff/Deputy and OR Economist. The FL Deputy AD, OR Section Chief, and Assistant Regional Director (ARD) ratify the EIC's decision.

1.3b. Preliminary Scope and Info Request: Preliminary examination scoping including product lines and modules and development/preparation of the Information Request for Targeted Examinations approximately 60-80 business days prior to on-site exam.

The EIC makes the decision with input from OSP POC, FL POC (for Home Mortgage Disclosure Act (HMDA) verification reviews), and ENF Staff/Deputy. OSP Program Manager

¹⁷⁹ As the term is used in this policy, Fair Lending Targeted Examinations does not include HMDA verification reviews.

¹⁸⁰ Decision rights in the Region may be delegated at the discretion of the RD. The FM/SEM may assume EIC Make rights for non-commissioned EICs.

¹⁸¹ Throughout this document, all input and ratify rights given to the OR Economist or Section Chief are limited to examinations in which they are providing statistical/econometric analysis, and may only be exercised for decisions related to that analysis, including how it is characterized. FL will facilitate the exercise of OR decision rights where the decision-maker is not in Fair Lending.

and FM/SEM ratify the EIC's decision. For HMDA verification reviews, the FL Deputy AD and the FM/SEM ratify the EIC's decision, either instead of the OSP Program Manager (for reviews that include only HMDA verification) or in addition to the OSP Program Manager (for reviews that include HMDA verification in addition to other non-FL areas of review).

1.4a. FL Final Examination Schedule: Finalized on-site scheduling based on review of entity documentation and CFPB resource constraints; decision is to be made in the context of the regional examination start and end dates made in Decision O.3.

The EIC makes the decision, after receiving inputs from the OR Economist, FL Deputy AD, and ENF Staff/Deputy. The FM/SEM ratifies the EIC's decision.

1.4b. Final Examination Schedule: Finalized scheduling based on review of entity documentation and resource constraints; decision is to be made in the context of the regional examination start and end dates made in Decision O.3.

The EIC makes the decision with input from the OSP Program Manager, Fair Lending Deputy AD (for HMDA verification review), and ENF Staff/Deputy. The FM/SEM ratifies the EIC's decision.

1.5a. FL Final Scope: Finalized scope for Fair Lending Targeted Examinations based on review of entity documentation and CFPB resource constraints.

The EIC makes the decision and uploads the final Scope Summary to SES, after receiving inputs from the OSP POC, FL POC, OR Economist, and ENF Staff/Deputy. The ARD and FL Deputy AD ratify the decision after ensuring the level of detail and resources are appropriate. The OR Section Chief may ratify only if the scope is changed in a way that affects OR resources.

1.5b. Final Scope: Finalized scope for Targeted Examinations based on review of entity documentation and CFPB resource constraints.

The EIC makes the decision with input from the OSP POC, FL POC (for HMDA verification reviews), and ENF Staff/Deputy and uploads the final scope summary to SES. The ARD ratifies the decision after ensuring the level of detail and resources are appropriate.

2.1. Work Papers: Determination of which templates to compile for findings documentation and final work papers to support final examination conclusions.

The EIC makes the decision with input on appropriate findings templates from the OSP POC, FL POC and OR Economist (as applicable on ECOA/HMDA related work papers), and ENF Staff/Deputy and uploads applicable documentation to SES or stores the

documentation in such other location as is consistent with the Office of Supervision's guidelines. The ARD ratifies the EIC's decision.

2.2. Scope Modifications: Modification to examination scope after initial scope is finalized.

The FM/SEM makes the decision with input on the impact of the scope change from OSP POC, FL POC, ENF Staff/Deputy, OR Economist (as applicable), and EIC and uploads the modified scope summary to SES. The FM/SEM also considers personnel resource constraints in Supervision/FL HQ, ENF, and the Regions. The OSP Program Manager, FL Deputy AD, RD, and ENF AD ratify the modified scope summary. The OR Section Chief may ratify only if the scope is changed in a way that affects OR resources.

2.3. Optional Fact Verification Memo: Review and validation of factual findings (without legal interpretation) during the examination with entity; generally happens multiple times throughout duration of on-site examination phase.

The EIC makes the decision and drafts and sends the Fact Verification Memo to the entity with input received on bi-weekly update calls from the OSP POC, FL POC and OR Economist as needed for ECOA and HMDA issues, and ENF Staff/Deputy. The FM/SEM ratifies the decision. The FL AD and OR Section Chief (as applicable) ratify decisions for Fair Lending Targeted Examinations or other ECOA or HMDA issues.

2.4. Post-Examination Status Meeting with Entity: Meeting with entity to disclose preliminary findings and provide status update / next steps around open questions.

The EIC makes the decision and develops an outline or script with input received on bi-weekly update calls on what can be shared regarding findings and open issues. The OSP POC, OSP Program Manager, FL POC (as applicable), OR Economist (as applicable), FL Deputy AD (as applicable), FL ENF Staff/Deputy (as applicable), and ENF Staff/Deputy provide input. The ENF AD, FL AD (as applicable for FL Enforcement decisions), OR Section Chief (as applicable), and ARD ratify the decision, after which the EIC facilitates the meeting with the entity.

2.5 Duration of Off-site Analysis Period: Extensions to the period of time for off-site analysis in a given examination, beyond the 10 business days that each examination is granted. Additional 10 business day units of analysis time may be added up to three times, for a total of up to 40 business days. Further increments may be added in unique circumstances where examinations require complex statistical analysis.

The ARD makes the decision on adding an additional 10 business days for off-site analysis with input from OSP or FL SUP POC, OSP Program Manager or FL Deputy AD, OR Section Chief (as applicable), EIC, and FM. The RD, OSE AD, and either OSP AD, or FL AD (as applicable) ratify the decision.

2.6a Move to Expedited Review: Determination of which review track an exam will follow based on whether the exam is “clean” or not. “Clean” exams are those exams that do not require interpretation from legal, do not require a Potential Action and Request for Response (PARR) Letter, and do not require the ARC process. In general “clean” exams also have minimal violations and low consumer harm/risk.

The EIC makes the decision on expediting an exam after evaluating input and determining if an exam meets the expedited criteria with input from OSP POC, OSP Program Manager, FL POC, FL Deputy AD, and ENF Staff/Deputy. The OSP AD, FL AD, ENF AD and ARD ratify the decision. An exam may not be appropriate for expedited review when there are different views about whether an examination meets the definition of “clean” described above, or when findings are disputed by the entity, HMDA errors are above the resubmission threshold, an exam is focused on a new IPL or entity, or the exam is a roll-up exam. Any parties listed above may suggest the decision be revisited in the event that new information presents itself during the review of the report (Decision 3.1).

2.6b Need for Legal (or Regulations) Opinion: Determination of need for sending a memo to Legal (or Regulations) outlining preliminary factual findings and analysis; this memo serves as primary input for Legal’s (or Regulation’s) determination(s) on a violation decision.

The OSP Program Manager or FL Deputy AD make the decision to develop a memo seeking Legal’s (or Regulation’s) opinion on a violation decision and gather input from OSP POC, FL POC, OR Economist (as applicable), ENF Staff/Deputy, EIC, and FM/SEM. The OSP AD, FL AD, and RD ratify the decision on whether to consult Legal (or Regulations).

2.7a Violation Decision for Non-Routine Questions of Law: Determination if violation around non-routine questions of law, except discrimination-related ECOA,¹⁸² has occurred.

Legal makes the decision if a violation has occurred and has the right of “non-objection” to the memo after reviewing the memo to Legal from OSP. The OSP POC drafts the memo to Legal and includes input from EIC on issue as well as OSP Program Manager, OSP AD, FL AD, FM/SEM, ARD, RD, ENF Staff/Deputy, and ENFAD. The SEFL Associate Director and Director have ratify rights in the case where OSP or the Region does not agree with Legal’s decision.

¹⁸² Non-routine matters include potentially unfair, deceptive or abusive acts or practices, substantive claims of discrimination, and all matters where the interpretation or application of a law or regulation is not clear based on the text or any official commentary.

(http://team.cfpb.local/wiki/index.php/Examination_Review_Procedures#cite_note-5)

2.7b Violation Decision for Non-Routine Questions of Law (Regulations):

Determination if violation around non-routine questions of law (Regulations), except discrimination-related ECOA, has occurred.

Regulations makes the decision if a violation has occurred and has the right of “non-objection” to the memo after reviewing the memo to Regulations. The OSP POC drafts the memo to Regulations and includes input from EIC on issue as well as OSP Program Manager, OSP AD, FL AD, FM/SEM, ARD, RD, ENF Staff/Deputy, and ENFAD. Legal has ratify rights, and the SEFL Associate Director and Director have ratify rights in the case where OSP or the Region does not agree with the decision.

2.7c Violation Decision for Non-Routine Questions of Law (Fair Lending):

Determination if discrimination in violation of ECOA or Regulation B may have occurred.

The FL AD makes the decision whether a violation may have occurred, and documents the decision in a Fair Lending Initial Determination Memo (FLID) with input from the FL POC, FL Deputy AD, EIC, FM/SEM, ARD, RD, and OR Economist. The OR Section Chief has a ratify right during the development of the FLID over how OR analysis is characterized. Legal and Regulations have ratify rights. The SEFL Associate Director and Director have ratify rights in the case where FL or the Region does not agree with the way in which Legal or Regulations exercises its ratify right.

2.8. Need for a PARR Letter: Determination of need for sending a Potential Action and Request for Response (PARR) Letter to the entity.

The FM/SEM makes the decision whether to send a PARR to an institution with input from the EIC, OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, FL Deputy AD, and ENF Staff/Deputy provide input. The OSP AD, FLAD, ENF AD and RD ratify the decision to draft a PARR Letter. FL decision rights for PARRs are for potential HMDA and/or non-discrimination ECOA violations.

2.9a. PARR Letter Approval: A PARR Letter provides a supervised entity notice that the CFPB has found potential violation(s) of Federal consumer financial law and is considering possible public enforcement action. Subject entities are invited to substantively respond to PARR Letters within 14 calendar days. A PARR Letter may be used when addressing both potential non-ECOA (or non-discrimination ECOA) violations and HMDA violations.

The OSP Program Manager makes the decision regarding content of a PARR Letter. The OSP Program Manager or assigned OSP POC drafts the PARR Letter with input from the FM/SEM, EIC, OSP Deputy AD, ENF Staff/Deputy, Legal, and, as applicable, the FL POC, FL Deputy AD, and FL AD. FL decision rights for PARRs are for potential HMDA and/or

non-discrimination ECOA violations. The RD ratifies the content, signs, and approves sending the PARR Letter to the entity.¹⁸³

2.9b PARR-FL Letter Approval: Documentation of 1) preliminary findings of potential ECOA violation(s), notice that the CFPB is considering referral to the Department of Justice and possible public enforcement action, and an invitation to the institution to respond within 14 calendar days; or 2) preliminary findings of HMDA violation(s), and possible public enforcement action, and an invitation to the institution to respond within 14 calendar days.

The FL POC makes the decision regarding content, drafts, signs, and sends the PARR-FL Letter. The ENF Staff/Deputy, EIC, OR Economist, FM/SEM and RD provide input. The FL Deputy AD ratifies the content and approves sending the PARR-FL Letter to the entity.

2.10 Need to ARC: Determination of need for developing an ARC memo and holding an ensuing ARC meeting.

The FM/SEM makes the decision regarding whether an exam will go through the ARC process based on the criteria outlined in Part IV of this policy and input from OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, FL Deputy AD, ENF/Staff Deputy, and the EIC. The OSP AD, FL AD, ENF AD and RD ratify the decision regarding whether or not to put an exam through the ARC Process.

2.11 ARC Memo Approval: Development of ARC Memo (internal) and recommended decision to pursue public enforcement action or non-public supervisory action.

The FM/SEM makes the decision regarding the content, drafts the ARC Memo and circulates it for input to the EIC and OSP POC, who also solicits the input of the FL POC, FL Deputy AD, ENF Staff/Deputy, OR Economist (as applicable), and Legal. The RD reviews and signs the memo and ratifies sending the memo to the ARC Committee (see Part IV, section 3.b).

2.12 ARC Decision on Enforcement or Supervision: Decision by ARC members (Assistant Directors of the SEFL Offices or their designees) on whether or not a matter will be pursued through public enforcement action.

The OSE AD, OSP AD, FL AD, and ENF AD review the ARC Memo and vote on whether they (a) believe the matter should be handled through the supervisory process, (b) believe that public enforcement action is warranted, (c) wish to convene a meeting of the ARC to discuss the matter, or (d) abstain. Input is provided from the RD via the ARC Memo and additional

¹⁸³ This arrangement will be collectively revisited after one year from the date it is instituted.

input as needed during the deliberation or voting period. The SEFL Associate Director ratifies the vote within 3 business days of ARC Committee vote.

3.1 Expedited-Review Track Report Approval: Decision and ratification that an expedited exam report (per Decision 2.5) is finalized and ready to be sent to Prudential Regulators/entity.

The ARD makes the decision on content within the final exam report by collecting input within the Region from the EIC, Review Examiner, and FM/SEM. The report is approved within the Region no later than **25 business days** after the exam is placed on the Expedited Track. The report is submitted by the ARD to HQ where further input is captured from the OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, OR Economist (as applicable) and FL Deputy AD. The input is assessed, consolidated, and reconciled in a manner that presents stakeholders' input without conflicts by the OSP POC or FL POC and returned to the ARD to incorporate feedback no later than **15 business days** after the report is submitted to HQ. The RD ratifies the content of the exam report before sending to the entity or Prudential Regulator within **5 business days** of receiving input from HQ.

3.2 Full Review Track Report Approval: Decision and ratification that exam report under Full Review (per Decision 2.5) is finalized and ready to move to Prudential Regulators/entity.

The ARD makes the decision on content within the final exam report by collecting input within the Region from the EIC, Review Examiner, and FM/SEM. The report is approved within the Region no later than **15 business days** after exam analysis finalized. The report is submitted by the ARD to HQ for review where further input is captured from the OSP POC, OSP Program Manager, OSP Deputy AD, FL POC, OR Economist (as applicable), FL Deputy AD, ENF Staff/Deputy and Legal. The input is assessed, consolidated, and reconciled in a manner that presents stakeholders' input without conflicts by the OSP POC or FL POC and returned to the ARD to address input. The RD ratifies the exam report and submits the report to HQ to be ratified by OSE AD, OSP AD, FL AD and SEFL Associate Director. The Headquarter review is completed in **25 business days**. The ARD incorporates input from SEFL ADs and SEFL Associate Director before sending to the entity or Prudential Regulator within **5 business days** of receiving input from HQ.

SEFL EXAMINATION PROCESS TIMING

This following table outlines the associated timing with each step of the process:

| Phase | Decision | Timing |
|--------------------|---|---|
| | <u>1.1a FL Data Request and Analysis</u> | 125 business days before on-site |
| | <u>1.2a FL Risk Assessment and Exam Focal Point Identification</u> | 40 business days before on-site |
| | <u>1.3a FL Scope Summary and Info Request</u> | 20-30 business days before on-site for Fair Lending Targeted Examinations |
| | <u>1.3b Preliminary Scope Summary and Info Request</u> | 60-80 business days before on-site Targeted Examinations |
| | <u>1.4a FL Final Exam Schedule</u> | 20 business days before on-site |
| | <u>1.4b Final Exam Schedule</u> | |
| | <u>1.5a FL Final Scope</u> | 20 business days before on-site |
| | <u>1.5b Final Scope</u> | |
| On-site | <u>2.1 Work Papers</u> | 6-8 weeks to complete the on-site exam activities |
| On-site | <u>2.2 Scope Modification</u> | 6-8 weeks to complete the on-site exam activities |
| On-site | <u>2.3 Optional Fact Verification Memo</u> | 6-8 weeks to complete the on-site exam activities |
| On-site | <u>2.4 Post-Exam Status Meeting with Entity</u> | 6-8 weeks to complete the on-site exam activities |
| Off- site Analysis | <u>2.5 Duration of Off-site Analysis Period</u> | 10 business days after completion of on-site exam activities, with up to three incremental 10 business day extensions, for a total of up to 40 business days (additional extensions allowed for exams requiring complex statistical analysis) |
| | <u>2.6a Move to Expedited Review</u> | Upon completion of the off-site analysis period, the duration of |

| Phase | Decision | Timing |
|-------|--|---|
| | | which is determined in decision right 2.5 |
| | 2.6b <u>Need for Legal Opinion</u> | Upon completion of the off-site analysis period, the duration of which is determined in decision right 2.5 |
| | 2.7a <u>Violation Decision for Non-Routine Questions of Law</u> | 10 business days for Legal Memo drafting (measured from the end of the off-site analysis period) |
| | 2.7b <u>Violation Decision for Non-Routine Questions of Law (Regulations)</u> | 5 business days for Legal/Regulations Division Response |
| | | 3 business days for Legal to Ratify Regulations' decisions 2.7b) |
| | | 10 business days to complete the Legal Response analysis |
| | 2.7c <u>Violation Decision for Non-Routine Questions of Law (FL)</u> | 25 total business days for Legal Memo drafting (FLID-includes Legal Response time) (measured from when enough information is available to draft the memo or the last day on-site) |
| | | 10 business days for Legal Division and Regulations Response (included in 25 business day total duration) |

| Phase | Decision | Timing |
|-------|---|---|
| | | 10 business days to complete the Legal Response analysis |
| | <u>2.8 Need for PARR Letter</u> | 10 business days to draft and approve PARR |
| | <u>2.9a PARR Letter Approval</u> | 5 business days for Fair Lending to draft and approve PARR |
| | <u>2.9b PARR-Fair Lending Letter Approval</u> | 14 calendar days for the Entity to respond to the PARR (unless an extension is granted) |
| | | 5 business days to complete PARR Response analysis (additional 10 business days to complete PARR Response analysis if the PARR Response contains quantitative analysis and/or challenges to the CFPB's statistical methodology/code.) |
| | <u>2.10 Need to ARC</u> | 15 business days to draft and approve ARC memo (3 business days of which is for HQ offices to provide input, and 2 business days of which is for HQ POC to consolidate input) |
| | <u>2.11 ARC Memo Approval</u> | |
| | <u>2.12 ARC Decision on ENF or Supervision</u> | 5 business days for SEFLADs to determine if (a) the matter should be handled through the supervisory process, (b) believes that public enforcement action is |

| Phase | Decision | Timing |
|----------------------|--|---|
| | warranted, (c) wishes to convene a meeting of the ARC to discuss the matter, or (d) abstains. | |
| | 3 business days for SEFL Associate Director to either concur in the decision or note his objection | |
| <u>Report Review</u> | <u>3.1 Expedited-Review Track Report Approval</u> | 25 business days for the Region to draft and approve the report |
| <u>Report Review</u> | | 15 business days for the HQ Report Review |
| | | 5 business days for the Region to incorporate feedback |
| <u>Report Review</u> | <u>3.2 Full-Review Track Report Approval</u> | 15 business days for the Region to draft and approve the report |
| <u>Report Review</u> | | 25 business days for the HQ Report Review (3 business days of which is for the Region to incorporate HQ input prior to review by the applicable SEFL ADs) |
| | | 5 business days for the Region to incorporate feedback |

PART III: ENFORCEMENT ATTORNEY ROLE IN EXAMINATION WORK

1. Scope

This policy outlines the role of attorneys with enforcement responsibilities on examinations and the governing principles for information sharing about examination work among the SEFL offices.

2. Coordination Through Supervision Policy and Fair Lending Supervision

- a. OSP staff will be the primary HQ staff receiving information about and advising on ongoing examinations. Fair Lending Supervision will be the primary HQ staff receiving information about and advising on ongoing fair lending examinations, in coordination with the OSP POC for that examination. OSP staff will serve as points of contact for individual examinations for HQ and field staff. On a parallel track, Fair Lending Supervision staff will serve as points of contact for individual fair lending issues arising in examinations for HQ and field staff. Enforcement attorneys (including Fair Lending Enforcement attorneys on an as needed basis) will continue to support and receive information about examinations in the respects described below in “Bi-Weekly Updates.”
- b. In an effort to improve efficiency and consistency, Enforcement and Fair Lending Enforcement attorneys will generally not attend on-site examinations or receive information directly from examiners or institutions under examination prior to completion of the ARC process, other than by participation in the Bi-Weekly Updates. Enforcement and Fair Lending Enforcement attorneys will not directly access supervised institutions’ systems under the CFPB’s supervisory authority. Enforcement and Fair Lending Enforcement attorneys, through Supervision Policy or Fair Lending Supervision, may review/analyze information obtained by the CFPB throughout the supervisory process but must convey any questions or requests for additional information either through Supervision Policy (or Fair Lending Supervision for fair lending matters) or in the Bi-Weekly Updates as described below. When an examination is likely to result in a public enforcement action, Enforcement and Fair Lending Enforcement attorneys may attend meetings with institutions during an examination, such as exit meetings.
 - i. An examination is deemed likely to result in a public enforcement action when a decision has been made through the Action Review Committee (ARC) process to refer a matter for potential enforcement action.

- c. Enforcement and Fair Lending Enforcement attorneys will collaborate and consult with OSP or Fair Lending Supervision (as appropriate) on non-routine¹⁸⁴ matters and may comment on examination product during HQ review. OSP and Fair Lending Supervision are responsible for keeping Enforcement and Fair Lending Enforcement attorneys apprised of examination updates to promote full collaboration, as well as for facilitating their participation during the bi-weekly Updates.

3. Bi-Weekly Updates

OSP staff will convene bi-weekly update calls (including telephonic participation as needed) regarding examinations with the field staff that representative Enforcement attorneys should also regularly attend. For Fair Lending examinations, Fair Lending Supervision staff will convene bi-weekly update calls (including telephonic participation as needed) regarding examinations with the field staff that representative Enforcement and OSP staff regularly attend and Fair Lending Enforcement on an as needed basis. Field staff will provide updates regarding examinations. Enforcement should have input about examination scoping (including review of legal matters pending involving the institution, complaints filed against the institution, legal investigations by partnering agencies and officials involving the institution, and any whistleblower tips involving the institution, though this work should be coordinated with OSP or Fair Lending Supervision and is not intended to duplicate any work already being done by OSP or Fair Lending Supervision).

The first such telephone update should occur at the commencement of the scoping of the examination or no later than two weeks prior to the due date of the scoping memo and should discuss all relevant information received. Thereafter, the bi-weekly update call should provide a full and substantive exchange of issues, ideas, and questions relevant to the examination among all of the participants. The calls should continue until an examination report or supervisory letter is issued. If a Memorandum of Understanding (MOU) is also resulting from the examination or review, the calls should include updates on the status of the MOU and continue until the MOU is signed, if it is signed after the associated letter or report is issued. The group of participants may have follow-up discussions as needed between the bi-weekly update call, but Enforcement and Fair Lending Enforcement attorneys will not in any way direct the conduct or actions of Supervision staff, and OSP and Fair Lending Supervision will make recommendations to relevant Supervision staff about the examination process as OSP and Fair Lending Supervision deem appropriate.

¹⁸⁴ Non-routine matters include potentially unfair, deceptive or abusive acts or practices, substantive claims of discrimination, and all matters where the interpretation or application of a law or regulation is not clear based on the text or any official commentary.

(http://team.cfpb.local/wiki/index.php/Examination_Review_Procedures#cite_note-5)

Generally, Fair Lending Supervision shall not be required to attend all bi-weekly calls for non-Fair Lending Targeted Examinations and OSP shall not be required to attend all bi-weekly update calls for Fair Lending Targeted Examinations or reviews that include only HMDA verification. However, the OSP POC will notify the Fair Lending Supervision POC regarding the discovery or identification of any fair lending issues (i.e., ECOA and/or HMDA) in a non-Fair Lending Targeted Examination so that s/he may attend the next bi-weekly update call or otherwise obtain the relevant fair lending information. OSP or Fair Lending Supervision may cancel the meeting if it is determined that there are no new updates for a given period. OSP or Fair Lending Supervision may also schedule additional update calls during the on-site examination period as needed. Likewise, the Fair Lending Supervision POC will notify the OSP POC regarding the discovery or identification of any significant non-fair lending issues found in a Fair Lending Targeted Examination so that s/he may attend the next bi-weekly update call or otherwise obtain the relevant non-fair lending information. When regular attendance on bi-weekly update calls is not required as described above, the Fair Lending Supervision POC or the OSP POC, as applicable, will attend the initial scoping bi-weekly update call and a midpoint-examination bi-weekly update call to ensure that they have an understanding of the scope of the examination and important findings at key points in the examination process.

4. Office of Fair Lending

- a. The responsibilities of Fair Lending attorneys will be delineated between supervision and enforcement, with Fair Lending attorneys clearly designated as Fair Lending Supervision or Fair Lending Enforcement attorneys where examination work is concerned.
 - i. Fair Lending Supervision attorneys will be permitted to work on particular fair lending enforcement matters if they have had no involvement with those particular matters during the supervisory process. Fair Lending Regional Counsel and other Fair Lending attorneys assigned to specific regions may work on enforcement matters only if such matters involve institutions outside the region to which they are assigned.
- b. When fair lending matters progress through ARC and it is determined that public enforcement is the appropriate course, the Fair Lending Supervision attorneys will transfer the enforcement matter over to their Enforcement and/or Fair Lending Enforcement colleagues. Fair Lending Supervision attorneys should be consulted by the Enforcement and Fair Lending Enforcement attorneys on the matter. Enforcement and Fair Lending Enforcement attorneys should include the Fair Lending Supervision attorneys as consultants on key issues such as on documents and discussions regarding evidentiary issues, settlement terms, monitoring, and

remediation. The Fair Lending Supervision attorneys may continue to work on the examination and on any potential referral to the Department of Justice.

5. Post-ARC Involvement of Supervision

For matters that have transitioned through the ARC process and have been referred for public enforcement action, Enforcement or Fair Lending Enforcement will regularly update Supervision and Fair Lending Supervision staff responsible for the underlying examination as to the progress of the public enforcement action. While Enforcement/Fair Lending Enforcement attorneys will have overall responsibility for meetings with the institution, the relevant Supervision/Fair Lending Supervision field staff will be invited to attend the appropriate meetings

PART IV: ACTION REVIEW COMMITTEE (ARC) PROCESS

1. Scope

This process governs SEFL's decision-making as to whether certain legal violations identified in the course of an examination or targeted review should be addressed by public enforcement action or non-public supervisory action. The specific form of relief that will be sought in any such action, including injunctive and monetary relief, and whether and in what amount to assess civil money penalties, will be addressed through the separate review processes associated with the determined course of action, whether supervisory or enforcement.¹⁸⁵

2. Notice to the Institution

- a. **Possible referral:** In the event that Fair Lending is considering referring an institution to the Department of Justice under the ECOA, it will send a PARR-FL letter to the institution in accordance with procedures adopted for that process, and subject to decision rights 2.9b outlined in Part II of this policy. The PARR-FL letter

¹⁸⁵ Occasionally, it may not be feasible to follow the process set forth below due to exigent circumstances. It is anticipated that such circumstances will be rare, and that normal procedures will only be suspended upon the recommendation of an Assistant Director of one of the Offices. In such situations, the SEFL Assistant Director will make every effort to personally contact a senior leader in each interested Office, alert them to the exigent circumstances, explain the necessity for accelerated action, and seek their input before making a recommendation. To the extent feasible, the SEFL Associate Director will also personally seek out the views of the Assistant Director of any Office that disagrees with the recommended course of action. Once the SEFL Associate Director has made a decision on the matter, it will be communicated to all SEFL Offices and the Regional Directors.

will typically be sent (and a response received) prior to the preparation of the ARC Memo.

- b. **Possible enforcement action:** As appropriate, in the course of the supervisory process, the CFPB may inform the institution with a PARR letter that the CFPB is considering the matter for formal action (that may include a non-public Memorandum of Understanding or a public enforcement action) and invite the institution's response. The issuance of a PARR letter is subject to decision rights 2.8 and 2.9a outlined in Part II of this policy.
- c. The above notices may be combined into one notice, as appropriate. Where a notice of possible referral is being provided pursuant to paragraph 2(a), the notice pursuant to paragraph 2(b) typically will be set forth in the PARR-FLletter, however Fair Lending may in its discretion decline to include the non-Fair Lending matters in the PARR-FL. The following chart provides guidance on when to use the PARR or PARR-FLletter template:

| PARR Letter | Owner | Examination Violation Types |
|----------------|-------|--|
| PARR-FL Letter | OFLEO | ECOA |
| PARR-FL Letter | OFLEO | ECOA and HMDA |
| PARR-FL Letter | OFLEO | HMDA |
| PARR Letter | OSP* | Non-ECOA (or non-discrimination ECOA) and HMDA |
| PARR Letter | OSP* | Non-ECOA |

**In the event of an examination where both non-ECOA and HMDA violations exist, OSP will draft the letter with input from OFLEO on HMDA-related matters*

- d. Absent special circumstances, the PARR letter must be drafted and approved within **10 business days** of a violation decision (**5 business days** for Fair Lending). The institution will be given **14 calendar days** to respond to the notice letter. For notices sent pursuant to paragraph 2(a), an extension may be granted pursuant to the PARR-FL Policy. For notices sent pursuant to paragraph 2(b), an extension may be granted at the discretion of the RD.

3. The ARC Memo

- a. In the circumstances described below, and where violations of Federal consumer financial law or legally enforceable CFPB orders have been discovered in the course of

an examination/review, an ARC memo may be prepared (see 3.b.) by the Region to support the ARC's evaluation of relevant facts and law in determining whether public enforcement action is appropriate. Such a memo will be prepared in the following circumstances:

- i. If the overall facts uncovered during the course of the examination would support a rating of 3, 4, or 5, or the overall facts uncovered during the course of a review would support a rating of 3, 4, or 5 for the activities examined; or
 - ii. If any Office or RD believes the possible violations warrant public enforcement action or further discussion of that question by SEFL HQ.
- b. The ARC memo will be prepared under the direction of the RD with input from the assigned OSP and Fair Lending Supervision personnel. OSP, or Fair Lending Supervision as appropriate, will be responsible for soliciting and reconciling edits to the Region's ARC memo from assigned enforcement attorneys, and from OSP and FL where applicable, as well as consulting with relevant offices outside of SEFL, including the Legal Division and OR when appropriate (see Decision Right 2.11). The memo will then be returned to the RD to address the input. This process incorporates existing procedures for OSP and Fair Lending Supervision consultation with Legal on non-routine matters, under which Enforcement is consulted.
 - c. The ARC memo will summarize the violations found and the applicability of the violation-focused and institution-focused factors set forth in the **Appendix**, as appropriate.¹⁸⁶ The ARC memo will also recommend whether or not to pursue public enforcement action and, where additional information is needed to inform settlement discussions or pursue an enforcement action, the ARC Memo will include a proposal for gathering such information, including an estimate of the time involved. The ARC memo will provide an objective analysis of the facts and the law involved, including any new or potentially controversial theory of law, and the pros and cons involved in pursuing a supervisory or public enforcement action in the matter. In the event any SEFL Office disagrees with the description of the facts or law or the RD's recommendation set forth in the ARC memo, the dissenting Office(s) will have an

¹⁸⁶ The memo need not address the policy-focused factors, which will be considered by the ARC members when determining whether public enforcement action is appropriate.

opportunity to address its disagreement at an ARC meeting to be held after the memo is circulated.

- d. The ARC memo should be completed and submitted to the ARC¹⁸⁷ as soon as sufficient facts are available regarding the matter at issue, and no later than **15 business days** after analysis of the institution's response to a PARR letter is completed (under paragraph 2(a) or 2(b) above). The **15 business day** period includes a time period for the FM/SEM to seek HQ input as follows: the FM/SEM will distribute the memo directly to each of the HQ offices, who will review and provide their input to the OSP or FL SUP POC within **3 business days**. The POC then will consolidate HQ input within **2 business days** and send to the FM/SEM to incorporate into the memo.
- e. The ARC memo will contain such attachments as the RD or other Offices believe may assist the ARC in its determinations, including, where available, the draft Examination Report/Supervisory Letter.
- f. Where the RD believes that a matter involves violations that are substantially similar to those that have previously been addressed through either public enforcement action or confidential supervisory action, an abbreviated ARC Memo may be drafted, consistent with Decision Right 2.11. The memo will identify the previous action and note: (1) why the current matter is substantially similar; and (2) whether there is any reason for the CFPB to address the current violations in a different manner than it addressed the violations that triggered the previous action.
- g. The examination team will continue to draft its examination report or supervisory letter while the ARC memo is being drafted. To the extent practical, the text of the ARC memo will be used in the appropriate portions of the examination report or supervisory letter.

4. Consideration of the ARC Memo

- a. Upon receipt, the ARC Memo will be distributed by OSE to designated points of contact in the Offices, as well as the Legal Division.
- b. Within **5 business days** of receipt of the ARC Memo each Office will reply to the ARC email box and the other Offices in writing whether it (a) believes the matter should be handled through the supervisory process, (b) believes that public

¹⁸⁷ The memo is to be sent to the CFPB_ARC_Request@cfpb.gov mailbox.

enforcement action is warranted, (c) wishes to convene a meeting of the ARC to discuss the matter, or (d) abstains.

- i. If an Office is voting for handling a matter through the supervisory process, it may suggest to the RD what type of supervisory action it believes is appropriate, although this will not be binding on the RD.
- c. In those cases where, upon review of the ARC Memo, all four Offices agree as to the appropriate course of conduct (supervisory vs. public enforcement action)¹⁸⁸, the SEFL Associate Director will either concur in the decision or note his objection within **3 business days** of receiving the ARC Memo and confirmation of each Office's agreement on the course of action. In the event the SEFL Associate Director concurs in the decision, the agreed-upon determination will govern. In the event the SEFL Associate Director objects to the determination, the ARC will convene to discuss the matter pursuant to paragraph 5. The SEFL Associate Director's Office will notify each SEFL AD or designee of the SEFL Associate Director's decision. A copy of the ARC memo and the Associate Director's decision thereon will then be provided to each of the SEFL ADs and RDs, as well as the Legal Division.
- d. In those cases where one or more of the Offices disagrees as to the appropriate course of conduct or believes that an ARC discussion is necessary, the ARC will convene to discuss the matter and make a determination as to next steps, including how the offices will efficiently gather any additional information necessary to proceed.

5. ARC Meetings

- a. The ARC will consist of the ADs of the Offices or their designees, who will be the only voting members. In addition, the RDs, a representative from the SEFL Associate Director's office, and such other participants as may from time to time be appropriate will be invited to attend all ARC meetings in order to provide additional information relevant to ARC decision-making.
- b. The ARC will meet at a regularly scheduled time every week unless no matters have been referred to it for decision.
- c. The ARC will endeavor to reach unanimity as to whether or not to pursue public enforcement action. If the ARC achieves such unanimity, notice of the ARC's determination will be provided to the SEFL Associate Director's office. The SEFL

¹⁸⁸ An abstention will constitute agreement with the views of the other Offices for these purposes.

Associate Director will then have 3 business days to concur in, or object to, the ARC's determination. The SEFL Associate Director's Office will notify each SEFLAD or designee of the SEFL Associate Director's action. In the event that the SEFL Associate Director concurs in the ARC's determination, appropriate further action will be taken and notice of the ARC's determination will be provided to each of the RDs by the SEFL Associate Director's office.

- d. In the event the ARC is unable to reach unanimity among its members, or the SEFL Associate Director objects to the ARC's unanimous determination, the SEFL Associate Director will solicit the views of the SEFL ADs, decide the matter, and provide notice of the decision to each of the SEFL ADs and the RDs.
- e. OSE will be responsible for maintaining a tracking mechanism showing the timing and disposition of ARC votes and the ARC decision.

6. Supervisory Letter or Examination Report

- a. For those matters in which an ARC Memo has been prepared, the Supervisory Letter or Examination Report will continue to be drafted but will not be finalized until a determination has been made as to whether or not the matter will be pursued through public enforcement action.
 - i. In matters that will not be pursued as public enforcement actions, the Supervisory Letter or Examination Report (as well as any MOU or other document, as appropriate) will be finalized and reviewed in the ordinary course.
 - ii. In matters being pursued as public enforcement actions, the Supervisory Letter or Examination Report:
 - (a) should identify the facts found during the examination/review as necessary to support the conclusions in the Supervisory Letter or Examination Report;
 - (b) will contain standard language indicating that the CFPB will use the Enforcement process to address certain specified matters ("These violations, any additional violations that might be identified in the course of investigating this conduct, and any [additional] corrective action, including remediation, will be addressed through the Enforcement process.");
 - (c) may include only the following corrective actions with respect to violations that will be pursued as public enforcement actions:

- (1) Direction to stop ongoing illegal conduct
 - (2) Direction to implement/enhance compliance management system (CMS), as long as it does not interfere with CMS requirements expected to be included in the CFPB or DOJ Order.
- iii. In matters that may result or have resulted in a referral to the DOJ, the Supervisory Letter or Examination Report will contain the below standard language in the Conclusions and Comments Section indicating that the CFPB may refer or has referred certain specified matters to the DOJ.
 - 1. **For referrals that have not yet been made but are under consideration at the time of issuance of the Report or SL:** “The CFPB continues to evaluate whether the [type of discrimination or violation] found during this review will be referred to the Department of Justice (DOJ) pursuant to the ECOA and/or the December 6, 2012 Memorandum of Understanding between the CFPB and the DOJ. A referral may result in additional corrective action by the DOJ and/or the CFPB. Please note that the CFPB’s referral of a matter to the DOJ is in addition to the CFPB’s independent supervisory and enforcement authority to seek appropriate legal or equitable relief. Thus, a referral does not deprive the CFPB of its authority to take additional, independent action.”
 - 2. **For referrals that have been made at the time of the issuance of the Report or SL:** “On [date], the CFPB referred this matter to the Department of Justice (DOJ) pursuant to the ECOA and the December 6, 2012 Memorandum of Understanding between the CFPB and the DOJ based on the CFPB’s finding of discrimination in violation of the ECOA. The referral may result in additional corrective action by the DOJ and/or the CFPB. Please note that the CFPB’s referral of a matter to the DOJ pursuant to ECOA is in addition to the CFPB’s independent supervisory and enforcement authority to seek appropriate legal or equitable relief. Thus, a referral does not deprive the CFPB of its authority to take additional, independent action.”
- iv. To the extent not already provided in the normal course, the assigned OSP POC or FL POC will provide an opportunity for the assigned Enforcement and Fair Lending Enforcement attorneys (if applicable) to review and

comment upon the Supervisory Letter or Examination Report before it is submitted for Supervision HQ management review. The OSP POC or FL POC will assess, consolidate, and reconcile comments in a manner that presents stakeholders' input without conflicts before returning to the ARD to address input (Decision Right 3.2). Additionally, the OSP POC will notify Enforcement and Fair Lending Enforcement of any material changes to a Supervisory Letter or Examination Report prior to issuance.

- b. For those matters in which no ARC Memo has been prepared pursuant to paragraph 3(a) above, any Office may refer the matter to the ARC upon review of the Supervisory Letter or Examination Report during HQ review. It is anticipated that such a referral will only occur in rare cases. The Supervisory Letter or Examination Report will then serve as a substitute for the ARC Memo.

7. Supervisory or Public Enforcement Action

- a. Once an ARC decision has been made, the SEFL office responsible for implementing the corrective action will also be responsible for determining how additional information should be gathered and what additional information is required.¹⁸⁹ When making this determination, the office will consider the proposal set forth in the ARC memo, but will not be constrained by it.
- b. For those matters in which public enforcement action has not been deemed appropriate, the RD will determine the appropriate remedial measures, with input from the other SEFL offices, and will oversee the implementation of those appropriate remedial measures. OSP/Fair Lending Supervision will consult with Enforcement and Fair Lending Enforcement, as appropriate, on behalf of the Region. Preparation and review of materials to implement the supervisory action (Examination Report, Supervisory Letter, draft MOU, board resolution, etc.) will be in accordance with the policies governing those matters, which require the materials to be complete and through HQ review no more than 45 business days for a Full Track Review Report Review (15 business days for the Regional Review, 25 business days for the HQ review, and 5 business days for the Region to transmit) after the ARC decision is made.¹⁹⁰

¹⁸⁹ The SEFL office gathering additional information will be limited to gathering information through its own authority.

¹⁹⁰ Following Headquarters' review, the federal prudential regulators must be provided with 30 days to review and comment on Examination Reports for large depository institutions, credit unions, and their affiliates, pursuant to

- c. For those matters in which public enforcement action has been determined appropriate, Enforcement and FL Enforcement (in FL matters) will assign one or more attorneys to handle the matter. The Enforcement and Fair Lending attorneys will take the lead on developing and resolving the enforcement action, in consultation with the RD and Supervision HQ. Preparation and review of materials to implement the enforcement action (Enforcement Action Process submissions, Notice and Opportunity to Respond and Advise letter, consent order, complaint, etc.) will be in accordance with the policies governing those matters, as well as paragraph 2(b)(ii) in Part V of this policy.
 - i. In the event that additional information is necessary to inform settlement discussions or pursue an enforcement action, Enforcement or Fair Lending Enforcement, in coordination with Supervision, may seek such additional information from the institution either through the exercise of the CFPB's enforcement authority or voluntarily.
 - ii. Civil Investigative Demands (CIDs) may be sent to the supervised entity or third parties in connection with the public enforcement action if (a) an Open Investigation memo has been circulated through the Enforcement Action Process (EAP), or (b) settlement parameters have already been approved.
 - 1. If additional information is sought by exercise of the CFPB's enforcement authority, pursuant to 7(c)(ii) above, an EAP Open Investigation memo should be submitted for EAP review within **10 business days** of the ARC decision to pursue a public enforcement action.
 - a. A CID seeking the necessary additional information should be sent to the institution within **30 business days** of EAP approval to open a formal investigation.
 - b. When further fact gathering by Enforcement or Fair Lending Enforcement is necessary, an EAP memo to Settle or Sue should

Section 1025(e)(1)(c) of Dodd Frank. Examination Reports are issued to the entity as soon as possible after such comments are considered. In an effort to improve transparency and foster communications, the prudential regulators will also receive a courtesy copy of the Supervisory Letters for the aforementioned entities five days prior to transmitting a letter to the entity. Supervisory Letters are issued to the entity as soon as possible after the expiration of the five days.

be submitted into EAP review no later than **40 business days** after the additional fact gathering is completed.

- c. In situations that Enforcement and/or Fair Lending Enforcement determine to be more complex, or where the factual record is substantially incomplete, they shall provide an explanation of why these timeframes should be adjusted, including a proposed alternative timeframe, for consideration and decision by the SEFL Associate Director.
- iii. In the event of an ARC decision to pursue a public enforcement action where no additional information is needed to begin settlement discussions with the institution, an EAP memo to Settle or Sue should be submitted into EAP review no later than **40 business days** after the ARC decision. When complex statistical analysis (e.g., proxying and regression analysis) is necessary to calculate damages, an EAP memo to Settle or Sue should be submitted into EAP review no later than **40 business days** after the analysis is completed.
- d. If the ARC decides to pursue both supervisory remedial measures and a public enforcement action for the same matter, Supervision, Enforcement and Fair Lending will ensure that the text of any relevant documents (e.g. supervisory letter, examination report, consent order) are consistent with each other.
- e. In the rare instance where additional information is received after the ARC process is complete that materially affects any Office's views as to whether or not the matter should be resolved by public enforcement action, that Office or the SEFL Associate Director may reconvene the ARC. The Office that reconvenes the ARC will submit a supplemental ARC memorandum to the ARC supporting the recommended action.

PART V: COMPLIANCE AND DISPOSITION OF REQUIRED ACTIONS

1. Scope

This section identifies the specific SEFL Office or staff that will be responsible for monitoring compliance with and/or the disposing of required actions resulting from the CFPB's examinations and investigations.

2. Compliance and Disposition of Required Actions

- a. For public enforcement actions at institutions not supervised by the CFPB,¹⁹¹ Enforcement or Fair Lending Enforcement, as appropriate, will be responsible for monitoring and evaluating compliance with any required actions, and the discretion to recommend either to the Director or his designee when to release requirements/orders.¹⁹²
- b. For public enforcement actions at supervised institutions, the RD will be responsible for monitoring and evaluating compliance with any required actions, and will have the discretion to recommend either to the Director or his designee when to release requirements/orders.
 - i. Before recommending release of requirements/orders, the RD will first ensure that appropriate staff in OSP, ENF, and FL are consulted including consultation with relevant interagency POCs. Then, the RD will provide notice to the four SEFL ADs and the Deputy General Counsel for Litigation and allow 7 calendar days for a response. The RD's notice will include: a summary of the requirements/orders; a summary of the work performed by regional staff that support their recommendation to release the order, including the actions taken by the institution to comply; a copy of the decision memo and termination order to be sent to the Director; and a list of staff who were consulted.
 - ii. In the course of pursuing public enforcement actions at supervised institutions, Enforcement and FL Enforcement will seek input from the appropriate RD regarding the terms of the consent order.
- c. For non-public required actions (e.g., Matters Requiring Attention, MOUs, Board Resolutions) resulting from examination work, the RD will be responsible for monitoring and evaluating compliance with the required actions, and will retain the discretion to release requirements as appropriate.
 - i. Before releasing MOUs and Board Resolutions, the RD will provide notice to the four SEFL ADs (copying CFPB_ARC_Request@cfpb.gov) and allow 7 calendar days for a response. The RD's notice will include a summary of the requirements/orders as well as a summary of the work performed by

¹⁹¹ For these purposes, a supervised institution includes any institution that has been examined before or has an IPL on Supervision's schedule.

¹⁹² In combined Enforcement actions, Enforcement and Fair Lending Enforcement must coordinate in monitoring and evaluating compliance with their respective required actions and when recommending the release of any provisions, requirements, and actions.

regional staff to support the release, including the actions taken by the institution to comply.

- ii. Any non-public required actions that are monitored and evaluated through on-site supervisory work that is addressed in a supervisory letter or examination report will go through the appropriate examination review track, as outlined in Decisions 3.1 and 3.2.
- iii. Non-public required actions in the form of Matters Requiring Attention may be monitored and evaluated outside of an examination or review and in that instance the requirements may be released at the sole discretion of the RD.

Appendix – ARC Factors for Evaluation

Violation-focused Factors:

- (1) Severity of each violation:
 - (a) The **nature** of the violations.
 - (b) The **number** of consumers affected.
 - (c) The **type** and **magnitude** of the risk, harm, or loss to consumers.
 - (d) The **duration** of the violations prior to discovery or notification.
 - (e) The **clarity of the law** underlying the violation.
- (2) Whether the violation(s) has **ceased or is ongoing** and the likelihood that it will be repeated.
- (3) Whether the identified violations indicate **targeting** on a prohibited basis classes for which the CFPB has a special mandate.
- (4) The importance of **deterrence**, considering the significance and pervasiveness of the practice.
- (5) The **variety** of violations and number of products affected by the violations.

Institution-focused Factors:

- (1) The **size**, complexity, and financial health of the institution.

- (2) The extent of the institution's **cooperation** to date and its willingness and ability to **comply** in the future:
- (a) The nature and extent of the institution's **cooperation** with the examination or review.
 - (b) Management's demonstrated ability and **willingness to take corrective actions** (will it comply with an MOU and has it in the past), and to operate in compliance with the law.
 - (c) Whether the institution **self-identified** the violation, either prior to the examination or during the course of the examination, or whether the entity attempted to conceal the violation, including purposely engaging in complicated transactions to make the violation difficult to uncover. Self-reporting is a different factor from self-identification.
 - (d) Whether the institution **self-corrected** the violation, including changing its practices and providing restitution, or other corrective actions taken by the entity on its own initiative, and if not, whether and for how long the entity continued to engage in the violation following notification by the CFPB.
 - (e) The institution's response to the PARR.

- (3) Whether the institution **knew or should have known** (e.g., through the volume of consumer complaints relating to the violations) of the violation.

(4) Prior regulatory action:

Whether the CFPB or another regulator has previously **criticized** or taken **corrective action** against the practice or conduct constituting the violation

Policy-focused Factors

- (1) Other ongoing or anticipated SEFL or CFPB activity related to the problematic conduct.
- (2) How responding to the conduct fits within the CFPB's or different offices' established priorities.
- (3) Resource considerations of the office(s) that will be following through on the proposed course of action.
- (4) Perspective of other regulators

Such other matters as justice may require.

APPENDIX B:

List of data collections

Bureau of Consumer Financial Protection – Data Inventory

Introduction

The data assets listed below are included in the Bureau’s Data Catalog, the Bureau’s central metadata repository, which describes the contents of the Bureau’s data assets. These data assets may represent a single dataset or multiple datasets captured in a specific data system. This listing does not include data collected from consumers on a voluntary basis through focus groups, one-on-one interviews, user testing, or small-scale informal surveys except where such data was collected in the context of developing disclosures in a rulemaking or potential rulemaking context. The Bureau is compiling information with respect to the data collections excluded from this report and will supplement the report by adding it to Appendix B.¹⁹³

The “Number” column provides a way to identify the data assets on this list. The “Source” column lists where the information is generally coming from, as discussed previously in the Bureau’s Data Report. The “Subject Title” and “Description” columns provide more information about the data collection. The “Contains direct identifiers maintained by the Bureau” column describes whether the Bureau is maintaining a data asset that contains information that directly identifies individuals. This does not include direct identifiers that consist of contact information for financial institutions or other organizations. Please note that, where a data asset contains direct identifiers, the Bureau has access controls on these data assets and, where appropriate, the Bureau has removed information that directly identifies individuals from the files staff use to conduct analyses with these data.

¹⁹³ The Bureau also is compiling and will add to Appendix B information on the costs associated with the purchase and/or collection of information by or on behalf of the Bureau.

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|--------|--|--|---|
| 1 | Public | IPEDS – College Score Card | This collection is the program level information including the program name, program length, type of degree, program cost, program completion rate, average salary for program completers and other key data points about the program. Used to power the Bureau's Paying for College tool. | |
| 2 | Public | HMDA Geocoder Public Data Sources; US Census Bureau | Combination of public State-provided street and address locations along with federal data, such as U.S. Census TIGER line files. These data were used to evaluate potential improvements to the geospatial analytic capacities of the Bureau, and in particular to support the HMDA data operations. | |
| 3 | Public | Bitcoin Historical Download | One-time download of the public Bitcoin blockchain register to understand innovation in the markets and emerging payment technologies, including digital currency. | |
| 4 | Public | Survey of Household Economics and Decision Making | The Federal Reserve Board has conducted the Survey of Household Economics and Decision-making (SHED), which evaluates the economic well-being of U.S. households and identifies potential risks to their financial stability. | |
| 5 | Public | Legal Entity Identifiers (LEI) | The Global Legal Entity Identifier Foundation (GLEIF) publishes daily an updated file, which includes all public Legal Entity Identifiers (LEIs) | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|--------|---|---|---|
| | | | | |
| 6 | Public | Current Population Survey | The Current Population Survey (CPS), sponsored jointly by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics (BLS), is the primary source of labor force statistics for the population of the United States. | |
| 7 | Public | USC Understanding America Studies | The UAS Comprehensive Data File is a basic public use dataset from the University of Southern California's (USC) Understanding America Study online panel survey. | |
| 8 | Public | Survey of Income and Program Participation | The Survey of Income and Program Participation (SIPP) is a household-based survey designed as a continuous series of national panels. | |
| 9 | Public | HMDA Geocoder Public Data Sources: State of Arkansas and Utah | These data contain Arkansas and Utah address point locations that were used to support a Bureau geocoding service prototype for financial institution's use that would return an MSA, state, and county for a given address for HMDA reporting. | |
| 10 | Public | California Bureau of Automotive Repair SMOG Data | One-time collection of emissions inspection data from the California Smog Check program downloaded for research into the effects and costs of regulatory policies. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------|--|--|---|
| 11 | Public | Summary of Deposits | The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. All institutions with branch offices are required to submit the survey; institutions with only a main office are exempt. | |
| 12 | Public | Survey of Consumer Finances | The Survey of Consumer Finances (SCF) includes extensive household-level data on credit card use and credit card balances; loan-level data on mortgages, education loans, and installment loans, and vehicles and vehicles loans. | |
| 13 | Public | IMLS Public Libraries Survey | Results of annual survey of public library systems in the U.S. Publicly available through the Institute of Museum and Library Science (IMLS). Informs Bureau financial education work with public libraries. | |
| 14 | Public | ATR/QM Assessment - Fannie and Freddie Public Use Data | Loan-level performance data made available by Fannie Mae and Freddie Mac. | |
| 15 | Public | Aggregate Debt Collection Case Volumes | Aggregate counts of consumer debt collection lawsuits by calendar quarter in various US counties, generated from public records available from state and county courts. Used to monitor developments in the debt collection market. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------|--|---|---|
| 16 | Public | Financial Public Records Credit Reporting Analysis | Case filing data downloaded from public court records to examine the public recording of judgments, liens and similar actions. Used for research into the impact of public records on credit scores. | |
| 17 | Public | United States Census | U.S. decennial population data for 2010 and 2000. | |
| 18 | Public | American Housing Survey | Information collected from a survey on the size and composition of the housing stock in the U.S., including the types of homes in which people are now living and the characteristics of these homes, as well as the costs of running and maintaining them. | |
| 19 | Public | Quarterly Census of Employment & Wages | Quarterly count of employment and wages reported by employers covering 98 percent of U.S. jobs, available at the county, MSA, state and national levels by industry. | |
| 20 | Public | American Community Survey | Information on demographic, social, economic, and housing characteristics about the American population collected through a nationally representative survey. | |
| 21 | Public | Home Mortgage Disclosure Act - Public | Publicly-available HMDA data has been modified from the restricted version to protect the privacy of individuals whose information is present in the dataset. | |
| 22 | Public | World Bank Remittance Data | Collection of data published by the World Bank about the cost of sending and receiving | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------|---|--|---|
| | | | relatively small amounts of money from one country to another. Used for monitoring the remittance market and for assessment of the remittance rule. | |
| 23 | Public | Elder Financial Exploitation Networks Study | One-time collection of information from interviews with representatives and/or members of organizations that provided financial exploitation services to elders for a study of elder financial protection. | |
| 24 | Public | Centers for Medicare & Medicaid Services (CMS) | One-time collection of Medicare pricing data for use in studying relationship of medical debt collections appearing on credit reports to medical costs. | |
| 25 | Public | LEHD QWI Public Use data | Employment and Earnings data collected from the Census Bureau to characterize employment and earnings outcomes for research. | |
| 26 | Public | Assessment Servicing - Making Home Affordable (MHA) Public Data | One-time collection of Making Home Affordable (MHA) data from the U.S. Treasury website for use in assessing mortgage servicing rules. | |
| 27 | Public | Federal Student Aid Data | Information collected by the office of Federal Student Aid, including: Direct Loans, Federal Family Education Loans (FFEL), and Perkins Loans with outstanding balances for use in marketing the student loan marketplace. | |
| 28 | Public | Health and Retirement Study | Survey of approximately 20,000 Americans over the age of 50 every two years, including information about | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------------------|--|---|---|
| | | | income, work, assets, pension plans, health insurance, disability, physical health and functioning, cognitive functioning, and health care expenditures. | |
| 29 | Public | Consumer Finance Litigation | Collection of court records from small claims courts, state courts, and federal district courts and of reports on litigation on public websites in connection with the arbitration study | X |
| 30 | Public | Home Equity Conversion Mortgage Data (HECM) | One-time collection of data that contains FHA loan-level origination and performance data for reverse mortgages insured through HUD's HECM program for use in mandated report on reverse mortgages. | |
| 31 | Public | Bureau of Labor and Statistics (BLS) – Consumer Expenditure Survey (CEX) | The Consumer Expenditure Survey (CEX) is a nationwide household survey conducted by the U.S. Bureau of Labor Statistics (BLS) to find out how Americans spend their money. | |
| 32 | Public | Department of Defense – Basic Allowance for Housing (BAH) List | The Basic Allowance for Housing (BAH) is a U.S. based allowance prescribed by geographic duty location, pay grade, and dependency status. | |
| 33 | Public, Commercial Vendor | Panel Study of Income Dynamics | The Panel Study of Income Dynamics (PSID) is longitudinal household survey of the same families and their descendants, with long-term measures of economic and social well-being. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|----------------------------|---|---|---|
| 34 | Public, Other Agency | Payday Storefront Location | One-time collection of storefront payday location data from a number of states to estimate effects of proposed rule. | |
| 35 | Public, Other Agency | NCUA Call Reports | Quarterly submissions of call report data from credit unions. The Bureau receives the public files and the regulatory files that include confidential fields that are not available in the public version. | |
| 36 | Public, Other Agency | Federal Financial Institutions Examination Council (FFIEC) - Call Reports | Call Report data for Banks and Thrifts from the Federal Financial Institutions Examination Council (FFIEC) shared with all FFIEC supervisory agencies. The Bureau receives the public files and the regulatory files that include confidential fields that are not available in the public version. | |
| 37 | Other Agency | Historical Loan Performance Data | Extracts from FHFA's Historical Loan performance data that include origination and performance data for GSE loans. These data were used for the Ability-to- Repay/Qualified Mortgage rule and market monitoring and research. | |
| 38 | Other Agency | Federal Reserve FR Y-14M | The FR Y-14M report collects monthly data from bank holding companies' (BHCs) and intermediate holding companies' (IHCs) loan regarding lending portfolios. These data include loan-level data on mortgages, credit cards and HELOCs. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|--------------|---|---|---|
| 39 | Other Agency | HMDA Restricted file | Prior to 2017, the Federal Reserve Board collected HMDA data and provided the HMDA Restricted file to the relevant supervisory agencies, including the Bureau. | |
| 40 | Other Agency | Department of Education - PISA Data | The Department of Education maintains Program for International Student Assessment (PISA) standardized test data on financial literacy skills of 15-year-old students from around the world, and performs analyses. Aggregated outputs of models from the analyses are used by the Bureau to assess the needs and conditions of youth financial education programming and to identify potential strategies that could improve youth financial capability. | |
| 41 | Other Agency | NMLS Mortgage Call Reports | Mortgage Call Reports from CSBS. This dataset is required reporting of all mortgage-related activities for state-registered mortgage companies registered in NMLS (non-depositories). | |
| 42 | Other Agency | State Auto Title License Lists | One-time collection of data on the number of state licensed storefront vehicle title lenders in authorizing states used in connection with the payday rulemaking. | |
| 43 | Other Agency | National Information Center (NIC) - Entity Data | Data from the Federal Reserve Board's National Information Center (NIC). The NIC is a repository of financial data and institution characteristics - such as | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau | |
|--------|--------|---------------|--------------|---|--|
| | | | Other Agency | NMLS Entity Data - B2B | banking structure, supervisory and certain financial data - collected by the Federal Reserve System. |
| 44 | | | Other Agency | FinRa - National Financial Capability Study | Information concerning state-licensed companies, branches, and individuals licensed and registered through the Nationwide Mortgage Lending System (NMLS) from the Conference of State Bank Supervisors (CSBS). |
| 45 | | | Other Agency | PA Treasury Prepaid Cards Data | Data from a financial capability study FINRA conducted in 2012 to benchmark key indicators of financial capability and evaluate how these indicators vary with underlying demographic, behavioral, attitudinal and financial literacy characteristics. |
| 46 | | | Other Agency | Federal Housing Administration's (FHA) Mortgage Data | One-time collection of aggregated monthly data on prepaid card transactions and fees for Pennsylvania's unemployment compensation and workers' compensation for monitoring the market for government-issued prepaid cards. |
| 47 | | | Other Agency | | One-time collection of loan-level information regarding FHA-insured loans including debt-to-income ratios, requested to support the Ability-to-Repay/Qualified Mortgage Rulemaking. |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|--------------|---|---|---|
| 48 | Other Agency | Class Action Fairness Act Notices | One-time collection of Class Action Fairness Act (CAFA) notices regarding class action settlements from 2010 to 2013 obtained from state AG offices and used in connection with the mandated arbitration report. | |
| 49 | Other Agency | State Remittance | One-time collection of data for research to assess the Remittance Rule's influence on the remittance market, consumer protections, and availability of services. | |
| 50 | Other Agency | Money Smart for Older Adults - Aggregated Report Form | One-time collection of information from the DC Office on Aging on the overall satisfaction with the content, and a general description of audiences reached, with the Money Smart for Older Adults Report training efforts. | |
| 51 | Other Agency | VITA - Ready? Set, Save! | Aggregate numbers on savings rates and amounts from tax refunds processed at Volunteer Income Tax Assistance (VITA) programs from annual tax season cohorts collected to understand the effectiveness of Tax Time Savings campaign. | |
| 52 | Other Agency | NMLS Data Intake for Installment Loan Larger Participant Rulemaking | Information downloaded from the NMLS database, including financial data (e.g., income statements and balance sheets) collected from 25 to 50 installment lenders required to file documents with state regulators through NMLS. Used in connection with consideration of a policy | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|---------------------------------|---|--|---|
| | | | | |
| 53 | Other Agency | Department of Education - Institute for Education Studies | Longitudinal microdata on a representative sample of post-secondary students including administrative and survey records from the Department of Education. Used for research into outcomes for student loan borrowers. | |
| 54 | Other Agency | Federal Trade Commission - Consumer Sentinel Network | Complaints downloaded from the FTC's Consumer Sentinel Network, a secure online database of consumer complaints available to and used for law enforcement. | X |
| 55 | Other Agency | FinCEN SARs Narrative Data | Collection through random sample of Suspicious Activity Reports (SARs) involving elder financial exploitation including narrative data. | X |
| 56 | Other Agency | FinCEN SARs Structured Data | Data from a subset of structured fields in Suspicious Activity Reports (SARs) involving elder financial exploitation. | |
| 57 | Other Agency, Commercial Vendor | National Mortgage Database | A nationally representative, de-identified loan-level mortgage database jointly funded and managed by the FHFA and the Bureau based on transaction-level files from one of the three nationwide consumer reporting agencies. These data are augmented with additional administrative data. | |
| 58 | Other | Scale Development Data Survey | Data from a survey collected at the Center for Decision Sciences, Columbia | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-------------------|--|---|---|
| | | | University, to inform research on actions that consumers take to help manage their finances. | |
| 59 | Other | Pew Prepaid Data | One-time collection of Pew Research Center survey responses underlying a report published in Feb. 2014 used to inform prepaid card rulemaking. | |
| 60 | Other | Master Entity Data | The Master Entity Data (MED) is a directory of institutions produced by the Bureau by matching identifiers from datasets to produce a single unified identifier for the Bureau. | |
| 61 | Other | Assessment Mortgage Servicing Rules Test | One-time collection of data from a survey of housing counselors and legal aid attorneys to inform the assessment of mortgage servicing rules. | X ¹⁹⁴ |
| 62 | Commercial Vendor | Black Knight Home Price Index | The Black Knight home price index data estimates the change in home price values for a particular type of home (e.g. top-tier, mid-tier) and geography (e.g., state, county, or zip code) over some period of time. | |
| 63 | Commercial Vendor | Mortgage Bankers Association - National Delinquency Survey | The National Delinquency Survey provides quarterly delinquency and foreclosure statistics at the national, regional, and state levels. | |

¹⁹⁴ Direct identifiers consist of contact information collected in order to conduct the survey.

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-------------------|--|---|---|
| 64 | Commercial Vendor | Educational Credit Scores | One-time collection of credit scores from a random sample of credit records to analyze differences between credit scores provided to consumers and creditors for a required report to Congress. | |
| 65 | Commercial Vendor | LaFleurs Historical Lottery Data | One-time collection of historical weekly sales for U.S. lotteries from calendar 1993 to 2013 for research into relationship with borrowing patterns. | |
| 66 | Commercial Vendor | J.D. Power | Responses to J.D. Power consumer financial survey used to report on consumer satisfaction in credit card industry report. | |
| 67 | Commercial Vendor | Mintel Comperemedia Mailout Survey Data | Information about consumer and small business direct marketing in the U.S. across four channels: direct mail, email, online display and print for four financial services sectors: banking, credit card, mortgage and loan and investments. Data are augmented by de-identified credit records from a national credit reporting agency. | |
| 68 | Commercial Vendor | Strategic Business Insights VALs Data | Data purchased to inform research on the underlying differences and causes of financial decisions by consumers, in particular focusing on the shopping behavior of consumers. | |
| 69 | Commercial Vendor | CoreLogic Loan Level Mortgage Market Analytics | Loan origination data, loan performance data, inferred loan modification data, and contributed modification data | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|----------------------|--|--|---|
| | | | for loans serviced by a number of large servicers. | |
| 70 | Commercial Vendor | Blackbox Logic Private Label Mortgages | Information from private-label mortgage securities, including origination and performance details. The data comes from public trustee records and includes monthly loan-level data for non-agency (private label) residential mortgage backed securities, and some agency RMBS data. | |
| 71 | Commercial Vendor | Clarity Online Payday Loans | One-time purchase of alternative credit bureau data for non-prime consumers using borrowing instruments not captured in standard credit reports. The dataset includes inquiries and loans for consumers whose initial inquiries occurred in 2011. Used to inform rulemaking on payday loans. | |
| 72 | Commercial Vendor | Geolytics | Lookup table (pre-geocoded) matching zip9 to census block and corresponding demographic data. | |
| 73 | Commercial Vendor | Informa Mortgage Rates and Fees | Mortgage rate and fee data that powers the Explore Rates tool on the Owning a Home module on consumerfinance.gov/owning-a-home and is used for market monitoring and research. | |
| 74 | Commercial Vendor | S&P Global | Financial, market and M&A data about companies in the banking and financial services industries including regulatory and public company filings, as | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-------------------|--|--|---|
| | | | | |
| 75 | Commercial Vendor | MBA Reports | One-time purchase of annual revenue and expense reports from the Mortgage Bankers Association for use in assessing mortgage servicing rules. | |
| 76 | Commercial Vendor | AutoCount | Aggregated loan transaction data from 46 state Department of Motor Vehicles (DMVs). | |
| 77 | Commercial Vendor | HSH Mortgage Rate Data | Aggregated mortgage rate data, based on HSH's surveys of mortgage lenders for use in exploring alternative means of defining Average Prime Offer Rate (APOR)+. | |
| 78 | Commercial Vendor | Strategic Business Insights MacroMonitor data | Data collected from a MacroMonitor survey to support the Bureau in its role monitoring financial markets for new risks to consumers. Data were augmented with de-identified credit reporting agency records. | |
| 79 | Commercial Vendor | Powerlytics Income Data | Purchase of aggregate annual income data to be appended to data from national credit reporting agency to allow research into the relationships between income and credit usage. | |
| 80 | Commercial Vendor | Informa Rate Sheet Data | Purchase of one year adjustable rate mortgages (ARMs) on an ongoing weekly basis from Informa for use in exploring alternative means of defining APOR. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-------------------|--|--|---|
| 81 | Commercial Vendor | Credit Appends for Overdraft Data | One-time collection of credit bureau information appended to checking account data from a sample of banks to inform overdraft policy development. | |
| 82 | Commercial Vendor | Black Knight Mortgage Origination/Performance Data | Monthly mortgage origination and performance data to support RMR rulemaking, market monitoring and research. | |
| 83 | Commercial Vendor | Market Intelligence Reports | Market Intelligence Reports provide insight into origination and outstanding volumes, as well as credit quality trends across different products by credit score and by geographic region. | |
| 84 | Commercial Vendor | Geographic Information Systems Shape Files | Geospatial shape files for use with Geographic Information Systems (GIS), to store, search, analyze, and display spatial data--that is any information that can be related back to a known place or position on the earth's surface. | |
| 85 | Commercial Vendor | CreditForecast.com | Quarterly historical credit data that provides insight into how the U.S. and local economies affect consumer credit behavior and performance | |
| 86 | Commercial Vendor | Informa Checking Account Fees | Checking account fee information. | |
| 87 | Commercial Vendor | Consumer Credit Panel | Nationally-representative sample panel of consumer credit information with additional appended data. | |
| 88 | Commercial Vendor | Infogroup Business Data | This dataset includes business and location information of firms identified | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-----------------------|------------------------------------|--|---|
| | | | through primary and secondary Standard Industrial Classification (SIC) codes as payday loan, check cashing, pawnbrokers, title loans, and automobile title loan servicers. | |
| 89 | Commercial Vendor | WebRecon Debt Collection Lawsuits | A proprietary dataset of public debt collection lawsuits (all cases where a debt collector is being sued under the FDCPA, TCPA or FCRA). The public data includes the names of the plaintiff and defendant and certain details about the suit, and is verified by the owner of the data. Used to monitor developments in the debt collection market. | X |
| 90 | Commercial Vendor | MeasureOne | Aggregate private student loan origination and performance data to monitor private student loan market. | |
| 91 | Commercial Vendor | iSpot TV | Advertisements of selected consumer financial products used to monitor marketing approaches in these markets. | |
| 92 | Commercial Vendor | Informa Credit Card Rates and Fees | Data on credit card terms from credit card issuers' published information. | |
| 93 | Financial Institution | College Credit Card Agreements | Information about college credit card agreements collected annually pursuant to the CARD Act from credit card issuers who have marketing agreements with universities, colleges, or affiliated organizations such as alumni associations, sororities, fraternities, and foundations. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-----------------------|------------------------------|--|---|
| 94 | Financial Institution | Simple | One-time collection of transaction data involving prepaid card use provided as part of Project Catalyst. | |
| 95 | Financial Institution | Third Party Comparison Sites | One-time collection of data from third party comparison sites in connection with the 2017 credit card industry report. | |
| 96 | Financial Institution | Remittance Assessment | One-time collection of data through a survey of remittance transfer providers in connection with the assessment of the remittance rule. | |
| 97 | Financial Institution | ATR-QM Assessment Data | One-time collection of de-identified loan level data from a number of financial institutions in connection with the assessment of the ATR-QM rule. | |
| 98 | Financial Institution | Remittance Exemption Usage | One-time collection of data from a number of financial institutions via interviews regarding their use of an exemption available to depositories under the remittance rule to inform the Bureau's decision making regarding extending the exception. | |
| 99 | Financial Institution | HMDA Cost | One-time collection of data from a number of financial institutions and service providers via interviews regarding costs of collecting and reporting HMDA data to inform the HMDA rulemaking. | |
| 100 | Financial Institution | Compliance Cost Study | One-time collection of data from a number of financial institutions regarding their costs in administering certain | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-----------------------|---|---|---|
| | | | consumer finance laws to provide the Bureau with baseline information for conducting cost-benefit analyses. | |
| 101 | Financial Institution | Credit Card Rewards Disclosures and Marketing Materials | One-time collection, pursuant to a section 1022(c)(4) order, of consumer disclosures and marketing materials for certain credit card rewards to better understand current market practices regarding credit card rewards disclosures in connection with the 2015 credit card industry report. | |
| 102 | Financial Institution | BillGuard | One-time collection of dispute data shared with the Bureau for observing trends in consumer complaints and complaint resolution provided as part of Project Catalyst. | |
| 103 | Financial Institution | Federal Student Loan Rehabilitation Data | Aggregate information on the repayment success of 500,000-1,000,000 borrowers previously in default from five companies servicing both FFELP and DL loans for monitoring the student loan servicing market. | |
| 104 | Financial Institution | Barclaycard/ Clarifi | One-time collection of data from Clarifi and Barclaycard regarding the enrollment of Barclaycard customers in credit counseling program as part of Project Catalyst. | |
| 105 | Financial Institution | Private Student Loan Originations | One-time collection of loan-level data on private education originations for 2005 to 2011 collected from private student lenders for the purpose of market research. These data were originally | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------------------|--|--|---|
| | | | | |
| 106 | Financial Institution | CARD Act Information Collection - Subprime Credit Cards 2017 | One-time collection, pursuant to a section 1022(c)(4) order, of high-level survey responses for years 2013 and 2014 of the subprime credit card market used to inform the 2015 Credit CARD Act Study Report, as well as ongoing market analyses. | |
| 107 | Financial Institution | DAP Discontinuation Data | One-time collection of aggregate data on deposit advance products (DAP) use, overdraft use, NSF incidence, and other statistics from banks that previously offered DAP to inform the payday rulemaking. | |
| 108 | Financial Institution | Plastyc | Online checking account transaction data provided as part of Project Catalyst. | |
| 109 | Financial Institution | Payday Loan Data | One-time collection of data from approximately 100 consumer loan files of a single lender to review financial status of payday loan customers at time of application and understand lending history. | |
| 110 | Financial Institution | 1071 One-Time Cost Survey Beta Test | One-time collection of data from a beta test of a survey that will allow the Bureau to better understand the potential one-time compliance costs related to a small business lending rulemaking | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-----------------------|--------------------------------------|--|---|
| | | | in accordance with section 1071 of the Dodd-Frank Act. | |
| 111 | Financial Institution | Vehicle Title and Installment Data | One-time collection, pursuant to 1022(c)(4) orders, from lenders of small auto title and installment loans. Loan level data on loans over one to two year periods for use in connection with the payday rulemaking. | |
| 112 | Financial Institution | Debt Collection Contact Data | One-time collection of account-level microdata supplied by one firm on contact attempts and successes, and payments and debt curing based on its internal records for use in connection with a potential debt collection rulemaking. | |
| 113 | Financial Institution | Manufactured Housing loan-level data | One-time collection of loan-level data on mortgage originations provided by certain manufactured housing lenders for research into the effects of mortgage rules on manufactured housing lending. | |
| 114 | Financial Institution | Credit Card Rewards Tags | One-time collection of credit card reward data in conjunction with their general purpose and private label credit cards for use in connection with the 2015 credit card industry report. | |
| 115 | Financial Institution | Survey of Credit Card Plans (TCCP) | Semi-annual survey on the terms of credit card plans offered by over 150 financial institutions. Twice per year, the Bureau is required by law to collect certain credit card | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------------------|---|--|---|
| | | | price and availability information from a sample of credit card issuers and report this information to Congress and the public. | |
| 116 | Financial Institution | Home Mortgage Disclosure Act - Restricted | HMDA agency data is the full dataset with original submitted values that are redacted or modified in the public version. HMDA agency data is shared with the FFIEC members and HUD. HMDA agency data is classified as CSI. | |
| 117 | Financial Institution | Servicing Assessments Interviews | One-time collection of data from interviews of mortgage servicers for assessing the mortgage servicing rules. | |
| 118 | Financial Institution | H&R Block | Data from a multi-year research pilot to design and test practices that might be effective at encouraging customers to save a portion of their tax refunds as part of Project Catalyst. | |
| 119 | Financial Institution | "HUD-1" Closing form Data from one Settlement Company | Collection of loan-level closing data from a settlement company to support market monitoring and research into the size and distribution of certain fees and the effect of the qualified mortgage points and fee cap. | |
| 120 | Financial Institution | Payment Data for Debt Collection Rulemaking | One-time collection of transaction data about accounts from a financial institution in support of debt collection rulemaking. | |
| 121 | Financial Institution | Credit Karma | One-time collection of financial well-being and other data collected by Credit Karma from their customers | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-----------------------|---|--|---|
| | | | and shared with the Bureau as part of Project Catalyst. | |
| 122 | Financial Institution | American Express | One-time collection of transaction data and data from a survey American Express conducted of customers to test practices that might be effective at encouraging prepaid card users to adopt saving habits. Shared with the Bureau as part of Project Catalyst. | |
| 123 | Financial Institution | HMDA Platform User Testing | Data from users based on their experience using HMDA platform during the beta period to inform future development of the platform. | |
| 124 | Financial Institution | CARD Act Information Collection - Credit Card Origination & Digital Volume Data 2017 | One-time collection, pursuant to a section 1022(c)(4) order, of credit card origination and digital volume data in conjunction with general purpose and private label credit cards used to inform the 2017 Credit CARD Act Study Report, as well as ongoing market analyses. | |
| 125 | Financial Institution | Overdraft Data Fees | One-time collection of account and transaction-level data based on random samples of consumer checking accounts to measure overdraft usage and costs. | |
| 126 | Financial Institution | CARD Act Information Collection – Aggregate Credit Card Origination & Digital Volume Data and Account-Level Deferred Interest Data 2015 | One-time collection, pursuant to a section 1022(c)(4) order, of credit card origination and digital volume data in conjunction with general purpose and private label credit cards used to inform the 2015 Credit CARD Act Study | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------------------|--|---|---|
| | | | | |
| 127 | Financial Institution | CARD Act Information Collection - Subprime Credit Cards 2015 | One-time collection, pursuant to a section 1022(c)(4) order, of high-level survey responses for years 2015 and 2016 of the subprime credit card market and voluntary collection of account-level deferred interest data used to inform the 2017 Credit CARD Act Study Report, as well as ongoing market analyses. | |
| 128 | Financial Institution | Payday Loan Agreements | One-time collection, pursuant to a section 1022(c)(4) order, requesting a copy of the lenders' standard-form consumer loan agreement used for the Arbitration Study's analysis related to payday loans. | |
| 129 | Financial Institution | Student Loan Agreements | A one-time collection of a copy of the lenders' standard-form consumer loan agreement used for the Arbitration Study's analysis related to student loans. | |
| 130 | Financial Institution | Interstate Land Sales Full Disclosure Act | Information describing the subject real estate and the selling entity is submitted by lot sellers (defined as "Developers" by the statute) offering 100 or more nonexempt lots for sale pursuant to the Interstate Land Sales Full Disclosure Act. | |
| 131 | Financial Institution | Private Student Loan Portfolio Performance | One-time collection of quarterly performance data on private education loans | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|--------------------------|---------------------------------|---|---|
| | Financial Institution | Debt Collection Survey - CMR | originated 1999 to 2011 and held by major lenders (acquired for 2012 report on private student loans). These data were originally acquired by the Bureau for a 2012 report mandated by Congress, and were provided under a non-disclosure agreement at the time. | |
| 132 | Financial Institution | Network Rules Request | One-time collection, pursuant to a section 1022(c)(4) order, of data that allows for further exploration of the relationship between credit card markets and debt collection to continue the data trends that were first reported in the previous iteration of the Card Market Report (2015). | |
| 133 | Financial Institution | Small Bank Overdraft | One-time collection, pursuant to a section 1022(c)(4) order, of a copy of the operator and provider rules, to help better understand the construction of the system and its implications for consumers. | |
| 134 | Financial Institution | Deferred Interest | One-time collection, pursuant to a section 1022(c)(4) order, of institution-level information from core service providers to better understand how overdraft programs vary by bank size and obtain more information on the overdraft programs they offer in connection with a potential overdraft rulemaking. | |
| 135 | Financial Institution | | One-time collection, pursuant to a section 1022(c)(4) order, of aggregate performance and outcome metrics relating to | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------------------|--|---|---|
| | | | | |
| 136 | Financial Institution | Credit Card Agreements | Credit card agreements from more than 300 card issuers. These agreements feature general terms and conditions, pricing, and fee information and are collected pursuant to requirements in the CARD Act. | |
| 137 | Financial Institution | Servicing Assessment Loan-level Data | One-time collection, pursuant to a section 1022(c)(4) order, of aggregate and loan-level data used to analyze and report on the effects of rule. | |
| 138 | Financial Institution | Government Monitoring Information (GMI) Survey | One-time collection of data from an interview-style, voluntary survey to institutions to improve collection of government monitoring information in connection to HMDA rulemaking. | |
| 139 | Financial Institution | Prevalence of Arbitration Agreements Intake | One-time collection of information from trade associations and a sample of firms in certain markets on the frequency with which businesses use arbitration agreements in their consumer contracts obtained in connection with preparing the require arbitration report. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------------------|---|--|--|
| 140 | Financial Institution | Navigant - Installment Loan Data | One-time collection of small dollar installment loan-level data from four lenders that are both online and storefront in connection with the payday rulemaking. | |
| 141 | Financial Institution | Deposit Advance Products | One-time collection of deposit account and transaction-level data, including use of deposit advance products that was used in connection with the Bureau's research into short-term lending products and related products. | X ¹⁹⁵ |
| 142 | Financial Institution | Student Loan Repayment Plan Information Request | One-time collection of data from student loan servicers about student loan repayments under certain alternative repayment plans for use in monitoring the student loan servicing market. | X ¹⁹⁶ |
| 143 | Financial Institution | Student Loan Repayment | Data collected about student loan repayments under certain alternative repayment plans available to student loan borrowers for the purpose of supporting the Bureau's market monitoring and consumer education functions. | X ¹⁹⁷ |
| 144 | Financial Institution | Debt Collection Interviews | One-time collection of information from industry experts by phone, using structured interview questions | |

¹⁹⁵ Bureau analysts using these data outside the supervisory context do not have access to any direct identifiers. One analyst was granted access to a very limited subset of directly identifiable information solely for the purpose of developing the necessary algorithms to clean these data.

¹⁹⁶ Direct identifiers consist of video of the participants.

¹⁹⁷ Direct identifiers consist of video of the participants.

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|-----------------------|--------------------------------|--|---|
| | | | to better understand the effects of a potential debt collection rulemaking on the debt collection market. | |
| 145 | Financial Institution | ATR-QM Lenders Survey | One-time survey of mortgage lenders to determine their level of burden and inform ATR/QM assessment. | |
| 146 | Financial Institution | Storefront Payday Loans | De-identified version of one-time supervisory data collection of borrower-level activity for loans within a period of 12 or more months. Used to research payday loan products and consumers' use of them. | X ¹⁹⁸ |
| 147 | Financial Institution | Arbitration Case Records | One-time collection of case records from January 2010 through early 2013 in connection with the mandated arbitration report. | X |
| 148 | Financial Institution | Rules of Thumb | One-time collection of account and transaction data and credit reporting data collected by contractor from participating credit union (December 2014 through June 2015) of members who carried revolving credit card debt, for study determining impact of reminder messages on financial decisions. | |
| 149 | Financial Institution | Credit Builder Loan Evaluation | One-time collection of survey and administrative data collected by a contractor on behalf of the Bureau from a credit union and some of its members to understand the | |

¹⁹⁸ Bureau analysts using these data outside the supervisory context do not have access to any direct identifiers.

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|---|--|---|---|
| | | | | |
| 150 | Financial Institution | Prepaid GPR Data | One-time collection, pursuant to a section 1022(c)(4) order, to one provider of prepaid services that includes monthly aggregates regarding consumers, transactions and fees. One order covered payroll cards and the other covered GPR cards. Used in connection with the prepaid card rulemaking. | |
| 151 | Financial Institution, Commercial Vendor | Credit Card Database | Sample of de-identified account-level (such as account balance) credit card data from 2012 to 2016. These data were augmented with credit reporting agency records. These data do not include transaction level data pertaining to consumer purchases. This collection has been replaced with Y-14M data directly from the Federal Reserve Board. | |
| 152 | Financial Institution, Commercial Vendor | 1073 Matched Remittance - Credit Bureau Data | One-time collection of transaction data and credit record data to prepare a report mandated by section 1073(e) of the Dodd-Frank Act. | |
| 153 | Financial Institution, Consumers | eClosing Pilot program | One-time collection of loan and process data from participants (both administrative data and settlement agent-reported data), survey data from consumers post-closing, follow-up interviews with | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|--|---|---|---|
| | Financial Institution, Consumers | Consumer Response Database | consumers post-closing, and feedback interviews with lenders and technology providers. Used to explore the benefits of eclosings for consumers and financial institutions. | |
| 154 | | | Consumer complaint data, including company responses, submissions through the "tell your story" function on the Bureau website, and inquiries and feedback from consumers. | X |
| 155 | Financial Institution, Consumers | Mortgage Disclosure Forms (Qualitative) | One-time collection of data from consumers and mortgage professionals to aid in the development of new consolidated mortgage disclosures. Consumers and financial institutions also were able to provide feedback via e-mail and on the Bureau's website. | X ¹⁹⁹ |
| 156 | Financial Institution, Other Agency | Supervisory Activities Data | Data collected in the course of supervisory activities. This is not one dataset, but rather a number of datasets maintained separately for each supervisory event, each with access restrictions. | X |
| 157 | Financial Institution, Other Agency, Consumers | Enforcement Activities Data | Data collected in the course of enforcement activities. This is not one dataset, but rather a number of datasets maintained separately for each enforcement matter, each with access restrictions. | X |

¹⁹⁹ Direct identifiers consist of email addresses used to provide feedback.

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------|--|---|---|
| 158 | Consumers | Remittance Disclosure | One-time collection of data from user testing of new remittance disclosures. | |
| 159 | Consumers | Mortgage Disclosure Forms (Quantitative) | One-time collection through quantitative testing of data with respect to consumer comprehension of proposed and existing mortgage disclosure forms. | |
| 160 | Consumers | CARD Act experience | One-time telephone survey of consumers with respect to their credit card experiences during the first year of the CARD Act prepared for a conference sponsored by the Bureau. | |
| 161 | Consumers | Prepaid Cards Disclosure Testing | One-time collection of information from testing of consumers regarding prepaid cards, including clarity and usefulness of disclosures, and their own prepaid card usage experience. | |
| 162 | Consumers | Debt Collection Disclosure Testing | One-time collection of data from user testing of consumer rights and other disclosures for the debt collection rulemaking. | |
| 163 | Consumers | Mortgage Servicing Disclosure Testing | One-time collection of data from user testing of periodic statements and other mortgage servicing disclosures. | |
| 164 | Consumers | eClosing Initial Research Field Trial | One-time collection of data from an online usability testing survey administered to approximately 300 participants regarding their closing experience. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------|--|---|---|
| 165 | Consumers | Financial Coaches | One-time collection of data collected from participants of the Financial Coaching project, which provides direct financial coaching services to transitioning veterans and economically vulnerable consumers nationwide. | |
| 166 | Consumers | National Survey of Mortgage Originations | Quarterly voluntary survey of a representative sample of recent mortgage borrowers about their experiences in choosing and taking out a mortgage. This is a joint collection between the Bureau and the FHFA. | |
| 167 | Consumers | Bureau Library Surveys | One-time collection of data from surveys of libraries participating in the Bureau's Library Program to measure the impact of the program and identify areas to improve services. | |
| 168 | Consumers | Owning a Home Survey | One-time collection of data from national online survey of over 600 consumers to determine interest in the Bureau's "Owning a Home" resource for first time homebuyers, measure appeal of this resource and understand how best to reach first-time homebuyers. | |
| 169 | Consumers | CE Concept Survey | One-time online survey of over 3,000 consumers, seeking feedback on the efficacy of "You Have the Right" messaging to determine the best way to reach consumers. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|--------|-----------|---------------------------------------|--|---|
| 170 | Consumers | Disclosure Lab Study | Two lab studies conducted with college students related to the effects of different financial disclosure regimes on market outcomes and participant attention. | |
| 171 | Consumers | Choice Overload Lab Study | One-time lab study concerning whether the number of attributes consumers are faced with when choosing a financial services provider influences their ability to make choices that align with their preferences. | |
| 172 | Consumers | National Financial Well-Being Survey | One-time nationally representative survey on financial well-being and related topics for the purpose of producing multiple reports on the state of financial well-being and the relative contribution of various factors to levels of individual financial well-being. | |
| 173 | Consumers | American Survey of Mortgage Borrowers | Survey of borrowers about their mortgage experience, including their experience with maintaining a mortgage under financial stress. This is a joint collection between the Bureau and the FHFA. | |
| 174 | Consumers | Making Ends Meet Survey | Survey, using the Consumer Credit Panel (CCP) data as a frame, to solicit information on the consumers' experiences related to household financial shocks and how households respond to those shocks. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------|---|--|---|
| 175 | Consumers | Survey on Consumer Views and Debt | One-time collection of data from a survey of consumers selected from the Bureau's Consumer Credit Panel on debt and debt collection to enhance the Bureau's understanding of consumer experiences with debt collection. | |
| 176 | Consumers | Awareness Survey | Annual consumer survey, collected for the Bureau from 2013 to 2017 by a research firm, to measure the American public's awareness of the resources and services available to them from the Bureau. | |
| 177 | Consumers | Credit Card Arbitration Survey | One-time collection of data from a nationwide telephone survey of approximately 1,000 English and Spanish speaking consumers to explore consumer awareness and perceptions of dispute resolution provisions in credit card agreements. | |
| 178 | Consumers | Student Loan Repayment Disclosure Testing | One-time collection data from disclosure testing of the Payback Playbook (student loan repayment disclosures), a tool to enable consumers to better understand alternative repayment options for student loan borrowers. | |
| 179 | Consumers | Financial Well-Being Scale Development Survey | One-time collection involving three waves of scale development and validation surveys for the Bureau's Financial Well-Being Scale and Financial Skill Scale. | |

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------|--|--|---|
| 180 | Consumers | Pretesting Debt Collection Disclosure Testing Quantitative | One-time collection of data collected using an online survey methodology to test multiple disclosure forms, and ask consumers questions in order to learn which forms improve consumer comprehension best. | |
| 181 | Consumers | Pre-Test Assessment of the Mortgage Servicing Rules | One-time collection from a pre-test of a housing counselor survey as part of the mortgage servicing assessment. The pre-test was circulated to a limited number of consumer advocates. | |
| 182 | Consumers | Overdraft Disclosures | One-time collection of data from user testing to aid in the development of potential new overdraft disclosures. | X ²⁰⁰ |
| 183 | Consumers | Mortgage Servicing Bankruptcy Disclosures | One-time collection of data from user testing of new mortgage disclosures to consumers experiencing a bankruptcy. | X ²⁰¹ |
| 184 | Consumers | Small Dollar Lending Rule - Disclosure Testing | One-time collection of data from user testing of origination and payment disclosures for small dollar lending rulemaking. | X ²⁰² |

²⁰⁰ Direct identifiers consist of video of the participants.

²⁰¹ Direct identifiers consist of video of the participants.

²⁰² Direct identifiers consist of video of the participants.

| Number | Source | Subject Title | Description | Contains direct identifiers maintained by the Bureau |
|---------------|---------------|--|---|---|
| 185 | Consumers | Urban Institute - Financial Coaching Evaluation | One-time collection of data to evaluate the effectiveness of financial coaching services and gain insights into how the program can be improved. | X ²⁰³ |
| 186 | Consumers | Owning a Home Research Study | One-time collection of data extracted from mortgage documents provided by respondents to a survey as part of the study into the effects of mortgage shopping. | X ²⁰⁴ |
| 187 | Consumers | NORC-GSS Dataset | One-time purchase of supplementary General Social Survey (GSS) data from NORC at the University of Chicago, which contains a standard core of demographic, behavioral, and attitudinal questions, plus topics of special interest. The Bureau used these data in research examining certain financial services markets. | |
| 188 | Consumers | Civil Penalty Fund and Bureau-Administered Redress Program Records | Data used to administer Civil Penalty Funds. The direct identifiers include the contact information of consumers in order to provide them with redress. | X |

²⁰³ Direct identifiers consist of audio of the participants.

²⁰⁴ Direct identifiers consist of video of the participants.

APPENDIX C:

List of MOUs

Introduction

This appendix lists the Bureau’s data-sharing Memoranda of Understanding (MOU) between the Bureau and other governmental and quasi-governmental agencies that address the sharing of data. The Bureau intends to supplement this report with the text of its MOUs, subject to the necessary approval of affected state and federal agencies.

The “Number” column provides a way to identify the MOU on this list. The “Agency/State/Other” column lists the government entity with whom the Bureau has entered into the MOU. The “Purpose/Nature of Interaction” column provides a brief description of the MOU. The “Effective (Start) Date” column states when the MOU went into effect.

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|--------|---|---|---------------------------|
| 1 | City of Chicago | To establish a framework to preserve the confidentiality of information shared between parties. | 11/28/2012 |
| 2 | Colorado Attorney General's Office | To establish a framework to preserve the confidentiality of information shared between parties. | 9/29/2012 |
| 3 | CSBS | To establish the framework for the parties, and to establish and enhance the cooperative relationship between the Bureau and State Regulators to preserve the confidential nature of the information the parties share by and among themselves. There are 64 state signatories and five state regulatory association signatories to the MOU. | 1/14/2011 |
| 4 | Department of Defense | To enhance collaboration and cooperation between the Department of Defense and Bureau in an effort to reduce consumer risk for service members and their families in the marketplace for consumer financial products, with a particular focus on small-dollar loan products. | 5/4/2012 |
| 5 | Department of Defense; Department of Education; Department of Veterans Affairs | To provide meaningful information to service members, veterans, and their family members about the financial cost and performance outcomes for educational institutions; prevent abusive and deceptive recruiting practices that target the recipients of federal, military, and veterans educational benefits; and ensure that educational institutions provide high-quality academic and student support services to service members, veterans, and their family members. | 7/18/2014 |
| 6 | Department of Education | To establish a framework for cooperation with respect to student financial services oversight and supervisory activities and for the sharing of nonpublic information between ED and the Office of Supervision. | 1/9/2014 |
| 7 | Department of Education | Terminated 9/30/2017. To set forth the agreement between the Bureau and Institute of Education Sciences of the Department of Education regarding the sharing of individually identifiable information acquired by the IES. | 8/21/2014 |
| 8 | Department of Education | To provides the framework for the Parties' coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or federal student loans. | 10/19/2011 |
| | | Terminated 9/30/2017. | |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|--------|--|---|---------------------------|
| 9 | Department of Homeland Security (Office of Cybersecurity and Communications) | To deploy "continuous diagnostics and mitigation" capabilities on Bureau's network to improve information security protection for information and information systems and reporting capabilities. | 8/5/2014 |
| 10 | Department of Housing and Urban Development | To set forth the agreement with respect to the transfer of ownership of documents that relate to the consumer protection functions under ILSA and the treatment of a request made under the Freedom of Information Act that seeks documents related to the consumer protection functions under ILSA. | 7/21/2011 |
| 11 | Department of Housing and Urban Development | To set forth the agreement between HUD and the Bureau with respect to the notification and sharing of complaints in connection with their respective responsibilities under the FHA and ECOA. This MOU also provides a set of procedures for coordination of FHA and ECOA enforcement investigations. | 9/2/2015 |
| 12 | Department of Justice | To establish a framework for the purpose of avoiding conflict and promoting consistency in litigation of matters under federal law. | 1/20/2012 |
| 13 | Department of Justice | To establish a framework regarding coordination of the federal fair lending laws. | 12/6/2012 |
| 14 | Department of Justice; Federal Trade Commission; Department of Housing and Urban Development | Addendum to DOJ, FTC, and HUD agreement to include Bureau in Information sharing agreement between agencies for the purpose of cooperative fair lending investigations. | 6/9/2011 |
| 15 | Department of Labor (Office of Disability Employment Policy) | To establish an understanding between the Department of Labor, Office of Disability Employment Policy, and the Bureau to work together to strengthen the financial capability of youth and adults with disabilities by expanding access to a wide range of financial education resources, asset-building strategies, and consumer protection information. | 8/26/2013 |
| 16 | Department of Labor's Occupational Safety and | To set forth the agreement between the Bureau and OSHA with respect to their sharing and treatment of non-public information in connection with their responsibilities under section 1057 of title X of the CFPB. | 2/4/2017 |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------------------------|--|--|---------------------------|
| | Health Administration (OSHA) | | |
| 17 | District of Columbia | To establish a framework to preserve the confidentiality of information shared between parties. | 8/30/2012 |
| 18 | District of Columbia, Office on Aging | To set forth the terms of collaboration between the Bureau and the DCOA to prevent financial exploitation of older adults through the use of Money Smart for Older Adults (MSOA). | 5/11/2016 |
| 19 | FDIC | To set forth the agreement between the Bureau and the FDIC with respect to the sharing and treatment of certain information in connection with their respective responsibilities consistent with and in implementation of the requirements of title X of the Dodd-Frank Act, FDIC's disclosures regulations at 12 C.F.R. part 309, and the Bureau's disclosure regulations at 12 C.F.R. part 1070. | 5/16/2012 |
| 20 | Federal Housing Authority | To provide data to the Bureau pursuant to Supplemental Notice Period announcement in the Federal Register for the Qualified Mortgage rulemaking. | 8/23/2012 |
| 21 | Federal Reserve Board | To set forth the agreement between the FRB and the Treasury, for itself and on behalf of the Bureau, with respect to their sharing, consistent with law, of non-public information in connection with their responsibilities related to or affecting the establishment of the Bureau. | 1/25/2011 |
| 22 | Federal Reserve Board | To reaffirm commitment to be bound by and comply with 1/25/2011 MOU concerning the sharing of information related to the establishment of Bureau. | 1/9/2012 |
| 23 | FFIEC | To document the development, management, operation, and security of the five-way interconnection using the Connect:Direct facility for the exchange of financial, supervisory, and structure data by and between the FRB, FDIC, OCC, NCUA, and Bureau. | 8/18/2014 |
| Replaced by 6/5/2017 agreement. | | | |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------|--|---|-----------------------------------|
| 24 | FFIEC | To memorialize the shared understanding of ways in which the agencies will coordinate among themselves and with the FFIEC (and its constituent bodies) in carrying out their responsibilities pursuant to the Home Mortgage Disclosure Act and Regulation C. | 1/1/2016 |
| 25 | FFIEC | To govern the operation and maintenance of HMDA Data, including collection, processing, and product work. | 1/1/2016 |
| 26 | FFIEC | Interconnection Security Agreement to document the development, management, operation, and security of the five-way interconnection using the Connect:Direct facility for the exchange of financial, supervisory, and structure data by and between the FRB, FDIC, OCC, NCUA, and Bureau. | 6/5/2017 |
| 27 | FFIEC | To ensure the protection of the confidentiality of information provided by FFIEC to Bureau as it transitions into FFIEC membership. | 4/22/2011 |
| 28 | FFIEC | To set forth a framework regarding the Home Mortgage Disclosure Act data and responsibilities. | 8/5/2013 |
| 29 | FFIEC and HUD | To memorialize the shared understanding of ways in which the Bureau, FFIEC, and HUD will coordinate with each other in carrying out their responsibilities pursuant to HMDA and Regulation C. | 9/26/2016 |
| 30 | FHFA | To define the guidelines implementing Sections C and D of the IAA between the Bureau and FHFA dated 9/13/2012. This MOU establishes an agreement surrounding the interconnection between the Bureau and FHFA, and the respective security responsibilities of each party to protect the confidentiality, integrity, and availability of the NMDB data as referenced in the IAA. | 7/23/2013 |
| 31 | FHFA | To set forth the agreement between the Bureau and FHFA with respect to their sharing of confidential information, consistent with law, that is necessary or appropriate to each party's supervisory, regulatory, and other responsibilities. | 2/14/2012 |
| 32 | Financial and Banking Information Infrastructure | Two MOUs to set forth the understanding of the Parties with respect to the treatment of non-public information when the Parties elect to share (at their discretion) non-public information regarding a cyber or other incident. | 9/22/2016 |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------|--|--|-----------------------------------|
| 33 | Financial Conduct Authority (FCA) | To establish a basis for co-operation, including the exchange of information and supervisory and investigative assistance. | 3/22/2017 |
| 34 | FinCEN (Treasury Department) | States the terms under which the Bureau participates in the program that FinCEN maintains to permit qualifying organizations to obtain direct electronic access to information collected pursuant to the reporting authority contained in the Bank Secrecy Act. | 6/3/2011 |
| 35 | FINRA | To set forth the terms and conditions of the Bureau's access to and use of customized data from the 2012 Military and State-by-State Survey of the FINRA Investor Education Foundation's National Financial Capability Study. | 4/17/2014 |
| 36 | FINRA | To amend 4/17/2014 MOU. | 6/9/2017 |
| 37 | Florida Office of Financial Regulation | To establish the framework for Bureau and FLOFR to establish and enhance the cooperative relationship between the Bureau and the FLOFR contemplated by the Consumer Financial Protection Act and to preserve the confidential nature of the information the parties share by and among themselves. | 4/25/2012 |
| 38 | FSOC | To set forth the understanding of the Parties with respect to the treatment of non-public information obtained from or shared among the Parties in connection with or related to the functions and activities of the FSOC or the Office of Financial Research pursuant to the Dodd-Frank Act. | 4/15/2011 |
| 39 | FTC | To facilitate cooperation and coordination on supervision, enforcement, and consumer response activities. Replaced by 3/6/2015 MOU. | 1/20/2012 |
| 40 | FTC | To facilitate cooperation and coordination on supervision, enforcement, and consumer complaint response activities. | 3/6/2015 |
| 41 | FTC | Consumer Sentinel Network Confidentiality and Data Security Agreement between Bureau and FTC regarding the exchange of confidential consumer complaint information. | 7/21/2011 |
| 42 | FTC | Standing agreement between Bureau and FTC concerning the exchange of non-public information between agencies. | 10/24/2011 |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------|--|---|-----------------------------------|
| 43 | Georgia Department of Banking and Finance | To establish a framework to preserve the confidentiality of information shared between parties. | 2/1/2012 |
| 44 | Hawaii Attorney General's Office | To establish a framework to preserve the confidentiality of information shared between parties. | 8/12/2012 |
| 45 | Hawaii Office of Consumer Protection | To establish a framework to preserve the confidentiality of information shared between parties. | 7/10/2012 |
| 46 | Iowa Attorney General's Office | To establish a framework to preserve the confidentiality of information shared between parties. | 4/4/2012 |
| 47 | Kentucky Attorney General Office | To establish a framework to preserve the confidentiality of information shared between parties. | 10/11/2012 |
| 48 | Massachusetts | To establish a framework to preserve the confidentiality of information shared between parties. | 11/6/2012 |
| 49 | Mississippi | To establish a framework to preserve the confidentiality of information shared between parties. | 6/13/2012 |
| 50 | Missouri Attorney General Office | To establish a framework to preserve the confidentiality of information shared between parties. | 2/18/2013 |
| 51 | Montana Department of Justice | To establish a framework to preserve the confidentiality of information shared between parties. | 7/10/2012 |
| 52 | Navajo Nation Department of Justice | To establish a framework to preserve the confidentiality of information shared between parties. | 1/22/2013 |
| 53 | NCUA | To set forth the agreement between the Bureau and the NCUA with respect to their sharing, consistent with law and NCUA's rule governing access to information (12 C.F.R. part 792), of nonpublic information in connection with their responsibilities related to or affecting the establishment of the Bureau. | Undated |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------|--|---|-----------------------------------|
| 54 | NCUA | To reaffirm the parties' commitment to be bound by and comply with the terms of the MOU (which sets forth the agreement between the Bureau and NCUA, with respect to their sharing of non-public information in connection with their responsibilities related to or affecting the establishment of the Bureau) expiring at the designated transfer date. | 7/15/2011 |
| 55 | NCUA | To facilitate the handling of consumer complaints and inquiries as well as sharing of information between agencies for the purpose of consumer financial protection. | 8/31/2011 |
| 56 | Nevada Attorney General Office | To establish a framework to preserve the confidentiality of information shared between parties. | 4/16/2012 |
| 57 | New Hampshire | To establish a framework to preserve the confidentiality of information shared between parties. | 4/5/2012 |
| 58 | New Mexico Attorney General's Office | To establish a framework to preserve the confidentiality of information shared between parties. | 6/14/2012 |
| 59 | New Jersey | To establish a framework to preserve the confidentiality of information shared between parties. | 5/30/2013 |
| 60 | New York Attorney General Office | To establish a framework to preserve the confidentiality of information shared between parties. | 5/7/2012 |
| 61 | New York City Dep't of Consumer Affairs | To establish a framework to preserve the confidentiality of information shared between parties. | 2/21/2013 |
| 62 | North Carolina Attorney General's Office | To establish a framework to preserve the confidentiality of information shared between parties. | 4/7/2012 |
| 63 | North Carolina Credit Union Division | To establish the framework for the parties, and to establish and enhance the cooperative relationship between Bureau and NCCUD, and to preserve the confidential nature of the information the parties share by and among themselves. | 3/2/2011 |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------|---|---|-----------------------------------|
| 64 | North Dakota Attorney General's Office | To establish a framework to preserve the confidentiality of information shared between parties. | 8/14/2012 |
| 65 | OCC | To facilitate the transition of Consumer Complaint processing responsibilities regarding the institutions, products, and services over which the Bureau will have examination authority and primary enforcement authority for compliance with Federal Consumer financial laws from the OCC to the Bureau. | 7/22/2011 |
| 66 | OCC | To amend the Rollout Schedule in the 7/22/2011 MOU as it pertains to the responsibility of handling consumer complaints. | 2/8/2012 |
| 67 | OCC | To set forth the agreement between the Bureau and the OCC with respect to the sharing and treatment of information in connection with their respective responsibilities consistent with and in advancement of the requirements of Title X of the Dodd Frank Act or other applicable law. | 4/30/2012 |
| 68 | OCC | To establish an overarching framework for the agencies, consistent with the 5/16/2012 MOU with Prudential Regulators and the 4/30/2012 MOU concerning the sharing of information by and between OCC and Bureau, to collect and share data. | 4/8/2013 |
| 69 | Office of Mortgage Settlement Oversight | To establish a framework for the sharing and treatment of nonpublic information relating to the National Mortgage Settlement entered into on 4/5/2012, and any additional servicers that enter into a settlement agreement with the Bureau and agree to oversight by the OMSO. | 12/9/2013 |
| 70 | Offices of the Judge Advocate Generals | To establish and enhance a lasting and productive partnership between the Bureau and the Offices of the Judge Advocate Generals. | 7/6/2011 |
| 71 | Oklahoma Department of Consumer Credit | To establish a framework to preserve the confidentiality of information shared between parties. | 11/27/2012 |
| 72 | Pennsylvania Department of Banking | Agreement between Bureau and PA Dep't of Banking with regard to the Bureau's access to and use of the NMLS. | 10/10/2012 |

| Number | Agency/State/ Other | Purpose/Nature of Interaction | Effective (Start) Date |
|---------------|--|---|-----------------------------------|
| 73 | Pennsylvania Office of Attorney General | To establish a framework to preserve the confidentiality of information sharing between parties. | 9/12/2017 |
| 74 | Prudential Regulators | MOU between Bureau and Prudential Regulators (FRB, FDIC, NCUA, OCC) outlining their coordinated supervisory activities, as well as encouraging additional voluntary cooperation for the purpose of consumer financial protection. | 5/16/2012 |
| 75 | San Francisco City Attorney | To establish a framework to preserve the confidentiality of information the parties share. | 5/30/2013 |
| 76 | Securities and Exchange Commission | To establish a framework for consulting and coordinating, where feasible, with each other to promote communication regarding consumer financial and investment products and services. | 9/3/2014 |
| 77 | Social Security Administration | To memorialize the collaboration between the Bureau and SSA on the Retirement Tool and to encourage cross promotion of the Bureau's Retirement Tool, SSA's Quick Calculator, and other tools made available by the Parties in an effort to maximize the benefit to consumers. | 7/20/16 |
| 78 | State Regulatory Registry | Terms of use agreement entered between SRR and Bureau for the purpose of sharing access to information off the NMLS registry system. | 9/20/2012 |
| 79 | Vermont | To establish a framework to preserve the confidentiality of information sharing between parties. | 4/5/2012 |
| 80 | Washington Attorney General's Office | To establish a framework to preserve the confidentiality of information sharing between parties. | 9/26/2012 |
| 81 | Wyoming Attorney General's Office | To establish a framework to preserve the confidentiality of information sharing between parties. | 9/20/2012 |

Taskforce Member Orientation

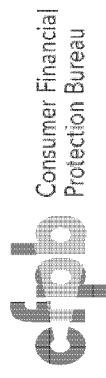
TAB 3 – Consumer Response



Consumer Financial
Protection Bureau

Office of Consumer Response Overview for Taskforce on Federal Consumer Financial Law

January 30, 2020



This document was used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion or the relative emphasis of topics therein.

Office of Consumer Response

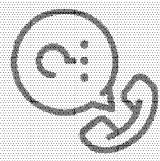
“Collecting, investigating, and responding to consumer complaints” is one of the six statutory “primary functions” of the Bureau.¹

The Bureau’s Office of Consumer Response

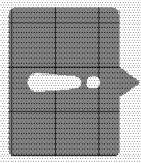
- facilitates the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services;
- maintains procedures to provide timely response to consumer complaints and inquiries

¹ 12 U.S.C. 5511(c)(2).

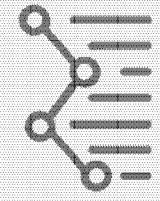
Office of Consumer Response



Answers questions

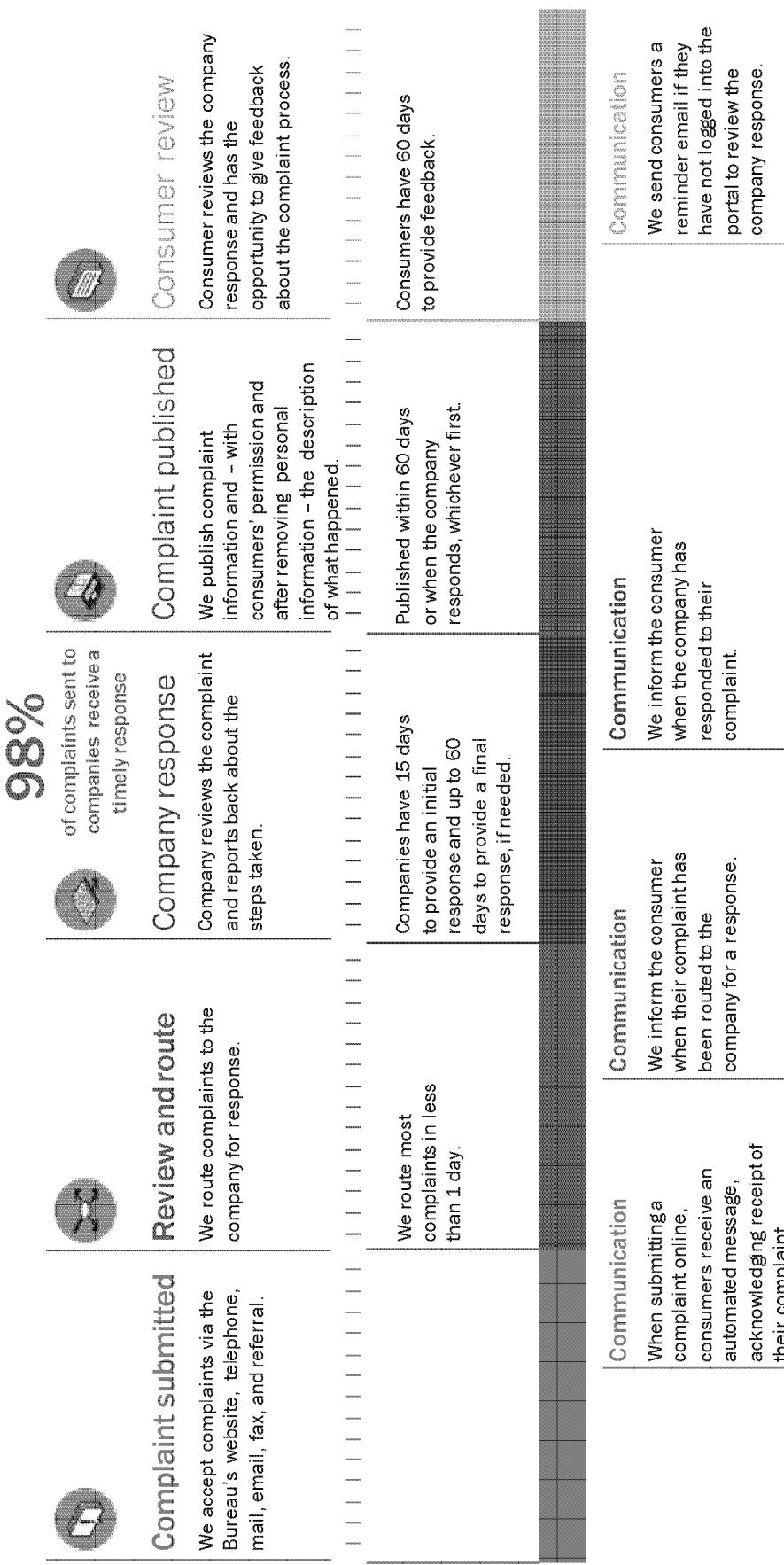


Handles complaints

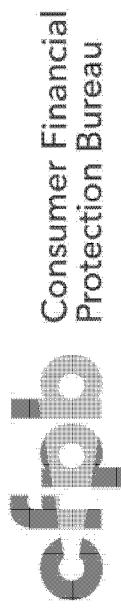


Shares data and insights

Our process is scalable and keeps consumers informed



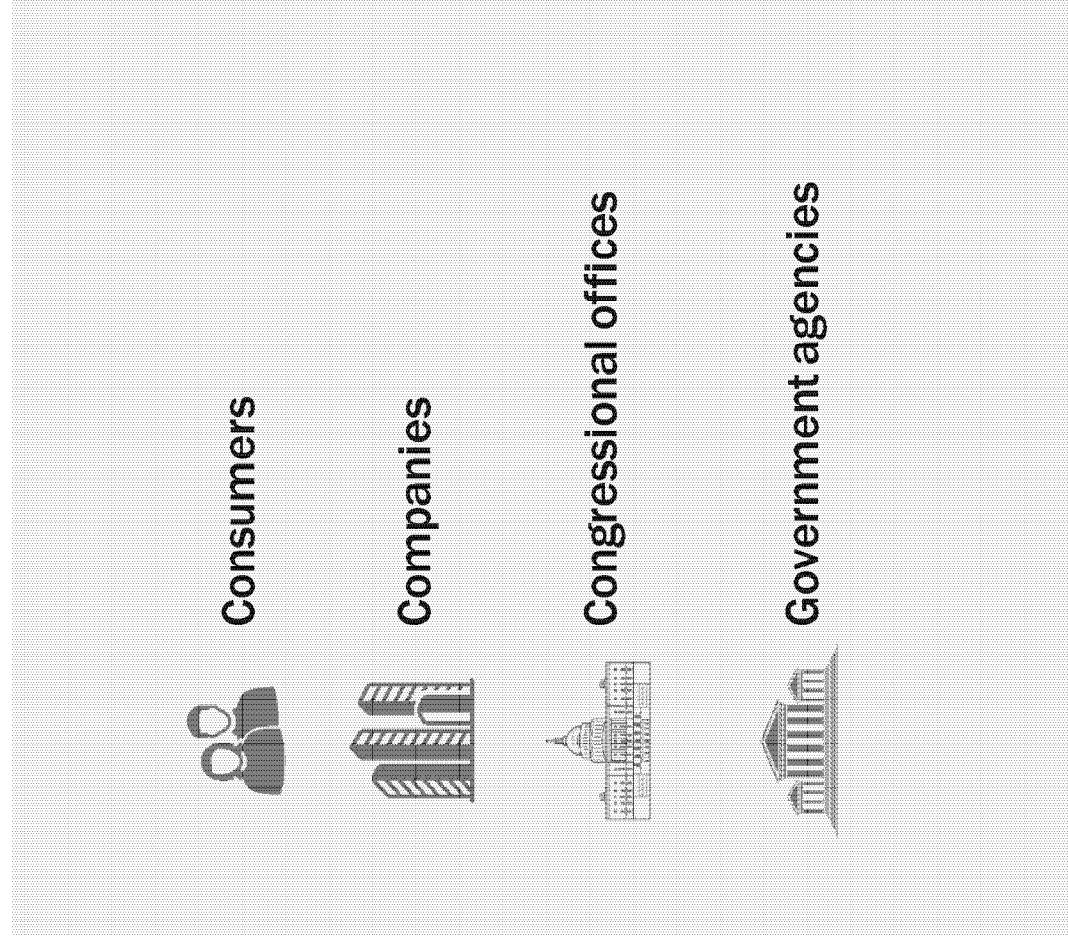
We customized portals for users



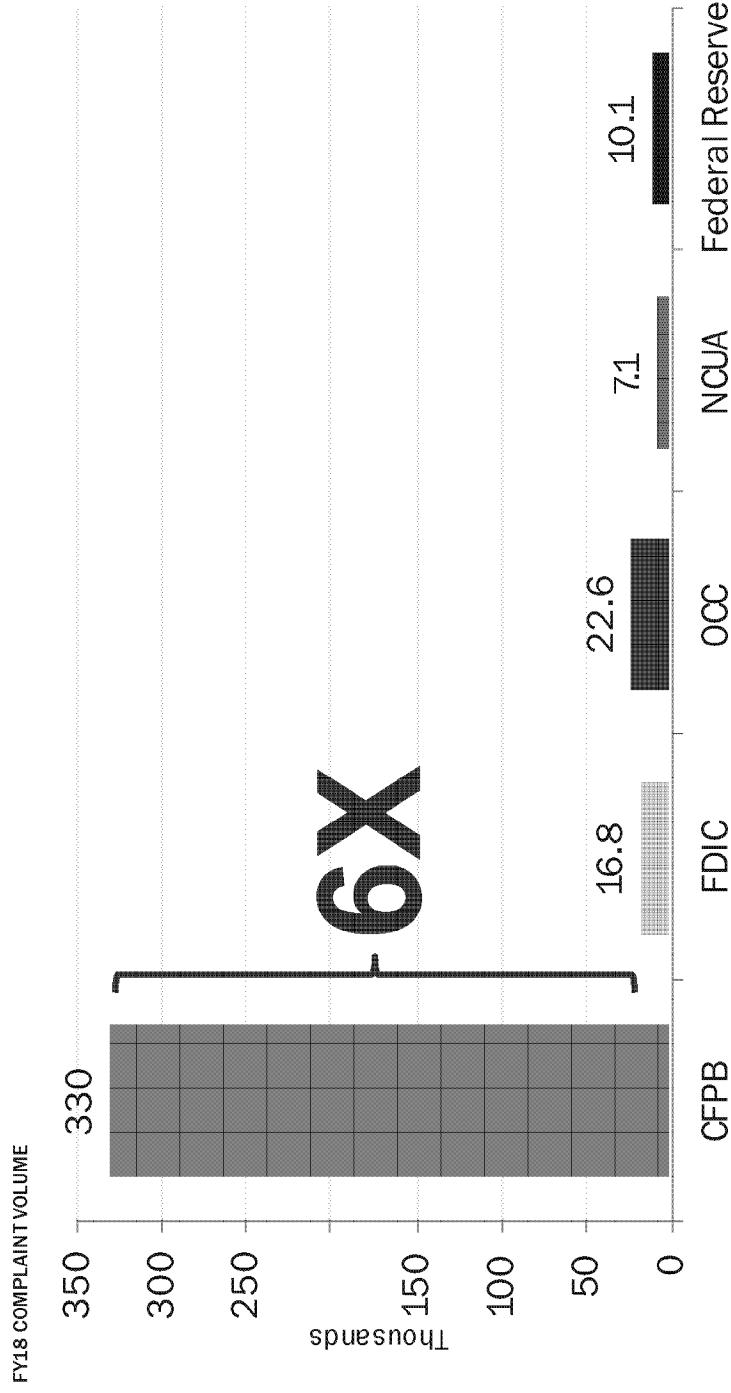
You will need to reset your password if:
■ You haven't set your password yet
■ You forgot your password

| |
|------------------------------------|
| <input type="text"/> Email Address |
| <input type="password"/> Password |

Log in

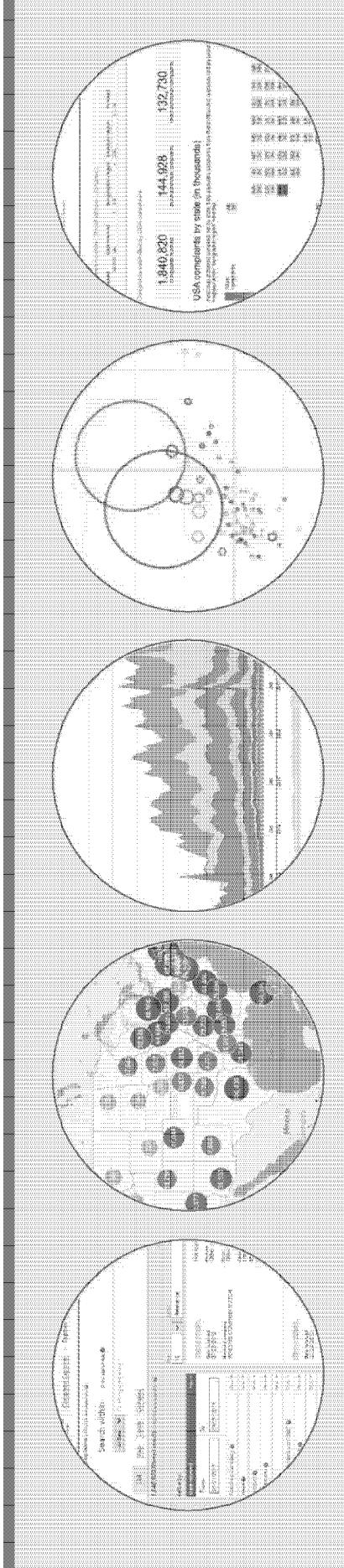


We answer questions, handle complaints, and share data and insights



Complaints totals at FDIC,
OCC, NCUA, and Federal
Reserve are estimates
based on available data
(Jan. 2019).

We built a suite of tools to analyze and monitor complaints



Explorer

Search complaints and stories to enhance your insights

Geospatial

View complaints on a map and add context using data layers

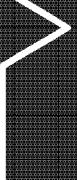
Advanced analytics

Identify spikes (anomalous increases) in complaint data

Interactive reports

Use self-service reporting tools to explore complaint data

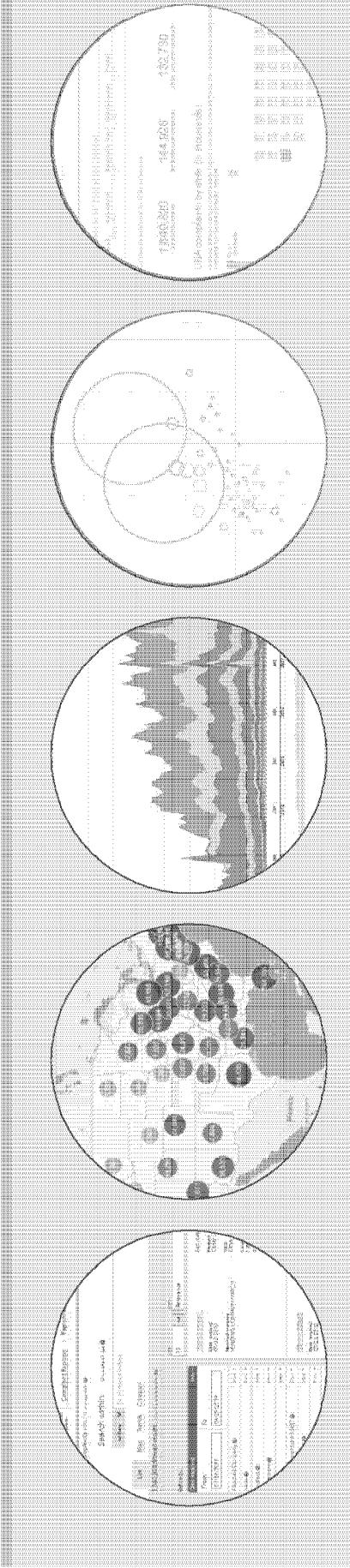
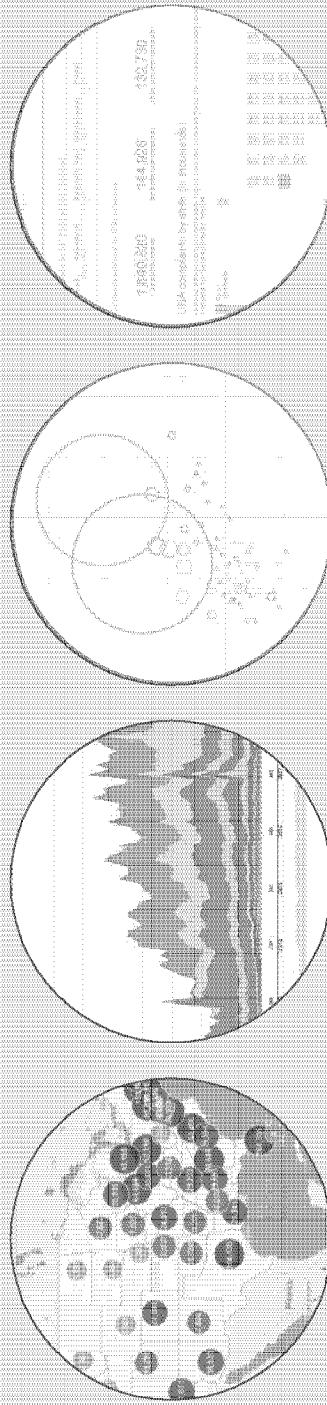
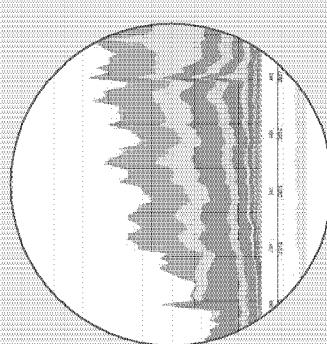
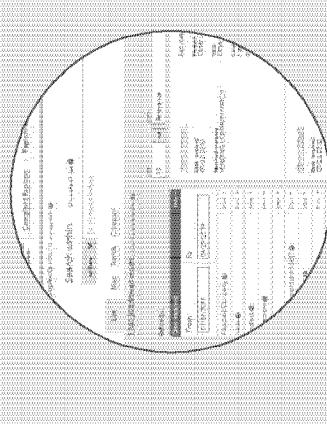
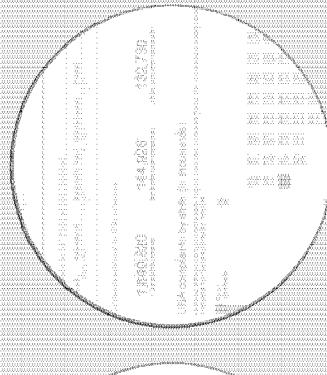
[W]e are working to develop modern data visualization and trend analytics tools that will make it easier for consumers, researchers, advocates, and other stakeholders to explore the data and quickly look at the data in a clearer and more powerful interface.



Director Kraninger

Speech at the National Consumer Empowerment Conference (Sep. 18, 2019)

We will now be making some of these tools available to the public

| | | |
|---|---|--|
|  | Explorer Search complaints and stories to enhance your insights | View complaints on a map and add context using data layers |
|  | Geospatial | View visualizations of complaint information based on filters and search terms |
|  | Trends | View visualizations of complaint information based on filters and search terms |
|  | Advanced analytics | Identify spikes (anomalous increases) in complaint data |
|  | Interactive reports | Use self-service reporting tools to explore complaint data |

CONSUMER FINANCIAL PROTECTION BUREAU

Analyzing complaint data: Explorer

Consumer Complaint Database BETA

Consumer complaints are added to this public database after the company has responded to the complaint, confirming a commercial relationship with the consumer, or after they've had the complaint for 15 calendar days, whichever comes first. We don't verify all the facts alleged in complaints, but we do give companies the opportunity to publicly respond to complaints by selecting responses from a pre-populated list. Company-level information should be considered in the context of company size and/or market share.

[More about the complaint database](#) | [How we use complaint data](#) | [Technical documentation](#) | [View complaint data in Socrata](#)

Search complaint data (last updated: 10/25/19)

Search Within

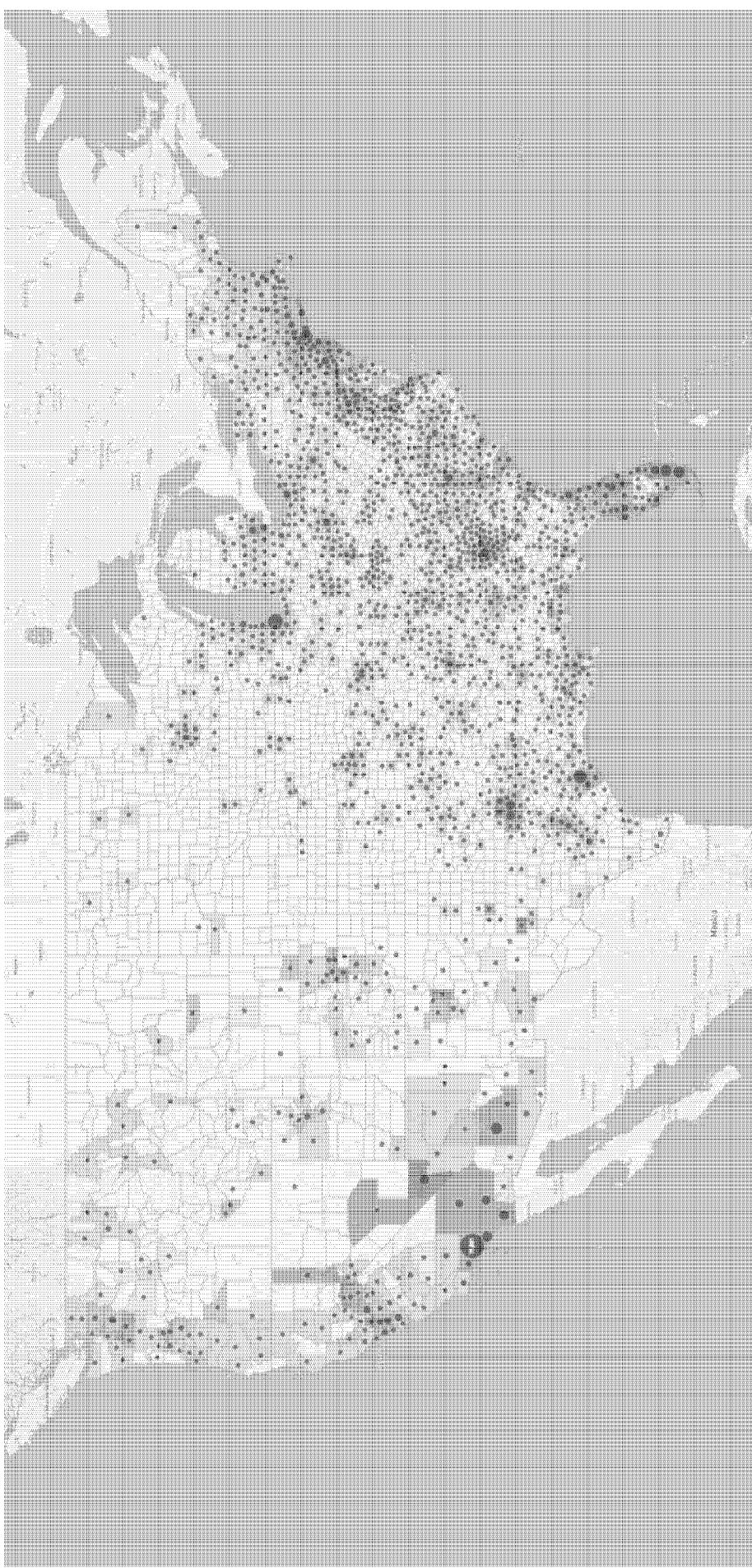
Showing 1,398,648 total complaints

Filter results by... Only show complaints with narratives? Yes

| Date received: 10/3/2019 | Consumer's state: SC |
|---|---|
| 3393993 | Sort by newest to oldest <input type="button" value="REPORT ABUSES"/> |
| Date CFPB received the complaint | Hide <small> ⓘ</small> |
| From | Through |
| mm/dd/yyyy | mm/dd/yyyy |
| Company name | Company name |
| Financial Data Systems | Financial Data Systems |
| Product | Debt collection |
| Sub-product: I do not know | Issue |
| Consumer response to consumer | Attempts to collect debt not owed |
| Closed with explanation | Sub-issue: Debt was result of identity theft |
| Timely response? | Yes |
| Company name | Hide <small> ⓘ</small> |
| The company name as it appears in our complaint system, which may be different than the name the consumer provided in their complaint | |
| Product / sub-product | Hide <small> ⓘ</small> |
| The type of product and sub-product the consumer identified in the complaint | |
| Recent changes to products and sub-products | Yes |

FOR ILLUSTRATIVE PURPOSES ONLY.

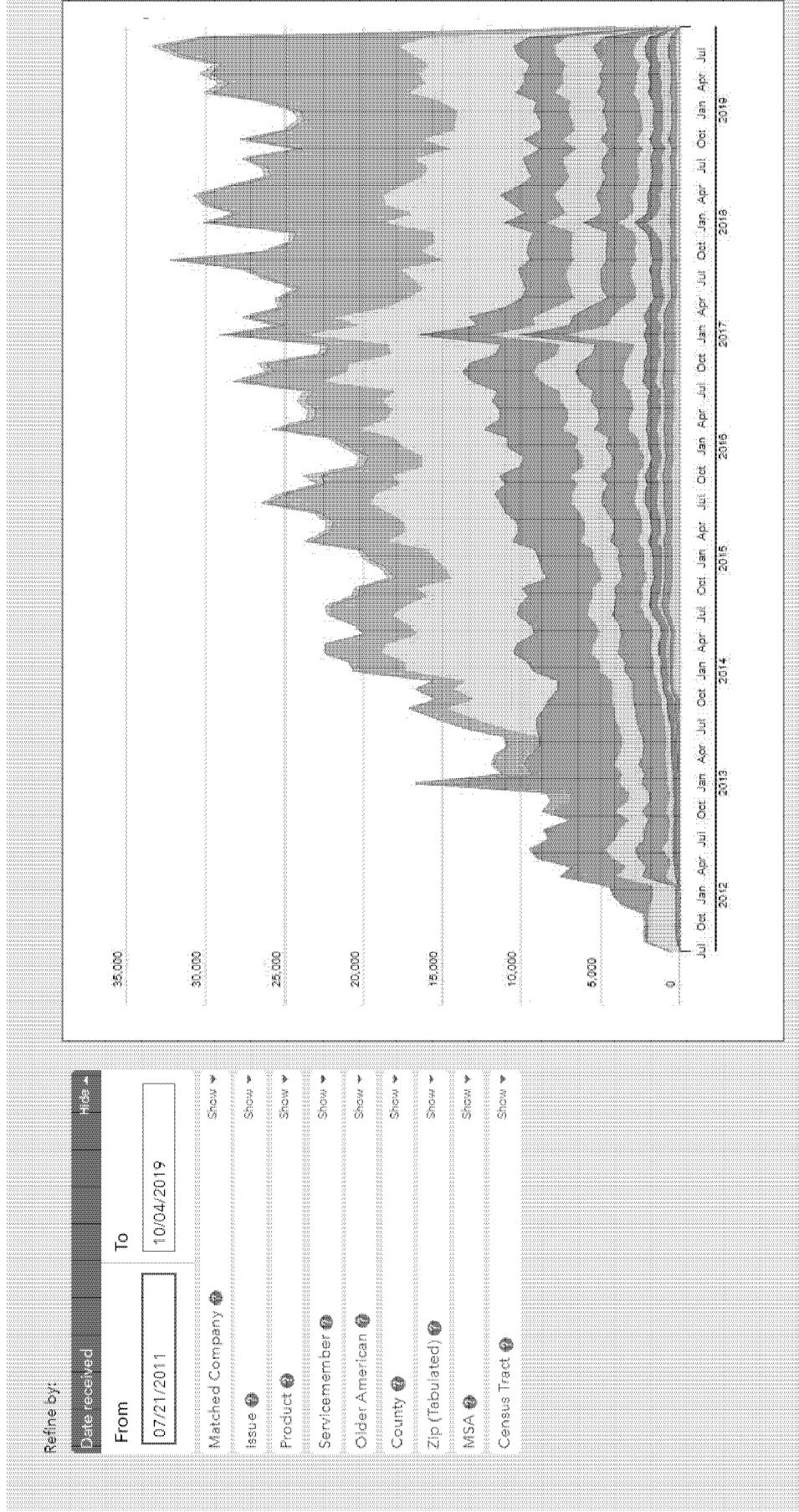
Analyzing complaint data: Geospatial



CONSUMER FINANCIAL PROTECTION BUREAU

FOR ILLUSTRATIVE PURPOSES ONLY.

Analyzing complaint data: Trends



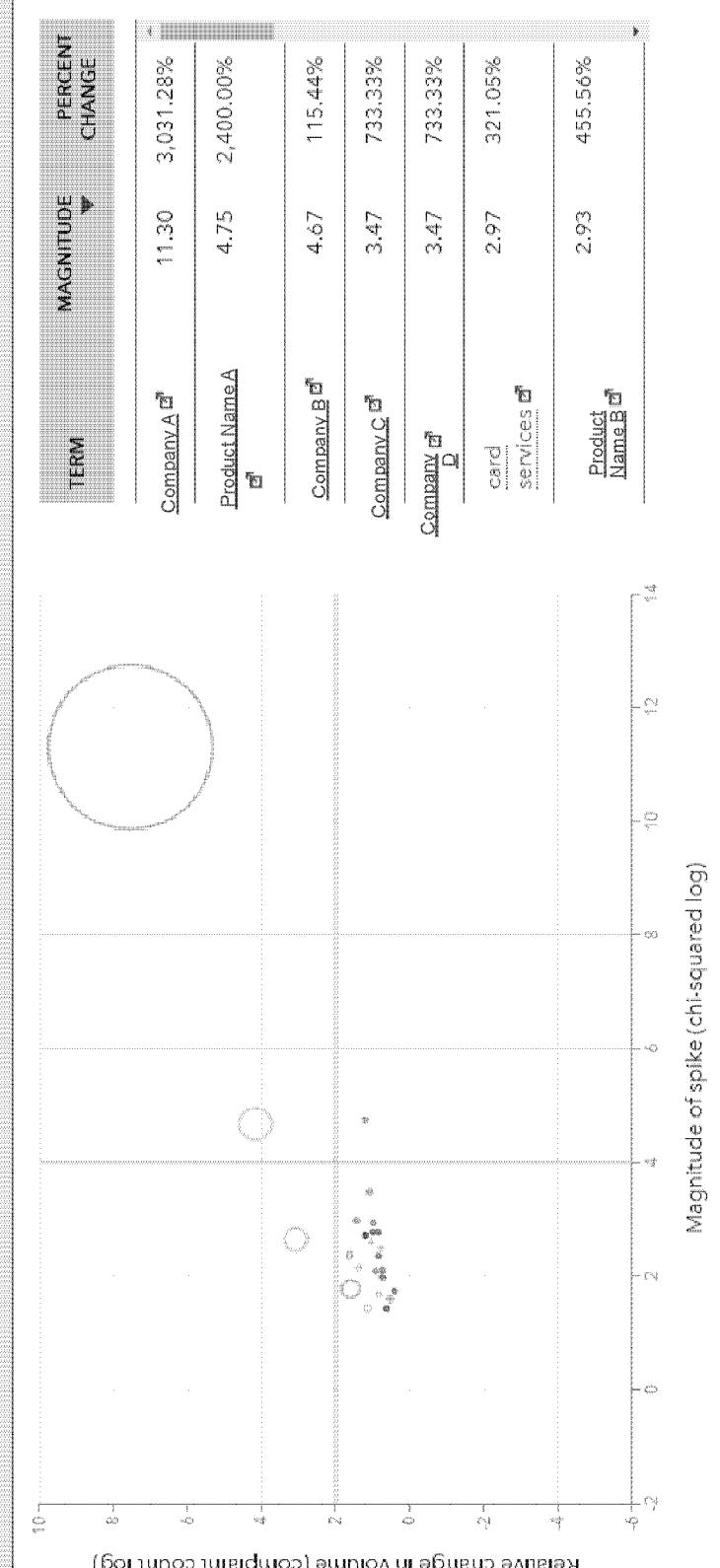
CONSUMER FINANCIAL PROTECTION BUREAU
CFPB-0000813

FOR ILLUSTRATIVE PURPOSES ONLY.

Discussion

Appendix

Analyzing complaint data: Advanced Analytics

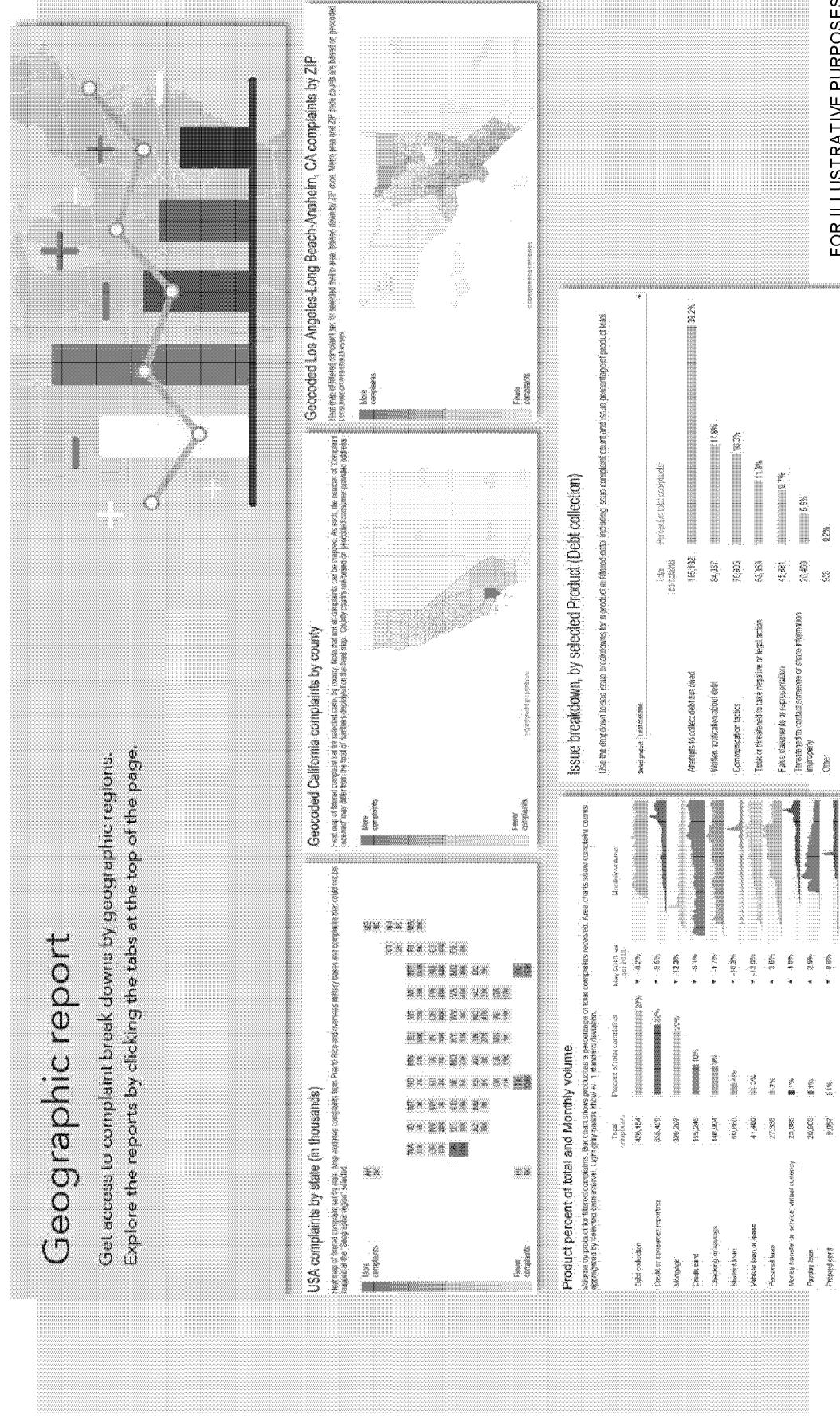


CONSUMER FINANCIAL PROTECTION BUREAU
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Analyzing complaint data: Interactive Reports

Geographic report

Get access to complaint break downs by geographic regions.
Explore the reports by clicking the tabs at the top of the page.



CONSUMER FINANCIAL PROTECTION BUREAU

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Taskforce Member Orientation

TAB 4 – Research, Markets, and Regulations



Consumer Financial
Protection Bureau

List of Enumerated Laws Subject to Consumer Financial Protection Bureau's Purview

12 U.S. Code § 5481. Definitions: <https://www.law.cornell.edu/uscode/text/12/5481>

"enumerated consumer laws" means—

- (A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);
- (B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);
- (C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act [15 U.S.C. 1693o–2];
- (D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);
- (E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);
- (F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);
- (G) the Home Owners [2] Protection Act of 1998 (12 U.S.C. 4901 et seq.);
- (H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);
- (I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)[(b)]–(f));
- (J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 [15 U.S.C. 6805] as it applies to section 501(b) [15 U.S.C. 6801(b)];
- (K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);
- (L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);
- (M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);
- (N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);
- (O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);
- (P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);
- (Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8) [12 U.S.C. 5538]; and
- (R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

AI MARKET PROFILE FOR CONSUMER FINANCIAL SERVICES

General AI Trends

- In 2018, 49% of financial services firms deployed AI in service operations, 26% in product/service development, and 33% in marketing and sales.¹

AI Visual/Audio perception now equal to or better than humans

- Since 2010, image labeling technology error rates have declined from 28% to 2.5%, which is better than human level performance.²
- Since 2011, speech recognition has risen from 84% accuracy to 95% accuracy (human level performance).³

Growth in AI Business Activity

- The number of active U.S. start-ups developing AI systems increased 14x since 2000 (and 2.1x between 2014 and 2018).⁴
- VC funding for U.S. AI startups increased 4.5x from 2013 to 2017.⁵
- In 2015, U.S. companies invested \$26 to \$39 billion in AI (Tech giants invest \$20B to \$30B).⁶

Financial Services Trends

Current leading AI use cases in financial services include credit underwriting, chatbots, fraud detection, cybersecurity, roboadvising, and compliance tools.

Chatbots

- Bank of America chatbot, Erica, had 7 million users as May 28, 2019
- Other examples of chatbots:
 - Capital One (Eno),
 - Wells Fargo,
 - Ally Bank (Ally Assist),
 - HSBC (Amy),
 - Mastercard (KAI),
 - RBS (Luvo)
- 67% of consumers worldwide use a chatbot for customer support in past year⁷
- Chatbots are expected to save banks between \$0.50 and \$0.70 per interaction.⁸

¹ McKinsey and Company, AI Index 2018

² Image-net.org

³ Electronic Frontier Foundation, AI Progress Metrics

⁴ AI Index 2017, citing Crunchbase, VentureSource, Sand Hill Economics

⁵ AI Index 2018

⁶ McKinsey Global Institute, Artificial Intelligence: The Next Digital Frontier

⁷ <https://www.invespcro.com/blog/chatbots-customer-service/>

⁸ <http://fortune.com/2017/05/10/chatbots-business-billions-savings/>

- Juniper Networks expects 90% of banking interactions with consumer to involve bots by 2022.⁹

Credit Decisioning

- FICO found 2% lift on its industry-leading FICO score from machine learning.
- FICO found ML reduces hours needed to build new credit models from 800 to 40 hours.
- Innovative use of mobile data: prepaid-minute purchase patterns, timing and frequency of text messages¹⁰
- Key Companies:
 - Zest Financial: Clients include Synchrony Financial, Prestige Financial, Ford Motor Credit
 - Upstart: Bankcorp, Bankmobile
 - Others: Scienaptic Systems, Underwrite.ai, DataRobot (client Crest Financial)

Compliance/Regulatory Technology

- 50% of recently surveyed banks say they spend six to 10% of revenue on compliance.¹¹
- Annual spending by financial institutions estimated by Medici Insights to be excess of US \$70 billion;¹²
- Compliance costs estimated to be up to \$4 billion annually at some big banks (KYC, AML, stress tests)¹³
- The number of individual regulatory changes that banks must track on a global scale has more than tripled between 2011 and 2015, to an average of 200 revisions per day¹⁴
- JPM COIN program reviews documents based on business rule, data and data validation, and can do 360,000 hours of work in seconds.¹⁵
- **Use cases:** Using natural language processing and text analytics to review regulations; speeding up and/or automating routine tasks; sending risk-based prioritized alerts; identify relevant content, news, etc.
- Key Companies:
 - Ayasdi,
 - ComplyAdvantage,
 - FixNix¹⁶

⁹ Juniper Research, Chatbots: Retail, eCommerce, Banking & Healthcare, 2017 -2022

¹⁰ <https://www.mckinsey.com/business-functions/risk/our-insights/new-credit-risk-models-for-the-unbanked>

¹¹ “Rising compliance costs are hurting customers, banks say,” American Banker, March 28, 2018

¹² <https://gomedici.com/a-report-on-global-regtech-a-100-billion-opportunity-market-overview-analysis-of-incumbents-and-startups/>

¹³ <https://internationalbanker.com/banking/innovating-bank-compliance-real-benefits-artificial-intelligence/>

¹⁴ <https://www.bcg.com/en-us/publications/2017/financial-institutions-growth-global-risk-2017-staying-course-banking.aspx>

¹⁵ <https://digitally.cognizant.com/how-banks-can-use-ai-to-reduce-regulatory-compliance-burdens-codex2710/>

¹⁶ <https://gomedici.com/medici-top-21-regtech-awards-unveiling-leaders-building-the-future-of-regulatory-compliance/>

Cybersecurity

- Financial Services industry has the highest cost of breaches, \$18.28 million annualized¹⁷
- More than 121.6 million new malware programs were discovered in 2017, equivalent to 231 new malware samples every minute.¹⁸
- Threat of hackers using AI is increasing, according to McAfee¹⁹
- According to Accenture/Ponemon only 26% of financial institutions have deployed AI-based security technologies.²⁰
- Key Companies:
 - Cylance,
 - CrowdStrike,
 - Darktrace,
 - Vectra Networks
- Incumbent Companies:
 - Amazon,
 - Microsoft,
 - Google (Chronicle),
 - Palo Alto Networks,
 - Fortinet,
 - Cisco Systems²¹

Fraud/AML

- 99% of AML Alerts are false positives²²
- HSBC saw a 20% drop in AML Investigations with Ayasdi AI²³
- Accenture in 2018 predicted that the use of AI for customer identification, verification (KYC/AML) and other forms of data processing will yield \$350 Billion savings for financial institutions by 2030²⁴
- Key Companies:
 - Fraugster – transactions,
 - Barracuda Sentinel – email,
 - Brighterion – fraud and cyber,²⁵
 - NCR – transactions

¹⁷ Cost of Cybercrime 2017 Accenture and Ponemon Report, 2018 Accenture Security update

¹⁸ According to a report by German research institute AV-Test GmbH. <https://www.wsj.com/articles/how-ai-can-help-stop-cyberattacks-1537322940>

¹⁹ <https://securintgomorrow.mcafee.com/other-blogs/mcafee-labs/mcafee-labs-2019-threats-predictions/>.

²⁰ Ponemon 2018 slide 9

²¹ <https://www.investors.com/news/technology/ai-companies-artificial-intelligence-cybersecurity/>

²² <https://www.pymnts.com/news/security-and-risk/2018/brighterion-ceo-artificial-intelligence-anti-money-laundering/>

²³ <https://www.finextra.com/blogposting/14485/to-truly-transform-kyc-and-aml-operations-adopt-ai-and-ml>

²⁴ Augmented Finance & Machine Intelligence.. <https://www.globalbankingandfinance.com/artificial-intelligence-in-banking-industry-conversion-to-genuine-benefits/>

²⁵ <https://www.g2crowd.com/search?utf8=%E2%9C%93&query=ai+fraud>

Roboadvising

- \$87 trillion in domestic wealth and a projected increase of over \$140 trillion by 2030. Nearly \$64 trillion will be in investable.²⁶
- 2030 fee income projected at \$150 billion and \$240 billion.²⁷
- Recently AI has been used to meet ‘fiduciary duty of care’ requirements by helping advisors provide advice that is (1) comprehensive, (2) objective, (3) transparent, and (4) relevant²⁸
- AI can be used to rebalance portfolio risk based upon shifting variables of a client and market.²⁹
- Key Companies:
 - SoFi Wealth,
 - Betterment,
 - Personal Capital,
 - Wealthfront,
 - SigFig³⁰

²⁶ <https://www2.deloitte.com/insights/us/en/industry/investment-management/us-generational-wealth-trends.html>

²⁷ ibid

²⁸ <https://seekingalpha.com/article/4161006-ai-can-help-advisors-grow-keep-assets?page=3>

²⁹ <https://emerj.com/ai-application-comparisons/robo-advisors-artificial-intelligence-comparing-5-current-apps/>

³⁰ <https://www2.deloitte.com/insights/us/en/industry/investment-management/us-generational-wealth-trends.html>

| | | | | | |
|--|----------------------------------|----------------------------------|-------------------------|--------------------------|---------------------------|
| | | | | | |
| | Sofi Wealth | Betterment | Personal Capital | Wealthfront | SigFig |
| Funds Raised | \$2 billion | \$275 million | \$215.3M | \$204.5 million | \$67 million |
| Year Founded | 2011 | 2008 | 2009 | 2011 | 2007 |
| Headquarters | San Francisco, California | New York, New York | San Carlos, California | Redwood City, California | San Francisco, California |
| Staff Size | 1001-5000 | 201-500 | 201-500 | 101-250 | 51-100 |
| Target User | Individual investors, Businesses | Individual investors, Businesses | Individual investors | Individual investors | Individual investors |
| Number of ratings on Google Play: | 218 | 3,738 | 4,638 | 255 | 343 |
| Score of ratings on Google Play: | 4.8 | 4.4 | 4.4 | 4.3 | 4.3 |

RMR Research Publications:

None yet

Regular Outputs:

The Office of Consumer Reporting, Lending, and Collections (CLRC) produces for internal Bureau use the following regular report:

- Monthly AI clipper
- Semi-annual AI Chartbook (in process)

³¹ <https://emerj.com/ai-application-comparisons/robo-advisors-artificial-intelligence-comparing-5-current-apps/>

AUTO FINANCE MARKET PROFILE

Market Size¹

- Auto finance is the third largest source of consumer debt after mortgage and student lending.
- Total outstanding balances: \$1.181T
- Total number of outstanding accounts: 90M
- Total number of new accounts/year: 6.98M through Q1 2019 ² and 28.79M new accounts in 2018
 - Most consumers finance vehicle purchases: 85.4% of new vehicles were financed and 56.68% of used vehicles were financed in Q1 2019.
 - In Q3 2018, approximately 79.39% of new accounts were for prime consumers, while 20.06% came from subprime consumers.
- Delinquencies: 1.98% of loan balances were 30 days delinquent and 0.67% of loan balances were 60 days delinquent in Q1 2019.

Market Structure

Origination volume by financial institution type:³

- Banks – 26.6%
- Credit Unions – 27%
- Captives (manufacturers' finance companies) – 24.6%
- Finance Companies – 21.4%
- Other – 0.4%

RMR estimates that at least 80% of auto loans are indirect (loan obtained through dealership arranged financing) and about 20% are direct loans (loan obtained directly through a lending institution such as a bank or credit union).

Typical car loan amounts and payments in Q1 2019:⁴

- New Vehicles
 - Average new vehicle loan is \$32,187
 - Average monthly payment is \$554 (a record high)
 - Average term of new vehicle loan is 68.85 months (a record high)
- Used Vehicles
 - Average used vehicle loan is \$20,137
 - Average monthly payment is \$391; (a record high)
 - Average term of used vehicle loan is 64.67 months (a record high)

¹ 2019 Q1 Experian – Oliver Wyman Market Intelligence Report and 2018 Q1 State of Automotive Finance Market, Experian

² BCFP's Consumer Credit Trends – Market Dashboards, <https://www.consumerfinance.gov/data-research/consumer-credit-trends/auto-loans/>.

³ 2019 Q1 Experian – Oliver Wyman Market Intelligence Report

⁴ 2019 Q1 State of Automotive Finance Market, Experian

Bureau Rulemakings and Research Publications

- Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service (June 30, 2015)
- Quarterly Consumer Credit Trends: Growth in longer-term auto loans (Nov 1, 2017)

Regular Outputs

- Bi-weekly Auto Finance Clipper
- Bi-monthly Auto Finance Market Update
- Quarterly Auto Finance Chart book

Regulatory Unified Agenda and Future Commitments

- N/A

Previous Regulatory Work

- N/A

CONSUMER REPORTING MARKET PROFILE

Market Size

- 200M-220M consumers have a credit report at one or more of the nationwide credit reporting agencies (NCRAs), Equifax, TransUnion or Experian.¹
- 26M consumers are “credit invisible” (no NCRA credit records), representing about 11% of the adult population. An additional 19M consumers, or 8.3% of the adult population, have credit records that are treated as having too little (“thin”) or too old (“stale”) data to generate a reliable credit score under the most widely-used credit scoring models.²
- There are 15,000+ financial institutions who regularly furnish data to the NCRA.³ They include lenders and debt collectors, but generally do not include providers of other services who extend credit as part of their business (e.g. telecom and utility furnishing generally consists only of negative charge-off data. It does not include the furnishing of positive on-time payment data nor past-due delinquency data.).
- Furnishers provide information on 1.3B + credit accounts or “trade lines” each month.⁴

Market Structure

- The three NCRAs have most of the market share for the credit reporting market.
- Consumer reports, and predictive risk scores derived from them, are used to underwrite major consumer credit decisions (home, auto, student loans, credit cards, personal loans, phone plans, etc.) as well as in debt collection, employment, insurance, rental housing, auto leasing, eligibility for public assistance, etc.
- Specialty credit reporting agencies (CRAs) focus on certain limited market areas: E.g., Background screening for employment, rental housing, insurance; Specialized consumer segments (subprime lending); and Supplemental risk management services for identity verification. Depositories use specialized reports to determine account eligibility.⁵
- Credit reports and risk scores are sold mostly to institutions, but also to consumers as part of credit and identity monitoring services. Lenders also devise and use their own proprietary risk models.
- Predictive credit scores, sold by CRAs and statistical modelers, help institutions manage credit, fraud and other risks, e.g., non-payment of rent. The most utilized third party scores are FICO and VantageScore. FICO advertises that its credit scores are used in 90%+ of U.S. consumer credit decisions.⁶ FICO also dominates the securitization market.⁷ VantageScore claims to score 30M more consumers than FICO.⁸

¹ See <https://www.equifax.com/business/consumer-reports/>, <https://www.transunion.com/solution/customer-credit-check>, and <http://www.experian.com/blogs/insights/2018/02/big-data-sandbox/>.

² See https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

³ See https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

⁴ See Ibid.

⁵ See <https://www.consumerfinance.gov/about-us/blog/know-your-data-our-latest-list-consumer-reporting-companies/> and

https://team.cfpb.local/wiki/images/9/9c/OSE_NE_All_Hands_NCRA_and_Checking_Acct_Furnishing_Oct_2018_Final.pdf.

⁶ See <https://ficoscore.com/about/>.

⁷ <https://www.mercatoradvisorygroup.com/News/Press/>.

⁸ See <http://www.experian.com/consumer-information/vantagescore-lender-faqs.html> and <http://www.fico.com/en/node/8140?file=9836>.

- There are a variety of “credit expansion” scores available today. They are intended to enable lenders to *expand* the number of scorable consumers for credit consideration.⁹
- Free credit scores are available to consumers from lenders and marketing lead generators (e.g., CreditKarma, Lending Tree, and Credit Sesame). FICO says that 300M consumer accounts have free access to the scores their lenders use for account management.¹⁰ Under the Fair Credit Reporting Act, consumers also have the right to obtain a free credit report once per twelve months from each NCRA. Under a recently passed bill (S.2155), consumers can block for free third-party access to their data with the NCRA.¹¹

RMR Research Publications

- In May 2018, Markets prepared a Spotlight for Bureau leadership and stakeholders. It examined security freeze programs available to consumers to block third-party access to their consumer report data.¹²
- In October 2018, Markets prepared a Spotlight for Bureau leadership and stakeholders on the NCTUE (National Consumer Telecom & Utility Exchange), a CRA that maintains a database of nearly 445M pay TV, utility and telecom bill payment records representing 222M+ unique consumers. Bill payment data has credit expansion implications.¹³
- In December 2012, Markets published a white paper examining the processes the NCRA uses to assemble credit reports and handle disputes.
- The Office of Research has undertaken a series of studies examining aspects of the credit reporting system:
 - Becoming Credit Visible (Jun 2017), and Credit Invisibles (May 2015)
 - Report on the Use of Remittance Histories in Credit Scoring (July 2014)
 - Medical Debt & Credit Scores (May 2014)
- Generally, on an annual basis, Markets compiles and issues a List of Consumer Reporting Companies to assist consumers seeking to obtain copies of their consumer reports.

Regular Outputs

- Weekly Consumer Reporting Clipper

Regulatory Unified Agenda and Future Commitments

- None

Previous Regulatory Work

- None

⁹ See https://team.cfpb.local/wiki/images/1/10/FL_Huddle_Alternative_Data_Market_Snapshot_Doc_2018.pdf.

¹⁰ See <https://www.fico.com/en/newsroom/fico-score-open-access-program-hits-milestone-enabling-lenders-and-financial-counselors-to-offer-consumers-free-access-to-their-fico-scores>.

¹¹ See <https://www.consumerfinance.gov/about-us/blog/free-credit-freezes-are-here/>.

¹² See https://team.cfpb.local/wiki/images/7/72/Security_Freeze_Paper_Internal_MAY_2018_FINAL.pdf.

¹³ See https://team.cfpb.local/wiki/images/9/99/NCTUE_Company_Report_Nov_2018_Final_1.pdf.

CONSUMER-AUTHORIZED DATA ACCESS (DATA AGGREGATION) MARKET PROFILE

Market Structure and Size

- Account data holders:
 - Accrue and maintain account data for consumer financial products and/or services in the course of offering those products or services.
 - Provide data access to consumer or consumer-authorized entity.
 - Potentially includes every financial service provider, including over 4,000 banks and 5,500 credit unions that offer some form of online banking; brokerage and investment companies; nonbank payment or credit service providers, etc.
- Data aggregators:
 - Subject to consumer authorization, retrieve consumer account data held by account data holders and provide the data to data-based service providers (either a third party or the aggregator itself).
 - Market appears to be dominated by a relatively small number of providers; as of March 2018, one aggregator identified eight operating in the United States (including itself).¹
- Data-based service providers:
 - Provide a range of direct and indirect consumer services, such as:
 - Personal financial management (PFM) tools;
 - Budgeting, savings, and fee avoidance;
 - Comparing rates and fees to help consumers choose a product;
 - Facilitating credit application and underwriting (both increased efficiency in gathering traditional underwriting data and collecting “alternative” data); and
 - Robo-advising for investments.
 - Includes not only the thousands of fintech firms that offer aggregation-powered apps, but a number of banks, credit unions, and other financial service providers that are both account data holders and data-based service providers.
- It is unclear how many consumers use aggregation services:
 - A survey commissioned by The Clearing House found that 31% of U.S. banking consumers had used at least one fintech app.²
 - However, other uses may not require consumers to use a separate app: for example, the new UltraFICO credit score uses an aggregator to pull consumer asset account data, but could be accessed through a bank’s website while the consumer is applying for a loan.

Research Publications

¹ MX, “A List of Financial Data Aggregators in the United States” (Mar. 5, 2018) available at <https://www.mx.com/moneysummit/a-list-of-financial-data-aggregators-in-the-united-states>. Since that list was published, two of the aggregators on the list (Plaid and Quovo) have combined.

² *Fintech Apps and Data Privacy: New Insights from Consumer Research* (Aug. 2018).

- “Consumer-Authorized Financial Data Sharing and Aggregation: Stakeholder Insights that Inform the Consumer Protection Principles,” Oct 2017

Regular Outputs³

- Weekly CPD Markets News Clipper
- Deposits and Payment Market Update

Regulatory Unified Agenda and Future Commitments

- “Consumer Access to Financial Records” – long-term action on regulatory agenda

Previous Regulatory Work

- Request for Information Regarding Consumer Access to Financial Records, Nov 2016
- “Consumer Protection Principles: Consumer-Authorized Financial Data Sharing and Aggregation,” Oct 2017

³ To subscribe, “tag” yourself with “CardClipper” on the Bureau’s Wiki.

DEBT COLLECTION MARKET PROFILE

Market Size:

- Total industry revenue: \$11.5B¹
- Estimated number of collection agencies (establishments): 8,377.²
- Estimated number of collection agencies (enterprises): 7,837³
- Total outstanding consumer debt and delinquent debt: \$13.86T outstanding, of which \$604B is delinquent and \$405B is seriously delinquent, i.e., 90+ days past due, as of August 2019.⁴
 - Unsecured debt balance (credit card, student loan, other): \$2.76 T
- Percentage of consumers with a third-party debt collection tradeline on their credit report: 28%.⁵
- Average number of third-party collection tradelines listed: 3.2⁶
- Average balance for consumers with at least one debt collection tradeline: \$1,234⁷
- Average balance for consumers with at least one third-party debt collection tradeline: \$787⁸

Market Structure:

- The debt collection industry includes creditors collecting on their own debts, debt collectors (including debt collection law firms) collecting on behalf of debt owners, debt buyers, and a wide variety of related service providers.
 - Debt collectors may be either *first-party* (collecting debt under the creditor's name) or *third-party* (collecting debt under their own name, usually on a contingent-fee basis.)
- Debt collectors collect a wide variety of debt, resulting in varied market segmentation. Major sources of industry revenue include healthcare (11.3%), telecommunications/utility (20.1%), government (9.0%), and retail (9.7%), in addition to financial services (36.6%) debt collection.⁹
- The debt collection industry is experiencing consolidation driven by a need to generate economies of scale: the number of debt collection firms declined from 10,550 in 2012 to 8,377 in 2019, and is expected to continue falling.¹⁰
 - Radius Global Solutions is the largest contingency collector; 150 other contingency collectors have over 60% combined market share.
- Debt buyers: Credit card debt comprises the majority of debt sold. Large issuers typically sell debt to a small, restricted network of buyers. Portfolio Recovery Associates Inc. and Encore Capital Group are the largest U.S. debt buyers with over 50% combined market share.

¹ Anna Amir, *Debt Collection Agencies in the US*, IBISWORLD (June 2019).

² *Id.*

³ *Id.*

⁴ Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit, 2019:Q2* (Aug. 2019), available at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2019Q2.pdf

⁵ Consumer Fin. Prot. Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2019* (March 2019) (“2019 FDCPA Report”), available at https://www.consumerfinance.gov/documents/7333/cfpb_fdcpa_annual-report-congress_03-2019.pdf.

⁶ *Id.*

⁷ Data drawn from the Bureau’s Consumer Credit Panel (“CCP”), a 1-in-48 longitudinal sample of de-identified credit records that is representative of the population of consumers with credit records, computed as of May 2019.

⁸ *Id.*

⁹ Anna Amir, *Debt Collection Agencies in the US*, IBISWORLD (June 2019).

¹⁰ *Id.*

Research Publications:

- As required by the Credit Card Accountability, Reporting and Disclosure (“CARD”) Act, the Bureau biennially publishes a chapter on major card issuers’ debt collections practices within its report on the consumer credit card market.¹¹
- As required by the Fair Debt Collection Practices Act (“FDCPA”), the Bureau annually publishes a report on its administration of its debt collection responsibilities, integrating discussion of the Federal Trade Commission’s debt collection activities throughout the report.¹²
- The Office of Research in January 2017 published results from the Bureau’s Survey of Consumer Views on Debt, using nationally representative data to examine consumers’ experiences and preferences related to debt collection.¹³
- The Markets and Research Offices have also undertaken a series of studies examining aspects of the debt collection market:
 - Market Snapshot: Third-Party Debt Collections Tradeline Reporting (July 2019)
 - The Effects of Debt Collections Laws on Access to Credit (Oct. 2018)
 - Collection of Telecommunication Debt (Aug. 2018)
 - Market Snapshot: Online Debt Sales (Jan. 2017)
 - Study of Third-Party Debt Collections Operations (July 2016)
 - Consumer Credit Reports: A Study of Medical and Non-Medical Collections (Dec. 2014)

Regular Outputs:¹⁴

- Monthly Debt Collection Market Update
- Monthly Debt Collection News Clipper
- Quarterly Debt Relief Market Update

Regulatory Unified Agenda and Future Commitments:

- On May 7th, 2019, the Bureau published a Notice of Proposed Rulemaking (“NPRM”) for a proposed debt collection rulemaking, initially setting August 19th as the deadline for public comments to be received.¹⁵ The Bureau announced on August 2nd, 2019, that the comment period would be extended until September 18th, 2019.¹⁶ The rulemaking focused primarily on issues of communication practices and consumer disclosures.

¹¹ Consumer Fin. Prot. Bureau, *The Consumer Credit Card Market* (Aug. 2019), available at https://files.consumerfinance.gov/f/documents/201908_cfpb_card-act-report.pdf

¹² See 2019 FDCPA Report, available at https://www.consumerfinance.gov/documents/733/cfpb_fdcpa_annual-report-congress_03-2019.pdf

¹³ See Consumer Fin. Prot. Bureau, *Consumer Experiences with Debt Collection* (Jan. 2017), available at https://www.consumerfinance.gov/documents/2251/201701_cfpb_Debt-Collection-Survey-Report.pdf.

¹⁴ To subscribe to debt collection market intelligence products, contact Emma Haas. To subscribe to the debt relief market update, contact Vanessa Megaw. The archive of debt collection market intelligence material is available via Sharepoint, at <https://sharepoint.cfpb.local/rnr/markets/default.aspx>.

¹⁵ Consumer Fin. Prot. Bureau, Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274 (May 21, 2019) (a proposed rule to amend 12 C.F.R. part 1006), available at https://www.consumerfinance.gov/documents/7622/cfpb_debt-collection-NPRM.pdf.

¹⁶ Consumer Fin. Prot. Bureau, Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274 (Aug. 2, 2019) (extension of comment period; proposed rule to amend 12 C.F.R. part 1006), available at

Previous Regulatory Work

- In July 2013, the Bureau issued an Advanced Notice of Proposed Rulemaking for a proposed debt collection rulemaking. In July 2016, the Bureau consulted with a cross-section of small debt collectors and debt buyers as required by the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) and released an outline of proposals under consideration.¹⁷
- In October 2012, the Bureau issued a rulemaking defining larger participants in the debt collection market, facilitating the supervision of non-bank covered persons active in that market.¹⁸

<https://www.federalregister.gov/documents/2019/08/02/2019-16476/debt-collection-practices-regulation-f-extension-of-comment-period>

¹⁷ See, respectively, Consumer Fin. Prot. Bureau, Debt Collection (Regulation F), 78 Fed. Reg. 67848 (Nov. 12, 2013) (advanced notice of proposed rulemaking to amend 12 C.F.R. part 1006), available at <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/debt-collection-regulation-f/>; Consumer Fin. Prot. Bureau, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (July 2016), available at https://files.consumerfinance.gov/f/documents/20160727_cspb_Outline_of_proposals.pdf.

¹⁸ See Consumer Fin. Prot. Bureau, Defining Larger Participants of the Consumer Debt Collection Market, 77 Fed. Reg. 65775 (Oct. 31, 2013), available at <https://www.federalregister.gov/documents/2012/10/31/2012-26467/defining-larger-participants-of-the-consumer-debt-collection-market>.

CONSUMER DEPOSITS MARKET PROFILE

Market Size

- Total consumer deposits, excluding CDs: ~\$5.8T¹
- Total number of accounts: estimated 200-300M consumer checking accounts²
- Total number/percentage of households with consumer deposits products:
 - As of 2017, approximately 91% of households had at least one checking account³
 - As of 2017, approximately 73% of households had at least one savings account⁴
 - As of 2016, 6.5% of families had at least one certificate of deposit⁵

Market Structure⁶

- There are roughly 4,000 banks that offer consumer deposit accounts and over 5,500 credit unions, the vast majority of which offer consumer deposit accounts.
- Banks operate 88,000 branches; 57% of branches belong to banks with assets greater than \$10B.⁷ 71% of bank customers report visiting a branch in the past twelve months.⁸
- For banks, estimated 91% of consumer deposits held by ~130 Depository Institutions (DIs) with over \$10 billion in assets; top 10 DIs hold nearly 60% of consumer deposits.
- For banks, estimated 9% of consumer deposits held by ~3,700 DIs with less than \$10 billion in assets.
- Deposit services charges on consumer accounts (such as overdraft/NSF fees, ATM fees, and monthly maintenance fees) contribute 11% of bank net income (before taxes and discontinued operations).⁹

RMR Research Publications

- RMR has issued a series of research reports with respect to consumers use of overdraft¹⁰
- RMR issued two internal Spotlight reports, in May and June 2018, addressing trends in branch banking¹¹

Regular Outputs

- Deposit & Payment Market Update
- Quarterly Deposits Market Chartbook & State of the Market

¹ Based on analysis of FFIEC and NCUA Call Reports, Q1 2019.

² Based on Bureau analyses, 2017.

³ FDIC National Survey of Unbanked and Underbanked Households, 2017.

⁴ *Ibid.*

⁵ Fed Survey of Consumer Finances, 2016.

⁶ Based on analysis of FFIEC and NCUA Call Reports, Q1 2019. Consumer deposits estimated for credit unions and banks with assets below \$1B or that do not offer consumer deposit products.

⁷ Based on analysis of FDIC Summary of Deposits and FFIEC Call Reports, Q3 2018.

⁸ JD Power, *2017 U.S. Retail Banking Satisfaction Study*, (April 27, 2017), available at <http://www.jdpower.com/press-releases/jd-power-2017-us-retail-banking-satisfaction-study>.

⁹ Among banks with \$1B or more in total assets. Based on analysis of FFIEC Call Reports, Q1 2019.

¹⁰ (1) CFPB study of overdraft programs, (Jun. 11, 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf; (2) Data point: Checking account overdraft, (July 31, 2014), available at http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf; (3) Data point: Frequent overdrafters, (Aug. 4, 2017), available at https://www.consumerfinance.gov/documents/5126/201708_cfpb_data-point_frequent-overdrafters.pdf.

¹¹ Spotlight: The Role of Bank Branches Today and Spotlight: Bank Branch Trends.

- Weekly Card, Payment, & Deposit Market Clipper

Regulatory Unified Agenda and Future Commitments

- Long-Term Actions: Regulation E Modernization
- Regulatory Flexibility Act Section 610 review of Board's 2010 Regulations E & DD overdraft modifications (November 2019)

Previous Regulatory Work

- Overdraft Inquiry field event, February 2012 (rulemaking activity has been suspended)
- Consumer checking account (applicant) screening convening (October 2014) and field event (January 2016)
- Through the FFIEC, modification of bank call reports to include disaggregated consumer deposit account information (implemented 2015)

MORTGAGE MARKET PROFILE

Market Size

Home mortgages represent the largest consumer financial market in the US.

- 48 million homeowners (64%) have a mortgage.¹
- This represents \$10.9 trillion in mortgage debt.²
- In total, US homeowners have \$16.44 trillion in home equity.³
- In 2018, approximately 5.3 million mortgage loans were originated for purchase or refinance. 69% of the loans were used for home purchase, and 31% were refinances.⁴

Other notable consumer real-estate financial products include home equity loans, home equity lines of credit (HELOCs), and reverse mortgages.⁵

- There are 3.1 million outstanding home equity loans, a 0.3% decrease from last year.⁶
- There are 10.3 million outstanding HELOCs, a 3.7% decrease from last year.⁷
- There are 498,000 outstanding reverse mortgages, a 10% decrease from last year.⁸

Loan performance continues to improve

- As of Q4 2018, overall delinquencies are at 2.3%, a significant decrease from the 8.9% delinquency level in January 2010 at the height of the crisis.⁹
- Loans in foreclosure continue to decline, reaching 0.92% in Q1 2019.¹⁰
- Over 99% of loans originated since 2010 are current.¹¹

Mortgage credit is primarily being extended to borrowers with good credit scores; however, there has also been an increase in lending to consumers with low down payments and high debt-to-income (DTI) ratios.

- Homebuyers' median FICO score in Q1 2019 has increased approximately 32 points from pre-crisis levels of around 700.¹²
- As of May 2019, the median combined loan-to-value at origination for purchase loans was 95 percent, and the median debt-to-income level was 40 percent, exceeding the pre-crisis level of 36 percent.¹³

Home prices are showing substantial price appreciation and housing supply is limited.

¹ American Community Survey.

² CFPB analysis of Federal Reserve Flow of Funds data.

³ Ibid.

⁴ CFPB pull of Agency HMDA.

⁵ See <https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/>.

⁶ Oliver Wyman Experian Report, Q1 2019.

⁷ Ibid.

⁸ FHA Production Report, July 2019.

⁹ See <https://www.consumerfinance.gov/data-research/mortgage-performance-trends/>.

¹⁰ MBA's National Delinquency Survey.

¹¹ CreditForecast.

¹² See https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-june-2019/view/full_report

¹³ Ibid.

- As of March 2019, the U.S. average home price was 13% above January 2007 peak, not adjusting for inflation.¹⁴
- As of March 2019, 23.2% of homes sold were sold within 30 days, almost double the pre-crisis peak in 2005.¹⁵

Market Structure

Originations

- Loans purchased by Freddie Mac and Fannie Mae (the government-sponsored enterprises (GSEs)) and government-backed loans insured or guaranteed by FHA, VA, and USDA represent the majority of the mortgage market.
 - 51% of all originated loans in 2018 were purchased by the GSEs
 - 26.5% government-backed (15.5% FHA, 9.1% VA, 1.9% USDA)
 - 22.5% portfolio (bank depository and investor whole loan trading)
 - 0.4% private label mortgage-backed securities (PLS)¹⁶
- In 2018, the top ten lenders accounted for nearly 40% of all originations by dollar volume.¹⁷
 - Non-depository institutions have moved into a more dominant role post crisis relative to banks. This is particularly true for government-backed loans. As of May 2019, non-depositories originated 63 percent of all mortgages.¹⁸

Servicing

- Mortgage servicers collect and process mortgage payments, administer escrow accounts for payment of taxes and insurance, and provide assistance to borrowers in the event of default. Most servicers¹⁹ are subject to Bureau servicing rules and supervisory oversight.
- There has been an expansion of mortgage servicing providers
 - Pre-crisis, depository institutions serviced most mortgage loans with the top five banks servicing nearly 50% of loans outstanding. Since 2011 the market has become increasingly fragmented. As of Q4 2018, market share of the top four bank servicers has dropped to 28%,²⁰ and of the top ten servicers, six are non-depositories.²¹

Research Publications

¹⁴ BCFP Analysis of Black Knight data.

¹⁵ See <https://www.corelogic.com/blog/2019/05/national-supply-of-homes-for-sale-rises-to-4.1-months-in-march-2019.aspx>

¹⁶ BCFP analysis of National Mortgage Database.

¹⁷ Inside Mortgage Finance, Top 100 Lenders 2018.

¹⁸ See https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-june-2019/view/full_report

¹⁹ Excluded are servicers with fewer than 5,000 loans that they originated and hold in portfolio.

²⁰ Inside Mortgage Finance, Top 50 Mortgage Lenders Q3 2018.

²¹ Inside Mortgage Finance, Top 50 Mortgage Servicing Participants Q3 2018.

- The Bureau conducted studies in 2015 and 2016 on the extent to which consumers shop for a mortgage.²²
- In May 2018, the Bureau published a report on mortgage activity in 2017 to accompany the release of 2017 HMDA data²³
- Bureau researchers have collaborated with researchers from the FHFA to produce a series of technical papers (published in 2017 and 2018) analyzing the results of successive waves of the National Survey of Mortgage Originations, including a paper analyzing the experiences of rural borrowers.²⁴ The Bureau and FHFA began publishing a public-use dataset from the survey in November 2018.²⁵
- In January 2019, the Bureau released 5-year look-back assessments of two significant rules: the 2013 ATR/QM Rule and the 2013 RESPA Servicing Rule.²⁶
- In August 2019, the Bureau published two Data Point papers to accompany the release of the 2018 HMDA data.²⁷

Regular Outputs

- Monthly Mortgage Markets Chartbook
- Monthly Mortgage Markets Update

Regulatory Unified Agenda and Future Commitments

- HMDA Disclosure
- HMDA Reconsideration
- Implementing Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)
 - Property Assess Clean Energy financing – standards for assessing consumers' ability to repay
 - Exempt certain creditors with assets of \$10B or less from certain mortgage escrow requirements
 - Partial HMDA exemptions
 - Guidance on Regulation Z's treatment of loan originators exercising the temporary authority established by EGRRCPA section 106
- Assessment of TILA-RESPA Integrated Disclosure Rule
- Expiration of the Temporary GSE QM Category

Previous Regulatory Work

- TILA and RESPA rules updated

²² See http://files.consumerfinance.gov/f/201501_cfpb_consumers-mortgage-shopping-experience.pdf and <https://www.consumerfinance.gov/data-research/research-reports/know-before-you-owe-mortgage-shopping-study/>.

²³ See <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-mortgage-market-activity-and-trends/>

²⁴ See <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Mortgage-Database.aspx>

²⁵ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-and-federal-housing-finance-agency-release-national-survey-mortgage-originations-dataset-public-use/>

²⁶ See <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-publishes-assessments-ability-repay-and-mortgage-servicing-rules/>

²⁷ See <https://www.consumerfinance.gov/data-research/research-reports/data-point-2018-mortgage-market-activity-and-trends/> and <https://www.consumerfinance.gov/data-research/research-reports/introducing-new-revised-data-points-hmda/>

- Extensive servicing rule revisions became effective in January 2014
- Additional servicing rule amendments primarily to loss mitigation and servicing transfer provisions of RESPA became effective on October 19, 2017
- Servicing rule amendments with respect to bankruptcy and treatment of successors in interest became effective on April 19, 2018
- The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM), which took effect in January 2014, requires that lenders make a reasonable, good-faith determination that a consumer has a reasonable ability to repay a mortgage loan.
- The TILA-RESPA Integrated Disclosure Rule (TRID), which included the newly-designed Loan Estimate (LE) and Closing Disclosure (CD) took effect October, 2015. Significant implementation support has been ongoing.
- HMDA – Implementation and communication of the new rule which went into effect January 2018.

CONSUMER PAYMENTS MARKET PROFILE

Market Size

- Consumer paper payments¹
 - Cash: 49.4B transactions (2% YoY), \$1.6T volume (0% YoY)
 - Check: 8.7B transactions (-16% YoY), \$0.8T volume (-38% YoY)
 - Money Order, Official Checks, Travelers Cheques: 490M transactions (-8% YoY), \$62.2B volume (-10% YoY)
- Card payments (excluding credit cards)²
 - Debit cards: 69.6B transactions (10% YoY), \$2.6T volume (7% YoY)
 - Electronic benefit transfer (EBT) cards: 2.4B transactions (-4% YoY), \$60B volume (-14% YoY)
 - Prepaid cards: 10.7B transactions (15% YoY), \$240B volume (9% YoY)
- Automated Clearing House (ACH) payments
 - Total (2018): 23B transactions (7% YoY), \$51.2T volume³ (9% YoY)
 - Consumer account debits (2015): 12.5B transactions, \$18.3T volume.⁴
- Person to Person (“P2P”) payment services⁵
 - Zelle: 420M transactions (70% YoY), \$120B volume (60%).⁶
 - Paypal/Venmo: ~\$140B volume (51% YoY).⁷

Market Structure⁸

Many different types of entities participate in the payments market. The following outlines many of the important types of participants and their roles in facilitating payments, including across various payment networks:

- Depositories—
 - Over 4,000 banks and 5,500 credit unions offer consumers access to payment systems via transaction accounts (i.e. checking, prepaid) and savings accounts. Transaction accounts offer consumers alternative ways to transact (checks, ACH payments, debit cards) and access to various payment networks.
 - Depositories also enable consumers to transmit wires.
 - Depositories also provide merchants and non-banks access to various payment networks to initiate transactions that debit funds from a consumer’s account.

¹ Figures as of 2017. Nilson Report #1144.

² Transaction volumes are mutually exclusive. The Federal Reserve Payments Study – 2018 Annual Supplement.

³ NACHA press release. Available at <https://www.nacha.org/news/ach-network-moves-23-billion-payments-and-51-trillion-2018>.

⁴ 2016 Federal Reserve Payments Study citing Networks, Processors, and Issuers Payments Surveys. In 2015, the ACH Network processed a total of 24B transactions, \$41.6T volume. See NACHA press release. Available at <https://www.nacha.org/news/ach-volume-grows-56-percent-adding-13-billion-payments-2015-0>.

⁵ Person to person payment services (P2P). Most are ultimately settled over existing payments rails—usually via ACH or a debit card network.

⁶ Zelle press releases. Available at <https://www.zellepay.com/press-releases>.

⁷ Paypal press release and earnings statement. \$\$180B figure is extrapolated from quarterly releases. Available at <https://investorpaypalcorp.com/releases.cfm>

⁸ Based on analysis of FFIEC and NCUA Call Reports. Consumer deposits estimated for credit unions and banks with assets below \$1B or that do not offer consumer deposit products.

- Card networks (for example, Visa, Mastercard, and other networks)—
 - Provide connectivity to transmit debit card, prepaid card, and ATM transactions.
- ACH network operators (Federal Reserve and The ClearingHouse (TCH))—
 - Operate ACH payment system as well as provide check clearing and process wire transfers.
- ACH network governing body (NACHA)—
 - Establish operating rules for financial institutions participating in the ACH network.
- Nonbank money transmitters (for example, Western Union and others)—
 - Enable consumers to send money domestically and cross-border using both proprietary and bank-operated channels.
- Intermediary providers (nonbank providers including PayPal, P2P service providers, and others)—
 - Rely on relationship with one or more depository institutions to effect payments.

Bureau Research Publications

- [Consumer Protection Principles for New Faster Payment Systems \(July 2015\)](#)
- [Risks to Consumers Posed by Virtual Currencies \(August 2014\)](#)

Regular Outputs

- Deposit & Payment Markets Update
- Weekly CPD Markets News Clipper
- Emerging Payments Chartbook

Regulatory Unified Agenda and Future Commitments

- Long-Term Actions: Regulation E Modernization

Previous Regulatory Work

- Payment provisions of the Small Dollar rulemaking.

PREPAID MARKET PROFILE

Market Size

- Major segments:
 - General purpose reloadable cards (GPR): \$115.5 billion in total load volume in 2018 (Mercator Advisory Group)
 - Payroll: \$42.7 billion in total load volume in 2018 (Mercator)
 - Government: \$74 billion in open-loop load volume in 2018 (Mercator)
 - Paypal/Venmo: \$140B volume in the first three quarters of 2018. In calendar year 2017, ~\$100B volume.

Market Structure

- Card-based products
 - Non-bank program managers often play predominant role in designing, marketing, and servicing these products.
 - A handful of specialized bank issuers represent a large share of the market.
 - Most “sub-markets” are highly concentrated, but generally face competition from each other as well as traditional (or non-traditional) demand deposit products.
 - Key products or product categories include:
 - GPR: network-branded cards that feature most of the functionality of a traditional demand deposit product (and increasingly act as a substitute for those products for a significant number of consumers);
 - Payroll cards: network-branded cards that employers distribute to employees for receipt of wages;
 - Government benefits cards: these cards vary widely in their structure and functionality depending on which government program(s) they support. Some “closed-loop” EBT products can be used only at certain merchants (e.g., those that support SNAP benefits a/k/a “food stamps”). In contrast, the Treasury’s Comerica “Direct Express” product, which supports Social Security and certain other disbursements, can generally be used like any other network-branded card;
 - Gift and loyalty: these cards may be closed- or open-loop. Increasingly, they are reloadable. They are also becoming more complex in functionality (e.g., the Starbucks loyalty product);
 - Benefits and incentives: these cards can be used to distribute and facilitate employee perks, health benefits (e.g., FSA/HAS), and a variety of other smaller or limited “B2C” payments;
 - Others: prepaid cards are used for a variety of other purposes, from facilitating spending on international travel to distributing relief funds in emergencies.
- Digital wallets
 - Traditionally used to facilitate small-scale commerce that blurs line between P2P and P2B (e.g., PayPal and eBay) or to substitute for cash in everyday P2P payments (e.g., using Venmo to split a restaurant bill).

- Increasingly these products offer a wider suite of functionality and, in some cases, are distributing traditional network-branded “plastics” as well (e.g., Venmo and Square).
- To the extent they meet the rule’s definitions, these products are also covered by the Bureau’s Prepaid Rule, even if there is no physical card associated with the account.

Bureau Research Publications

- “Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures,” Nov 2014
- “Study of Prepaid Account Agreements,” Nov 2014
- “Tools for saving: Using prepaid accounts to set aside funds,” Sep 2016
- “Final Report of Findings: Post-Proposal Testing of Prepaid Card Disclosures,” Oct 2016

Regular Internal Outputs¹

- Weekly CPD Markets News Clipper
- Emerging Payments Chartbook

Regulatory Unified Agenda and Future Commitments

- “Regulation E Modernization”: long-term action on electronic payments may impact prepaid products

Previous Regulatory Work

- Prepaid Accounts Rule (first finalized in 2016) and subsequent amendments

¹ To subscribe, “tag” yourself with “CardClipper” on the Bureau’s Wiki.

REMITTANCES MARKET PROFILE

Market Size

- Consumers in the U.S. transferred over 325 million international remittances worth more than \$219 billion in 2017.¹
 - At least 3.4% of U.S. households sent a remittance in 2017.²
 - Top 6 receiving “corridors” for remittances sent from the U.S.³:
 - Mexico: \$30 billion
 - China: \$16.1 billion
 - India: \$11.7 billion
 - Philippines: \$11.1 billion
 - Vietnam and Guatemala: \$7.7 billion each
- Non-depository money services businesses (MSBs) (like Western Union or Xoom) account for almost all remittance transfers.
 - In 2017, MSBs conducted 95.6% of all remittance transfers. This includes both “legacy” MSBs and fintech MSBs (see below).
 - In 2017, banks and credit unions accounted for 4.6% of all remittance transfers.
- MSBs and banks/credit unions each account for around half of remittance dollar volume.
 - In 2017, MSBs accounted for 54.5% of remittance dollar volume.⁴
 - In 2017, banks/credit unions accounted for 45.5% of remittance dollar volume.⁵
 - The average dollar volume for a MSB remittance transfer is in the hundreds, while it is in the thousands for banks/credit unions.⁶

Market Structure

- Banks and credit unions—
 - Both large and small financial depository institutions offer remittance transfer services – often referred to as “wire transfers” – through an open network system in which no one institution exerts end-to-end control over a transfer. They send, on average, higher dollar consumer remittances. Larger banks’ consumer remittance volume is generally a small fraction of their commercial cross-border payments.
 - Banks and credit unions generally rely on the correspondent bank network – a decentralized latticework of institutional relationships – to send remittances.
 - Some banks, most notably Wells Fargo, have developed networks of direct, bilateral relationships with banks in major receiving countries.
- Traditional/“legacy” non-depository MSBs (Western Union, MoneyGram, Ria, and others)—
 - The largest have a global scope, offering remittances to almost every country in the world, while others target specific regions or corridors.

¹ Bureau’s 2018 Remittance rule assessment report

² Federal Deposit Insurance Corporation’s (FDIC) biennial National Survey of Unbanked and Underbanked Households, 2017

³ World Bank 2017 Corridor Estimates

⁴ Bureau’s 2018 Remittance rule assessment report

⁵ *Ibid*

⁶ *Ibid*

- While traditionally a cash-in, cash-out model reliant on a closed-loop system of agents and franchises, large money services businesses are investing heavily in digital offerings and a wide variety of partnerships offering more options and flexibility to both sending consumers and recipients.
- “Fintech” MSBs—
 - New class of money services businesses that rely on digital technology and smartphones as access points for senders, and often, receivers. These new entrants – eg Xoom, Remitly, TransferWise, WorldRemit - have rapidly gained market share due to their focus on large corridors and strategic partnerships, as well as a digital-send-only model that allows for rapid scaling and ease of use. The digital nature of their business model requires consumers to have a funds source that is electronically accessible and does not generally allow for cash.
- Payment networks and messaging services—
 - SWIFT is the historically dominant messaging system supporting cross-border interbank payments; in 2017, SWIFT rolled out a newly updated product (“gpi”) to improve the speed and transparency of cross-border payments (and compete with newer messaging competitors such as Ripple).
 - Ripple offers a messaging protocol for cross-border payments that can optionally be supplemented by use of Ripple’s proprietary cryptocurrency, XRP. The messaging protocol (but not the cryptocurrency) has seen significant adoption recently, but remains far from ubiquitous; XRP has attracted interest from a number of MSBs but has not yet seen widespread adoption.
 - Traditional card-payment networks allow for cross-border consumer-to-merchant payments, and also increasingly offer “push”-payment person-to-person capability, but while the latter has disruptive potential, it has yet to see significant deployment for cross-border payments. (In addition, former is outside the scope of the Remittance Rule).

Bureau Research Publications

- [2018 Remittance rule assessment report](#)
- [2014 Report on the role of remittance histories in credit scoring](#)
- [2011 Report on remittance transfers](#)

Regular Outputs

- Weekly CPD Markets News Clipper

Regulatory Unified Agenda and Future Commitments

- A working group in RMR is currently developing potential policy options as a follow on to the assessment process.
- By statute, the temporary exception that allows depository institutions to estimate certain disclosure inputs expires on July 21, 2020. A working group in RMR is currently developing policy options.

Previous Regulatory Work

- February 2012 Final Remittance Rule: the Bureau was compelled by statute to write this rule that established disclosures, cancellation rights, and error resolutions processes.

- May 2013 Remittance Rule Amendments: introduced additional exceptions for disclosures and error resolutions processes.
- August 2013 Remittance Rule Amendments: provided clarifications and technical corrections.
- September 2014 Remittance Rule Amendments: extended the temporary exception for depository institutions by five years, provided clarifications and technical corrections.

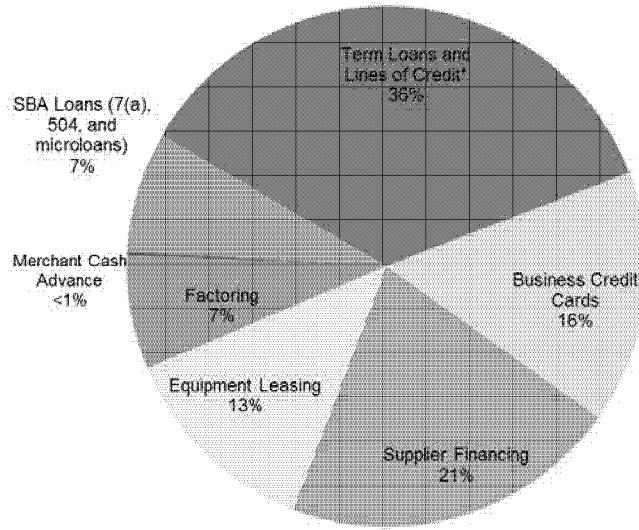
SMALL BUSINESS LENDING MARKET PROFILE

Market Size¹

- 30.2 million employer and non-businesses (99.9% of businesses)
- 24.3 million are non-employer firms
- 5.9 million are employer firms: of which 5.3 million have 1 – 20 employees
- 8.0 million are minority-owned businesses; 11 million are women-owned²
- Sector accounts for 58.9 million employees (47.5% of total employment) in 2015
- 287,835 small business firms are exporters
- \$50,347 - median income for individuals self-employed in their own incorporated business in 2016
- \$23,060 – median income for individuals self-employed at an unincorporated firm in 2016
- Small business formations are lagging levels prior to the recession³

Market Structure

- Total financing extended is estimated to be approximately \$1.4 billion classified by type:



- Small Business owners utilize a variety of financing products including term loans and lines (both secured and unsecured)

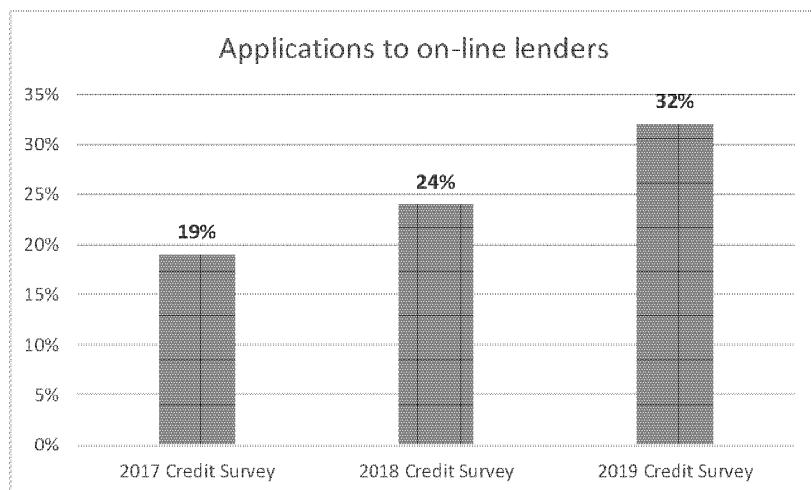
¹ Small Business Administration Office of Advocacy, "United States Business Profile 2018"
<https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>

² National Women's Business Council

³ Bureau of the Census Analysis of Business Formations

<https://www.census.gov/newsroom/blogs/research-matters/2018/02/bfs.html>

- Financing is provided by both regulated and non-regulated entities:
 - Banks
 - Credit Unions
 - Commercial finance companies (including independent leasing companies)
 - Factoring firms
 - On-line lenders
 - Non-profits and government entities
 - Loan brokers
- 5.7 million loans under \$100,000 (valued at \$82.6 billion) were issued by lending institutions reporting under the Community Reinvestment Act
- Small Business Loans may be made under guarantees; the largest of these are the 7(a) and 504 programs of the Small Business Administration and from the Department of Agriculture: USDA Business and Industry Guaranteed Loans and those from the U.S. Farm Service Agency.
- Bank lending to small businesses has barely recovered to pre-recession levels; given that these have been a decline in such lending by institutions with less than \$10 billion in assets
- Online lenders are increasing their share of applications for small business loans, lines and cash advances taking share from traditional lenders⁴.



Office of Small Business Lending Markets Publications

- Monthly Small Business Lending Markets Update
- Key Dimensions of the Small Business Lending Landscape (May 10, 2017)

Regulatory Unified Agenda and Future Commitments

- Future rulemaking on long-term agenda: Dodd Frank Act Section 1071

Past Regulatory Work

- N/A

⁴ "Small Business Credit Survey 2019, Report on Employer Firms" Federal Reserve Banks

STUDENT LENDING MARKET PROFILE

Market Size¹

- \$1.605T in outstanding balances, as of June 30, 2019— second largest consumer credit product in U.S.
 - Federally dominated market, with education loans issued or guaranteed by the U.S. Department of Education (ED) totaling \$1.477T as of March 31, 2019 – 92% of total market.
 - ED owns and manages \$1.287T –more than 80% of total market.
 - Private lenders, guaranty agencies, and schools own approximately \$190B in federally-backed loans -12% of total market.
 - 91+ day delinquency rate for ED-owned loans is 8% of outstanding balance in repayment (excluding defaulted loans) and 10% of borrower accounts, as of March 31, 2019.
 - Banks, credit unions, state agencies, postsecondary institutions, and other private entities hold an estimated \$122B in non-federal loans (8% of total market).
 - 90+ day delinquency rate for private loans in repayment was 1.50% as of March 2019.
- 44.7M borrowers, as of December 31, 2017
 - 96% have at least one federal loan
- 2.5M first-time borrowers annually (2014 data).

Market Structure: Originations²

- 17.5M new loans, totaling nearly \$106B, were issued during 2017-18 academic year.
- Originations are dominated by the Federal Direct Student Loan Program.

Student Loan Originations in 2017-18 Academic Year

| Non-Refinancing Loans | Number of Loans | 2017-18 Originations | Market Share (% of \$ Volume) |
|-----------------------|-----------------|----------------------|-------------------------------|
| Direct Loans | 16.3M | \$93.1B | 88% |
| Federal Perkins Loans | 286,000 | \$0.8B | 1% |
| Non-federal Loans | 830,000 | \$11.6B | 11% |

¹ (1) See <https://www.federalreserve.gov/releases/g19/current/>; (2) See <https://www.newyorkfed.org/microeconomics/hhdc/background.html>, and <https://www.newyorkfed.org/microeconomics/topics/student-debt>; (3) See <https://studentaid.ed.gov/sa/node/412>; (4) See <https://www.measureone.com/pls.php> (reporting as of end-March 2019); (5) Adam Looney and Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults*, (2015), p. 6, available at <https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/>.

² (1) See <https://studentaid.ed.gov/sa/node/111>; (2) The College Board, *Trends in Student Aid 2018*, p. 9 (loan disbursements), p. 16 (Perkins loan data), available at <https://trends.collegeboard.org/sites/default/files/2018-trends-in-student-aid.pdf>; (3) See <http://www.efc.org/>; (4) Number of private loans originated and refinancing volume are CLRC estimates; (5) Sallie Mae earnings reports, available at <https://www.salliemae.com/investors/shareholder-information/earnings-information/>; (6) Navient Q2 2019 Investor Presentation, p. 8, available at <https://navient.com/assets/about/investors/webcasts/2019-Q2-Investor-Slides-Final.pdf>.

- In-school origination market is dominated by Sallie Mae (market share exceeds 40%), Discover, Wells Fargo, Citizens, and several other large retail banks. Private lenders include credit unions, state-sponsored agencies, marketplace lenders, and postsecondary institutions.
- Private refinancing market, estimated to generate \$12B in annual originations, is dominated by several marketplace lenders: SoFi, Earnest (a subsidiary of Navient), and CommonBond. Bank refi players include Citizens, Wells Fargo, Discover, and PNC. Refi lenders also include credit unions and state agencies.

Market Structure: Servicing³

- Most student loans are outsourced to specialty servicers.
- Servicing for federally-owned loans, including Direct Loans and ED-owned guaranteed loans, is outsourced to 9 contracted servicers, including 6 state-affiliated non-profits; these contracts are set to expire in 2019.
- Three servicing companies – Pennsylvania Higher Education Assistance Agency, Navient and Nelnet/Great Lakes – administer 90% of the government-owned servicing portfolio and more than 80% of the total, non-defaulted student loan servicing portfolio.
- ED relies on multiple servicing systems that perform the same functions. It is preparing to replace the existing structure with an integrated servicing system that will rely on multiple entities to perform specific functions. Consumer Credit, Payments, and Deposits Markets' Assistant Director was detailed to Office of Federal Student Aid in 2018 to help review bids for the new system.

RMR Research Publications

- In 2012, the Bureau published a report to Congress on the private student loan market as required by the Dodd-Frank Act.⁴
- Economists in the Office of Research have studied repayment patterns among student borrowers and have issued two research reports.⁵
- Annual Student Banking Report to Congress (2010-2018)
- In September 2018, Markets issued a Spotlight on the servicing framework for federally-owned student loans.

Regular Outputs

- Monthly Student Lending Clipper
- Monthly Student Lending Market Update
- Quarterly Student Loan Market Monitoring Chart Book⁶

³ (1) U.S. Department of Education, Office of Federal Student Aid Data Center, Servicer Portfolio by Loan Status, (March 2019), available at <https://studentaid.ed.gov/sa/node/412>. (2) Annual reports, earning statements and other documents published by loan servicing companies and lenders.

⁴ See http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

⁵ See https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_data-point_final-student-loan-payments-household-borrowing.pdf (Jun 2018) and

https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_student-loan-repayment.pdf (Aug 2017).

⁶ The most recent chart book is available on the Markets Intelligence Products page, available at <https://sharepoint.cfpb.local/rmr/markets/default.aspx>

Regulatory Unified Agenda and Future Commitments

- N/A

Previous Regulatory Work

- N/A

MORTGAGE MARKET PROFILE

Size of Market

Home mortgages represent the largest consumer financial market in the US.

- 48 million homeowners (65%) have a mortgage.¹
- This represents \$10.76 trillion in mortgage debt.²
- In total, US homeowners have \$15.8 trillion in home equity.³
- In 2017, approximately 7.9 million mortgage loans were originated. 63% of the loans were used for home purchase, and 37% were refinances.⁴

Other notable consumer real-estate financial products include home equity loans (i.e. second mortgages), home equity lines of credit (HELOCs), and reverse mortgages.⁵

- There are 3.2 million outstanding home equity loans⁶
- There are 10.7 million outstanding HELOCs.⁷
- There are 5560,000 outstanding reverse mortgages.⁸

Commented [RJ(1): Home equity loans can be second liens, but aren't always. HELOCs are also often called "second mortgages."

Loan performance continues to improve

- As of Q4 2017, overall delinquencies are at 3.22.8%, a significant decrease from the 8.9% delinquency level in January 2010 at the height of the crisis.⁹
- Loans in foreclosure continue to decline, reaching 0.991.2% in Q4 2018.¹⁰
- Over 99% of loans originated since 2010 are current.¹¹

Mortgage credit is primarily being extended to borrowers with good credit scores; however, there has also been an increase in lending to consumers with low down payments and high debt-to-income (DTI) ratios.

- Homebuyers' average FICO score increased from 705 in 2001 to 759⁵ in Q2⁴ 2018 (excluding government-insured and jumbo loans).¹² One credit rating agency describes FICO scores from 670 to 739 as "Good" and scores from 740 to 799 as "Very Good".¹³

¹ American Community Survey.

² CFPB analysis of Federal Reserve Flow of Funds data.

³ Ibid.

⁴ See <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-mortgage-market-activity-and-trends/>.

⁵ See <https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/>.

⁶ Oliver Wyman Experian Report, Q2⁴ 2018.

⁷ Ibid.

⁸ FHA Production Report, August-May 2018.

⁹ See <https://www.consumerfinance.gov/data-research/mortgage-performance-trends/>.

¹⁰ MBA's National Delinquency Survey.

¹¹ CreditForecast.

¹² See <https://www.corelogic.com/downloadable-docs/marketpulse/the-marketpulse-vol-7-issue-10-october-2018-screen-102918.pdf>

¹³ See <https://www.experian.com/blogs/ask-experian/credit-education/score-basics/what-is-a-good-credit-score/>.

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- The percentage of consumers with low down payments or high debt-to-income ratios increased 26% and the percentage with high debt-to-income ratios has increased 57% since 2001 (excluding government-insured and jumbo loans).¹⁴

Home prices are showing substantial price appreciation and housing supply is limited.

- As of March-August 2018, the U.S. average home price was 119% above January 2007 peak, not adjusting for inflation.¹⁵
- As of Q2 2017, the unsold inventory as a share of all households is 1.9%, which is the lowest Q2 reading in over 30 years.¹⁶
- As of July 2018, 25.4% of homes sold were sold within 30 days, almost double the pre-crisis peak in 2005.¹⁷

Market Structure

Originations

- Loans purchased by Freddie Mac and Fannie Mae (the government-sponsored enterprises (GSEs)) and government-backed loans insured or guaranteed by FHA, VA, and USDA represent the majority of the mortgage market.
 - 51% of all originated loans in 2016 were purchased by the GSEs
 - 27.6% government-backed (16.1% FHA, 10% VA, 1.5% USDA)
 - 19.5% portfolio (bank depository and investor whole loan trading)
 - 2.0% private label securities (PLS)¹⁸
- In 2017, the top ten lenders accounted for over 40% of all originations by dollar volume.¹⁹
 - Non-depository institutions have moved into a more dominant role post crisis relative to banks. This is particularly true for government-backed loans. In 2017, non-depositories originated over half of all mortgages.²⁰
- Lenders are increasingly turning to technology to streamline the mortgage origination process and improve the consumer experience.

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Servicing

- Mortgage servicers collect and process mortgage payments, administer escrow accounts for payment of taxes and insurance, and provide assistance to borrowers in the event of default. Most servicers²¹ are subject to Bureau servicing rules and supervisory oversight.

¹⁴ See <https://www.corelogic.com/downloadable-docs/marketpulse/the-marketpulse-vol-7-issue-6-june-2018-screen-061518.pdf>. Low-down payments are defined as those less than 5%, high DTIs are defined as those above 45%.

¹⁵ CFPB Analysis of Black Knight data.

¹⁶ See <http://investor.corelogic.com/pressreleases/corelogic-us-home-price-report-shows-prices-67-percent-june-2017-up-08012017-1203>.

¹⁷ See <https://www.corelogic.com/blog/2018/09/nations-months-supply-of-homes-for-sale-up-year-over-year-in-july-2018.aspx>.

¹⁸ CFPB analysis of National Mortgage Database.

¹⁹ Inside Mortgage Finance, Top 100 Lenders 2017.

²⁰ See <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-mortgage-market-activity-and-trends/>.

²¹ Excluded are servicers with fewer than 5,000 loans that they originated and hold in portfolio.

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- There has been an expansion of mortgage servicing providers
 - Pre-crisis, depository institutions serviced most mortgage loans with the top five banks servicing nearly 50% of loans outstanding. Since 2011 the market has become increasingly fragmented. As of Q4 2018, market share at the top five bank servicers has dropped to 23.4%²², and of the top ten servicers, six are non-depositories.²³

Research Publications

- The Bureau conducted studies in 2015 and 2016 on the extent to which consumers shop for a mortgage.²⁴
- Bureau researchers have collaborated with researchers from the FHFA to produce a series of technical papers (published in 2017 and 2018) analyzing the results of successive waves of the National Survey of Mortgage Originations, including a paper analyzing the experiences of rural borrowers.²⁵ The Bureau and FHFA began publishing a public-use dataset from the survey in November 2018.²⁶

Regular Outputs

- Monthly Mortgage Markets Chartbook
- Monthly Mortgage Markets Update

²² Inside Mortgage Finance, Top 50 Mortgage Lenders Q3 2018.

²³ Inside Mortgage Finance, Top 500 Mortgage Servicing Participants Q3 2018.

²⁴ See http://files.consumerfinance.gov/f/201501_cfpb_consumers-mortgage-shopping-experience.pdf and <https://www.consumerfinance.gov/data-research/research-reports/know-before-you-owe-mortgage-shopping-study/>.

²⁵ See <https://www.fhfa.gov/PolicyProgramsResearch/Programs/Pages/National-Mortgage-Database.aspx>.

²⁶ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-and-federal-housing-finance-agency-release-national-survey-mortgage-originations-dataset-public-use/>

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CREDIT CARD MARKET PROFILE

Market Size: General purpose segment (Visa, MasterCard, American Express, Discover networks)¹

- \$783B in outstanding debt, of which \$115B is held by consumers with subprime and deep subprime credit scores, as of mid-2018
- 465M accounts (54M subprime and deep subprime) as of mid-2018
- 157M consumers have at least one card as of mid-2017
- 71M new accounts opened in 2017 (13M subprime and deep subprime)
- \$2.7 trillion in transaction volume through Q3 2018
- 5.6% annualized rate of gross balance charged off as of Q2 2018

Market Size: Private label segment (also known as “retail” or “proprietary” networks)²

- \$91B in outstanding debt (\$23B subprime and deep subprime) as of mid-2018
- 283M accounts (34M subprime and deep subprime) as of mid-2018
- 102M consumers have at least one card as of mid-2017
- 44M new accounts in 2017 (8M subprime and deep subprime)
- Over \$170 billion in transaction volume in 2017
- 8.4% annualized rate of gross balance written off as of Q2 2018

Market Structure: General Purpose segment

- Visa, MasterCard, American Express and Discover operate competing networks through which transactions are authorized, processed and settled but these networks do not act as issuers or creditors on the cards.³
 - Merchants sign up with the various networks to be able to accept payments via the network.
 - Merchants generally submit transactions through a “merchant acquirer” who pays the merchant and obtains payment through the network from the issuing bank.
- Market segment is highly concentrated, but there is a large tail of smaller issuers.
- Issuers market, underwrite and service accounts using their own brands and also under “co-branding” arrangements which use brands of partners which offer a rewards currency (e.g., frequent flyer miles). Issuers often partner with one or more payment networks in their card product offerings.
- A handful of small “subprime specialists” dominate the deep subprime market segment.⁴

Market Structure: Private Label segment

- Market segment is highly concentrated, with only a handful of smaller players.
- Deferred interest promotions which offer ‘no interest if paid in full’ are a key feature of this market.

¹ Cardholding figure produced from *The Consumer Credit Card Market Report*, available at https://www.consumerfinance.gov/documents/5950/cfpb_consumer-credit-card-market-report_2017.pdf. Analysis supporting the forthcoming 2019 credit card market report will be available soon. In the meantime, more current market size figures are taken from Experian MIR (2018 Q2) and Nilson Report (#1135, #1142).

² Ibid.

³ American Express and Discover also operate as card issuers in addition to their payment network function.

⁴ First Premier, Credit One, Merrick Bank, Continental Finance.

Research Publications

- As required by the Credit Card Accountability, Reporting and Disclosure (CARD) Act, the Bureau biennially publishes a report on the consumer credit card market.⁵
- Also as required by the CARD Act, the Bureau annually publishes a College Credit Card Agreement Report,⁶ which lists information concerning agreements between credit card issuers and institutions of higher education.
- The Office of Research in June published a report examining how different segments of consumers use and repay their credit card balances during the holiday season.⁷

Regular Outputs

- Quarterly Credit Card Chartbook
- Weekly CPD Markets News Clipper

⁵ See http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf and https://www.consumerfinance.gov/documents/5950/cfpb_consumer-credit-card-market-report_2017.pdf.

⁶ See https://www.consumerfinance.gov/documents/5948/cfpb_college-credit-card-agreements-report_2017.pdf.

⁷ See https://www.consumerfinance.gov/documents/6574/bcfp_consumer-credit-trends_eoy-credit-card-borrowing_062018.pdf.

AUTO FINANCE MARKET PROFILE

Size of Market¹

Auto finance is the third largest source of consumer debt after mortgage and student lending.

- Total outstanding balances as of Q2 2018: \$1.25T
- Total number of outstanding accounts as of Q2 2018: 88M
- Total number of new accounts/year: 29.2M from Q3 2017 – Q2 2018
 - Most consumers finance vehicle purchases: 86.1% of new vehicles and 54.7% of used vehicles were financed in Q2 2018.
 - In Q2 2018, approximately 56% of new accounts were for prime or super prime consumers, approximately 20% were for near prime consumers, and approximately 24% were for subprime or deep subprime consumers.
- Delinquencies: 2.06% of loans balances were 30-59 days delinquent and 0.61% of loan balances were 60-89 days delinquent in Q2 2018.

Market Structure

- Market share by financial institution type:²
 - Banks – 31.6%
 - Captives (manufacturers' finance companies) – 29.0%
 - Credit Unions – 21.3%
 - Finance Companies – 11.1%
 - Buy-Here-Pay-Here – 6.9%
- RMR estimates that about 80% of auto loans are indirect (loans obtained through dealership arranged financing which are purchased by a bank, credit union, captive etc.) and about 20% are direct loans (loan originated directly by the consumer at a lending institution such as a bank or credit union).
- Typical car loan amounts and payments in Q2 2018:³
 - New Vehicles
 - Average new vehicle loan is \$30,958
 - Average monthly payment is \$525
 - Average term of new vehicle loan is 69 months
 - Used Vehicles
 - Average used vehicle loan is \$19,708
 - Average monthly payment is \$378
 - Average term of used vehicle loan is 64 months

¹ Experian–Oliver Wyman Market Intelligence Report 2018 Q2 and Experian State of Automotive Finance Market 2018 Q2.

² 2018 Q2 Experian State of Automotive Finance Market Report.

³ *Id.*

Bureau Research Publications

- Quarterly Consumer Credit Trends: Growth in longer-term auto loans (Nov 1, 2017)⁴

Regular Outputs

The Office of Consumer Reporting, Lending, and Collections (CLRC) produces for internal Bureau use the following regular reports:

- Bi-weekly Auto Finance Clipper
- Bi-monthly Auto Finance Market Update
- Quarterly Auto Finance Chart book

⁴ See <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-growth-longer-term-auto-loans/>.

CONSUMER DEPOSITS MARKET PROFILE

Size of Market

- Total consumer deposits, excluding CDs: ~\$5.6T¹
- Total number of accounts: estimated 200-300M consumer checking accounts²
- Total number/percentage of households with consumer deposits products:
 - As of 2017, approximately 91% of households had at least one checking account³
 - As of 2017, approximately 73% of households had at least one savings account⁴
 - As of 2016, 6.5% of families had at least one certificate of deposit⁵

Market Structure⁶:

- There are over 4,000 banks that offer consumer deposit accounts and over 5,500 credit unions, the vast majority of which offer consumer deposit accounts.
- Banks operate 88,000 branches; 57% of branches belong to banks with assets greater than \$10B.⁷ 71% of bank customers report visiting a branch in the past twelve months.⁸
- For banks, estimated 91% of consumer deposits held by ~120 Depository Institutions (DIs) with over \$10 billion in assets; top 10 DIs hold nearly 60% of consumer deposits.
- For banks, estimated 9% of consumer deposits held by ~3,900 DIs with less than \$10 billion in assets.
- Deposit services charges on consumer accounts (such as overdraft/NSF fees, ATM fees, and monthly maintenance fees) contribute 12% of bank net income (before taxes and discontinued operations).⁹

RMR Research Publications

- RMR has issued a series of research reports with respect to consumers use of overdraft¹⁰
- RMR issued two internal Spotlight reports, in May and June 2018, addressing trends in branch banking¹¹

Regular Outputs

- Quarterly Deposits Market Chartbook & State of the Market
- Weekly Card, Payment, & Deposit Market Clipper

¹ Based on analysis of FFIEC and NCUA Call Reports , Q2 2018.

² Based on Bureau analyses, 2017.

³ FDIC National Survey of Unbanked and Underbanked Households, 2017.

⁴ *Ibid.*

⁵ Fed Survey of Consumer Finances, 2016.

⁶ Based on analysis of FFIEC and NCUA Call Reports , Q2 2018. Consumer deposits estimated for credit unions and banks with assets below \$1B or that do not offer consumer deposit products.

⁷ Based on analysis of FDIC Summary of Deposits and FFIEC Call Reports , Q2 2018.

⁸ JD Power, 2017 U.S. Retail Banking Satisfaction Study, (April 27, 2017), available at <http://www.jdpower.com/press-releases/jd-power-2017-us-retail-banking-satisfaction-study>.

⁹ Among banks with \$1B or more in total assets. Based on analysis of FFIEC Call Reports , Q2 2018.

¹⁰ (1) CFPB study of overdraft programs, (Jun. 11, 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf; (2) Data point: Checking account overdraft, (July 31, 2014), available at http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf; (3) Data point: Frequent overdrafters, (Aug. 4, 2017), available at https://www.consumerfinance.gov/documents/5126/201708_cfpb_data-point_frequent-overdrafters.pdf.

¹¹ Spotlight: The Role of Bank Branches Today and Spotlight: Bank Branch Trends.

STUDENT LOANS MARKET PROFILE

Size of Market¹

- \$1.564T in outstanding balances, as of September 30, 2018 – second largest consumer credit product in U.S.
 - Federally dominated market, with education loans issued or guaranteed by the U.S. Department of Education (ED) totaling \$1.412T – 90% of total market
 - ED owns and manages \$1.228T – 78% of total market.
 - Private lenders and schools own \$184B in federally-backed loans -13% of total market.
 - 91+ day delinquency rate for ED-owned loans is 8% of outstanding balance in repayment (excluding defaulted loans).
 - Banks, credit unions, state agencies, postsecondary institutions, and other private entities hold \$118B in non-federal education loans (8% of total market).
 - 90+ day delinquency rate for private loans in repayment was 1.49% as of March 2018.
- 44.7M borrowers, as of December 31, 2017
 - 96% have at least one federal loan
- 2.5M first-time borrowers annually (2014 data).

Market Structure: Originations²

- 17.8M new loans, totaling more than \$105B, were issued during 2016-17 academic year.
- Originations are dominated by the Federal Direct Student Loan Program.

Student Loan Originations in 2016-17 Academic Year

| Non-Refinancing Loans | Number of Loans | 2016-17 Originations | Market Share (% of \$ Volume) |
|-----------------------|-----------------|----------------------|-------------------------------|
| Direct Loans | 16.5M | \$93.8B | 88% |
| Federal Perkins Loans | 425,000 | \$1.1B | 1% |
| Non-federal Loans | 830,000 | \$11.6B | 11% |

¹ (1) See <https://www.federalreserve.gov/releases/g19/current/>; (2) See <https://www.newyorkfed.org/microeconomics/hhdc/background.html>, and <https://www.newyorkfed.org/microeconomics/topics/student-debt>; (3) See <https://studentaid.ed.gov/sa/node/412>; (4) See <https://www.measureone.com/pls.php> (Reporting as of end-March 2018); (5) Adam Looney and Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults*, (2015), p. 6., available at <https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/>.

² (1) See <https://studentaid.ed.gov/sa/node/111>; (2) The College Board, Trends in Student Aid (2017), p. 9 (loan disbursements), p. 15 (Perkins loan data), available at https://trends.collegeboard.org/sites/default/files/2017-trends-student-aid_0.pdd; (3) See <http://www.elsc.org/>; (4) Number of private loans originated and refinancing volume are CLRC estimates.

- Private student loans are dominated by Sallie Mae (market share exceeds 40%), Discover, Wells Fargo, Citizens, and several other large retail banks. Private lenders include credit unions, state agencies, marketplace lenders, and postsecondary institutions.
- Private refinancing market, estimated to generate less than \$10 billion in annual originations, is dominated by several marketplace lenders: SoFi, CommonBond, and Earnest (a subsidiary of Navient). Bank refi players include Citizens, Wells Fargo, Discover, and PNC. Refi lenders also include credit unions and state agencies.

Market Structure: Servicing³

- Most student loans are outsourced to specialty servicers.
- Servicing for federally-owned loans, including Direct Loans and ED-owned guaranteed loans, is outsourced to 9 contracted servicers, including 6 state-affiliated non-profits, whose contracts are set to expire in Summer 2019.
- Three servicers – Pennsylvania Higher Education Assistance Agency, Navient and Nelnet/Great Lakes -- administer nearly 92% of the government-owned servicing portfolio and 85% of the total student loan servicing portfolio.
- ED relies on multiple servicing systems that perform the same functions. It is preparing to replace the existing structure with an integrated servicing system that will rely on multiple entities to perform specific functions. Consumer Lending, Reporting and Collection Markets' Assistant Director was detailed to Office of Federal Student Aid in 2018 to help review bids for the new system.

RMR Research Publications

- In 2012, the Bureau published a report to Congress on the private student loan market as required by the Dodd-Frank Act.⁴
- Economists in the Office of Research have studied repayment patterns among student borrowers and have issued two research reports.⁵

Regular Outputs

The Office of Consumer Reporting, Lending, and Collections (CLRC) produces for internal Bureau use the following regular reports:

- Monthly Student Lending Clipper
- Monthly Student Lending Market Update
- Quarterly Student Loan Market Monitoring Chart Book⁶

³ (1) U.S. Department of Education, Office of Federal Student Aid Data Center, Servicer Portfolio by Loan Status, (March 2018), available at <https://studentaid.ed.gov/sa/node/412>. (2) Annual reports, earning statements and other documents published by loan servicing companies and lenders.

⁴ See http://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

⁵ See https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_data-point_final-student-loan-payments-household-borrowing.pdf (Jun 2018) and https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_student-loan-repayment.pdf (Aug 2017).

⁶ The most recent chart book is available on the Markets Intelligence Products page, available at <https://sharepoint.cfpb.local/rmr/markets/default.aspx>.

CONSUMER PAYMENTS MARKET PROFILE

Size of Market

- Consumer paper payments¹
 - Cash: 48.6B transactions, \$1.6T volume
 - Check: 10.38B transactions, \$1.3T volume
 - Money Order, Official Checks, Travelers Cheques: 530M transactions, \$69.1B volume
- Card payments (excluding credit cards)²
 - Debit cards: 73.8B transactions, \$2.7T volume
 - Electronic benefit transfer (EBT) cards: 2.5B transactions, \$70B volume
 - Prepaid cards: 8.2B transactions, \$220B volume
- Automated Clearing House (ACH) payments
 - Total (2017): 21.5B transactions, \$46.8T volume³
 - Consumer account debits (2015): 12.5B transactions, \$18.3T volume.⁴
- Person to Person (“P2P”) payment services⁵
 - Zelle: Over 300M transactions, \$85B volume in the first three quarters of 2018. In calendar year 2017, 247M transactions, \$75B volume.⁶
 - Paypal/Venmo: ~\$140B volume in the first three quarters of 2018. In calendar year 2017, ~\$100B volume.⁷
- International remittances⁸
 - ~325 million transactions, \$~175 billion in volume in 2017

Market Structure⁹

Many different types of entities participate in the payments market. The following outlines many of the important types of participants and their roles in facilitating payments, including across various payment networks:

- Depositories—

¹ Figures as of 2016. Nilson Report #1122.

² Transaction volumes are mutually exclusive. The Federal Reserve Payments Study – 2017 Annual Supplement.

³ NACHA press release. Available at <https://www.nacha.org/news/ach-network-volume-and-value-hit-new-highs-2017>.

⁴ 2016 Federal Reserve Payments Study citing Networks, Processors, and Issuers Payments Surveys. In 2015, the ACH Network processed a total of 24B transactions, \$41.6T volume. See NACHA press release. Available at <https://www.nacha.org/news/ach-volume-grows-56-percent-addin-g-13-billion-payments-2015-0>.

⁵ Person to person payment services (P2P). Most are ultimately settled over existing payments rails—usually via ACH or a debit card network.

⁶ Zelle press releases. Available at <https://www.zellepay.com/press-releases>.

⁷ Paypal press release and earnings statement. \$180B figure is extrapolated from quarterly releases. Available at <https://investor.paypal-corp.com/releases.cfm>.

⁸ Based on information from FFIEC and NCUA Call Reports, information obtained from individual states, and information obtained from state licensing of MSBs as reported by the Conference of State Bank Supervisors (CSBS). See Remittance Rule Assessment Report at 61 available at <https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/>.

⁹ Based on analysis of FFIEC and NCUA Call Reports. Consumer deposits estimated for credit unions and banks with assets below \$1B or that do not offer consumer deposit products.

- Over 4,000 banks and 5,500 credit unions offer consumers access to payment systems via transaction accounts (i.e. checking, prepaid) and savings accounts. Transaction accounts offer consumers alternative ways to transact (checks, ACH payments, debit cards) and access to various payment networks.
- Depositories also enable consumers to transmit wires, including cross-border remittances.
- Depositories also provide merchants and non-banks access to various payment networks to initiate transactions that debit funds from a consumer's account.
- Card networks (for example, Visa, Mastercard, and other networks)—
 - Provide connectivity to transmit credit card, debit card, prepaid card, and ATM transactions between merchants or ATM terminals and financial institutions issuing the card products.
- ACH network operators (Federal Reserve and The ClearingHouse (TCH))—
 - Operate ACH payment system as well as provide check clearing and process wire transfers.
- ACH network governing body (NACHA)—
 - Establish operating rules for financial institutions participating in the ACH network.
- Nonbank money transmitters (for example, Western Union and others)—
 - Enable consumers to send money domestically and cross-border using both proprietary and bank-operated channels.
- Intermediary providers (nonbank providers including PayPal, P2P service providers, and others)—
 - Rely on relationship with one or more depository institutions to effect payments.

Bureau Research Publications

- Consumer Protection Principles for New Faster Payment Systems (July 2015)

Regular Outputs

- Deposit & Payment Markets Update
- Weekly CPD Markets News Clipper
- Emerging Payments Chartbook

CONSUMER REPORTING MARKET PROFILE

Size of Market:

- 200-220M consumers have a credit report at one or more of the nationwide consumer reporting agencies (NCRAs), Equifax, TransUnion or Experian.¹
- 26M consumers are credit invisible (no NCRA credit records), representing about 11% of the adult population. An additional 19M consumers, or 8.3% of the adult population, have credit records that are treated as having too little (“thin”) or too old (“stale”) data to generate a reliable credit score under the most widely-used credit scoring models.²
- There are 10,000+ financial institutions who regularly furnish data to the NCRA.³
 - Furnishers to the NCRA include lenders and debt collectors, but generally do not include providers of other goods and services who extend credit as part of their business (e.g. telecom and utilities).
- Furnishers provide information on 1.3B + credit accounts or “trade lines” each month.⁴

Market Structure:

- The three NCRA have most of the market share for the credit reporting market. Consumer reports, and risk scores derived from them, are used to underwrite major consumer credit decisions (home, auto, student loans, credit cards, personal loans, phone plans, etc.) as well as in debt collection, employment, insurance, rental housing, etc.
- Credit reports and risk scores are sold mostly to institutions, but also to consumers as part of credit and identity monitoring services.
- Other smaller specialty credit reporting agencies (CRAs) focus on certain limited market areas (e.g., background screening for employment, rental housing, insurance); specialized consumer segments (e.g. subprime users of alternative financial services); or provide supplemental risk management services (e.g. identity verification).⁵ In the past year, each of the NCRA acquired specialty CRAs focused on the subprime lending segment.
- Banks and credit unions use specialized consumer reports from CRAs like ChexSystems and Early Warning Services to determine consumers’ eligibility for checking accounts by looking at prior bank account history with a focus on instances of insufficient funds (i.e. “bounced” checks), involuntary account closures, and fraud.
- Predictive credit scores, sold by CRAs and statistical modelers, help institutions manage credit, fraud and other risks, e.g., non-payment of rent. The most utilized scores are FICO and VantageScore. FICO advertises that its credit scores are used in 90%+ of U.S. consumer credit decisions.⁶ VantageScore claims to score 30M more consumers than FICO.⁷

¹ See <https://www.equifax.com/business/consumer-reports/>, <https://www.transunion.com/solution/customer-credit-check>, and [http://www.experian.com/blogs/insights/2018/02/big-data-sandbox/](http://www.experian.com/blogs/insights/2018/02/big-data-sandbox).

² See https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

³ See https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

⁴ See Ibid.

⁵ See <https://www.consumerfinance.gov/about-us/blog/know-your-data-our-latest-list-consumer-reporting-companies/>.

⁶ See <https://ficoscore.com/about/>.

⁷ See <http://www.experian.com/consumer-information/vantagescore-lender-faqs.html> and <http://www.fico.com/en/node/8140?file=9836>.

- There are a variety of “credit expansion” scores available today. They are intended to enable lenders to *expand* the number of scorable consumers. These scores use “alternative” data that sit outside of the main NCRA repositories. This data can include public records, and payment records on credit-like obligations such as pay TV, utility and wireless subscriptions. It can also include data from consumers’ bank accounts.
- Free credit scores are available to consumers from lenders and marketing lead generators (e.g., CreditKarma, Lending Tree, and Credit Sesame). FICO says that 250M consumer accounts have free access to the scores their lenders use for account management.⁸ Under the Fair Credit Reporting Act, consumers also have the right to obtain a free credit report once per twelve months from each NCRA. Under a recently passed bill (S.2155), consumers can block (“freeze”) for free third-party access to their data with the NCRAAs.⁹

RMR Research Publications:

- In December 2012, Markets published a white paper examining the processes the NCRAAs use to assemble credit reports and handle disputes.
- In May 2018, Markets prepared a Spotlight for Bureau leadership and stakeholders which examined consumer report security freeze programs available to consumers to block third-party access to their consumer report data.
- In October 2018, Markets prepared a Spotlight for Bureau leadership and stakeholders on the NCTUE (National Consumer Telecom & Utility Exchange), a CRA that maintains a database of nearly 445 million pay TV, utility and telecom bill payment records representing 222M+ unique consumers.
- The Office of Research has undertaken a series of studies examining aspects of the credit reporting system:
 - Data Point: The Geography of Credit Invisibility (Sept 2018)
 - Data Point: Becoming Credit Visible (Jun 2017)
 - Data Point: Credit Invisibles (May 2015)
 - Report on the Use of Remittance Histories in Credit Scoring (July 2014)
 - Data Point: Medical Debt & Credit Scores (May 2014)
 - Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores (Sep. 2012)
- Generally, on an annual basis, Markets compiles and issues a List of Consumer Reporting Companies to assist consumers seeking to obtain copies of their consumer reports.

Regular Outputs:

The Office of Consumer Reporting, Lending, and Collections (CLRC) produces for internal Bureau use the following regular report:

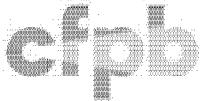
- Weekly Consumer Reporting clipper

⁸ See <http://www.fico.com/en/newsroom/fico-score-open-access-reaches-250-million-consumer-financial-credit-accounts>.

⁹ See <https://www.consumerfinance.gov/about-us/blog/free-credit-freezes-are-here/>.

Market Snapshot: Background Screening Reports

Criminal background checks in employment



Consumer Financial
Protection Bureau

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1. Introduction

Employers¹ use background screening reports² to evaluate prospective and current employees for employment, promotion, reassignment, or retention.³ Background screening reports may include many types of information, including credit history, public records from civil court proceedings – such as bankruptcy filings and other court documents – and information related to employment history. They may also include other public record information on arrests and convictions of individuals. According to the most recent survey of state criminal history information, “[f]ifty states, Guam, and Puerto Rico report the total number of persons in their criminal history files as 110,235,200.”⁴

Employment screening companies provide information such as credit history, employment, salary, education, and professional license verification to employers and others. They may also collect, evaluate, provide, or make available criminal arrest and conviction information; driving record information; drug and alcohol testing and health screening information; and non-profit and volunteer activity verification.

The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) both enforce the Fair Credit Reporting Act (FCRA),⁵ which includes provisions related to the inclusion and use of criminal history information. The CFPB has general rulemaking authority

¹ The terms “employers”, “users” and “requestors” of reports will be used interchangeably in this report. “Applicants” and “individuals who are the subject of the request” will be used interchangeably.

² Background screening reports are generally prepared by background screening companies that are consumer reporting agencies and therefore subject to the requirements of the Fair Credit Reporting Act (“FCRA”).

³ 15 U.S.C. §1681a(h).

⁴ BECKI R. GOGGINS & DENNIS A. DEBACCO, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2016 : A CRIMINAL JUSTICE INFORMATION POLICY REPORT, Dep’t of Justice, Office of Justice Programs 2 (2018)[hereinafter *2016 Criminal History Survey*] available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf> (Dep’t of Justice, Office of Justice Programs) (fifty states, Guam and Puerto Rico report the total number of persons in their criminal history files as 110,235,200, of which 105,927,700 are automated records and 4,307,500 are manual records.) However, the estimate generally used is 70 million to 100 million individuals with criminal records to account for individuals that may have records in more than one state. For an example of a methodology accounting for the duplication, see Michelle Natividad Rodriguez and Maurice Emsellem, *65 Million ‘Need Not Apply’: The Case For Reforming Criminal Background Checks For Employment*, National Employment Law Project (2011), http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1 interpreting the BUREAU OF JUSTICE STATISTICS, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS 2014: CRIMINAL JUSTICE INFORMATION POLICY 2 (2015) available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf>

⁵ 15 U.S.C. §1681 *et seq.*

over most of the FCRA.⁶ The FTC and the CFPB provide educational materials to help consumer reporting companies, users of consumer reports, and consumers understand their rights and responsibilities under the FCRA.⁷ Both the FTC and the CFPB work to ensure accuracy and completeness of information in consumer reporting company files. For example, the agencies filed a joint amicus brief in 2013 addressing when the seven year allowable reporting period under the FCRA commences for certain criminal history information.⁸

This report describes (i) the background screening industry; (ii) how background screening reports, including criminal history information, are generated; (iii) how screening reports are used by employers; (iv) challenges related to accuracy and dispute resolution, and (v) developments in the market. While background screening reports can include various types of information and be used for several purposes, this paper focuses on reports used for employment purposes that include criminal history information.

2. Industry Structure

The background screening industry has grown over the past two decades.⁹ Following the September 11, 2001 terrorist attacks, the monthly volume of criminal history check requests to one major firm providing multi-state criminal history checks increased from about 3,000 to almost 25,000 by February 2002.¹⁰ According to a 2016 human resource industry survey, approximately 72 percent of employers surveyed conduct background checks; 82 percent of

⁶ 15 U.S.C. § 1681s(e).

⁷ See, e.g., Federal Trade Commission, *Background Checks: What Employers Need to Know*, <https://www.ftc.gov/tips-advice/business-center/guidance/background-checks-what-employers-need-know>; Consumer Financial Protection Bureau, *Focus on Reentry Companion Guide*, section 6, Background Screening reports available at <https://www.consumerfinance.gov/practitioner-resources/your-money-your-goals/companion-guides/>.

⁸ See *Moran v. The Screening Pros, LLC*, No. 12-57246, Ninth Circuit, Brief of Amici Curiae Consumer Financial Protection Bureau and Federal Trade Commission supporting reversal available at <https://www.consumerfinance.gov/policy-compliance/amicus/briefs/moran-screening-pros-llp/>.

⁹ U.S. GOVT ACCOUNTABILITY OFFICE, GAO 15-162, CRIMINAL HISTORY RECORDS: ADDITIONAL ACTIONS COULD ENHANCE THE COMPLETENESS OF RECORDS USED FOR EMPLOYMENT-RELATED BACKGROUND SCREENING BACKGROUND CHECK 33, note 8 (2015) [hereinafter *GAO Report*] available at <https://www.gao.gov/products/GAO-15-162> (number of private companies conducting criminal record background checks appears to be increasing because of employer demand).

¹⁰ Ann Davis, Firms Dig Deep Into Workers' Pasts Amid Post-Sept. 11 Security Anxiety, Wall St. J. (updated March 12, 2002), <http://www.wsj.com/articles/SB1015886922323674160>.

those that conduct background checks include criminal background checks.¹¹ A 2018 survey of employers, commissioned by the background screening industry, found 95 percent of employers surveyed stated they conduct one or more types of background screening; 94 percent of those employers that conduct background screening include some form of criminal history check.¹² State and federal law require criminal background checks for certain types of jobs or industries, including those working with the elderly, children or other vulnerable populations.¹³ Those laws often require FBI criminal background checks, which require fingerprints to be submitted, for certain types of positions, volunteers, and organizations. While there is some overlap in terms of the industry and challenges, such criminal checks are outside the scope of this paper.

An industry analysis characterizes the background screening industry as mature and growing, experiencing consolidation and price competition.¹⁴ According to the analysis, three key drivers of growth are 1) increased demand due to improvements in the labor market, 2) a decline in the rental vacancy rates, and 3) the continuing increase of online services.¹⁵ The analysis estimates that for 2019 there are 1,954 background screening companies¹⁶ with revenue of \$3.2 billion; two firms account for fourteen percent of the industry's revenue.¹⁷

¹¹ *More than 1 in 4 Employers Do Not Conduct Background Checks of All New Employees* (November 17, 2016) https://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?sd=11/17/2016&siteid=cbpr&sc_cmp1=cb_pr975_&id=pr975&ed=12/31/2016; see also Society for Human Resource Management (SHRM), *Background Checking – The Use of Criminal Background Checks in Hiring Decisions* (2012) (69 percent of the 300 member companies and 285,000 individual members polled reported conducting criminal background checks on at least some job applicants), available at <https://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

¹² National Association of Professional Background Screeners (NAPBS), *How Human Resource Professionals View the Use and Effectiveness of Background Screening Methods* (2018)(HR.com was commissioned by NAPBS to conduct the survey of 2,137 human resource professionals) available at https://www.hr.com/en/resources/free_research_white_papers/napbs-background-screening-2018-jun2018_jiexgh27.html.

¹³ See generally GAO Report, *supra* note 9, at 10-15 (providing background on state law requirements for FBI background checks).

¹⁴ Evan Hoffman, *Background Check Services in the US*, IBISWorld Industry Report OD6058 10-11 (April 2019)[hereinafter *IBISWorld*] (IBISWorld is publisher of business intelligence reports that specializes in industry research). Note: IBISWorld does not consider drug and health screening services as part of the Background Check Services industry. *Id.* at 25.

¹⁵ *Id.* at 3-5.

¹⁶ *Id.* at 3. See also SEARCH: The National Consortium for Justice Information and Statistics, Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information 5 (2005)[hereinafter *2005 Task Force Report*] available at <http://www.search.org/files/pdf/RNTFCSCJRL.pdf> (The portion of the commercial information industry that provides criminal justice information products is difficult to quantify. In addition to a few large industry players, there are hundreds, perhaps even thousands, of regional and local companies).

¹⁷ *IBISWorld*, *supra* note 14, at 3, 23-24. (First Advantage accounts for 7.4%, Sterling for 6.6% of industry revenue).

Companies that provide consumer reports for employment purposes vary in size, the users they serve, the services they provide, and the geographic regions they cover. A majority of the companies that provide background screening services for users assess applicants for employment or tenant screening purposes. The industry analysis for 2019 estimates that 32.1 percent of revenue in the background screening industry will come from prospective tenant reports, and the remainder of revenue will mostly come from reports requested by employers and businesses.¹⁸

Some background screening companies only provide employment screening services; others solely tenant screening; and others provide both.¹⁹ Criminal record check services as part of background screening account for 36.5 percent of industry revenue; credit check services account for 46.4 percent; and reference check services 17.1 percent.²⁰ With the growth of digitized and online access to public records, some companies, including even some smaller companies, can offer national criminal searches.²¹ Background screening companies typically provide a variety of other services, including education and employment verification, credit checks, identity checks, driving records checks, and form I-9 US employment eligibility verification.²²

Based on information on company websites, some background screening companies state that they use official court repositories from each relevant jurisdiction; others rely on private databases of public criminal records information, either run internally or by third parties, which may be national in scope or state/county specific.²³ Background screening companies often also

¹⁸ *Id.* at 14-15. The data includes requests by businesses for reports used for employment purposes as well as reports used to assess certain customers.

¹⁹ See, e.g., TransUnion SmartMove <https://www.mysmartmove.com/>; MyRental (owned by CoreLogic) <https://www.myrental.com/>; and Tenant Background Search <https://www.tenantbackgroundsearch.com/>. (tenant screening); AccuSource <https://accusource-online.com/>; Hireshield.com <https://hireshield.com/>; and DataCheck <https://www.datacheckinc.com/default.php> (employment screening); ChoiceScreening <https://www.choicescreening.com> and SentryLink <https://www.sentrylink.com/> (employment and tenant screening).

²⁰ IBISWorld, *supra* note 14, at 12-13.

²¹ See, e.g., AccuSource, *Court Records*, <https://accusource-online.com/solutions/screening-services/court-records/>; iProspectCheck, *The Power of Your Own Custom-Built Screening Program*, <https://www.iprospectcheck.com/background-checks-screening/>; Corra Group, *Background Checks & Pre-Employment Screening*, <http://www.corragroup.com/nationwide-criminal-records.html>; Employment Background Investigations, Inc., *Background Check Services*, <https://www.ebiinc.com/solutions/background-checks/criminal-record-checks>.

²² See National Association of Professional Background Screeners (NAPBS), *The Facts About Background Screening* <http://pubs.napbs.com/pub/0822433E-CAEA-32D3-A1F2-C4970C002321>.

²³ See, e.g., Validity Screening <https://validityscreening.com/screening-solutions/all-solutions/criminal-records/> (search includes official court repositories for each identified jurisdiction of residence); CoreLogic

use third party companies that provide “runner” services or may have those services in-house that will search individual courthouse records directly.²⁴ Some large companies that maintain national databases for their own use sell access to their databases to other companies.²⁵

Background screening companies state they will customize their searches to address the needs of their users,²⁶ often employers in certain sectors, e.g., transportation. Or, users may have specific criteria related to the type and extent of risk related to the position. For a position in the company’s controller’s office, for example, the employer may limit search to information about any financial crimes such as embezzlement.

Background screening companies report that it can take from a few minutes, to a few hours to a week to complete a background check.²⁷ The companies note that the timeframe depends on the types of information the employer requests and how quickly the information, e.g., court records, can be accessed.

The price of a background screen that includes a criminal history review can range from under \$10 to \$100 or more, depending on the level, number or type of service offered.²⁸ Based on

<https://www.corelogic.com/solutions/background-data.aspx>; Background Screeners of America; <https://backgroundscreenersofamerica.com/services/court-record-searches/>.

²⁴ See, e.g., Securitec <https://www.securitecscreening.com/>; Sterling <https://www.sterlingcheck.com/services/criminal-background-checks/> (Sterling notes that “[w]hen automation isn’t available, we have our team of court runners”). Companies that have private databases, maintain national databases, and third party companies or other companies that provide services may also be background screening companies or may provide services or products such that they are subject to the requirements of the FCRA.

²⁵ See, e.g., GIS/Hireright, KwikScreen <http://www.geninfo.com/EXTRAS/background-screening/KwikScreen-National-Criminal-Database.pdf?v=00000069t> (company states that “[a]s one of the largest and most updated national criminal databases in the US, GIS | HireRight’s KwikScreen National Criminal Database contains more than 600 million criminal records from a comprehensive list of sources”); Innovative Enterprises, Inc. <https://www.knowthefacts.com/ncis> (company states that “NCIS™ is a powerful, high-speed multi-jurisdictional search of our proprietary databases compiled from multiple sources consisting of court records, incarceration records, prison/inmate records, probation/parole/release information, arrest data, wants and warrants and/or other proprietary sources”).

²⁶ See, e.g., Paladin Background Screening, *Industries Served*, <https://paladinbackgroundscreening.com/background-screening/industries-served-2/>; Crimcheck <https://crimcheck.net/services/criminal-checks/> (“We provide customized reports: the criminal online background checks which we provide are customized according to your needs”).

²⁷ See, e.g., Goodhire <https://www.goodhire.com/trueme/faq>. (a few hours to a few days); Hireright <https://www.hireright.com/background-check-faq/answers/how-long-does-a-background-check-take> (depending on nature and scope of the background check your potential employer has requested, an average employment background check will typically take between two and four business days to complete); Verified Credentials <https://www.verifiedcredentials.com/state-criminal-history/> (one to three business days).

²⁸ See, e.g. Verifirst <https://blog.verifirst.com/blog/bid/305407/cost-of-a-background-check-how-much-should-you-pay>; Goodhire <https://www.goodhire.com/pricing>; HireRight, *“Types of Criminal Records”* <https://www.hireright.com/services/criminal-background-checks>; Hireshield, *“Pre-Employment Online Background*

information on some company websites, they may charge more for more customized products or manual searches of criminal court records.²⁹ A higher-priced product also might include searches of other databases that include criminal history information.³⁰ Companies sometimes list the types of sources they use to conduct their background checks.³¹

3. Background Screening Reports – the Process

If an employer wants to obtain a background screening report for a potential or current employee, it must first inform the individual of its intent and secure their authorization in writing.³² Employers typically obtain background screening reports from a background screening company.³³ Depending on the purpose and needs of the particular employer or industry,³⁴ background screening companies provide their clients with an array of verification and background check services.

Check Pricing <https://hireshield.com/pricing/>; Backgrounds Online, “*Products & Services*” <https://www.backgroundsonline.com/products-and-services>; Backgroundchecks.com, <https://www.backgroundchecks.com/Business/Packages>; Criminal Watch Dog, <https://www.criminalwatchdog.com/faq/how-much-does-background-check-cost>.

²⁹ See, e.g., Backgroundchecks <https://www.backgroundchecks.com/products> (offers multi-jurisdictional instant criminal database, supplemented with “direct searches at specific courts.” It also provides “role-specific reports or verifications”); Verifirst <https://www.verifirst.com/employment-screening> (Verifirst Doublecheck service: “A manual review of potential ‘hits’ on a criminal record database search”).

³⁰ See, e.g., HireRight, “*Types of Criminal Records*” <https://www.hireright.com/services/criminal-background-checks>; Hireshield, “*Pre-Employment Online Background Check Pricing*” <https://hireshield.com/pricing/>; Backgrounds Online, “*Products & Services*” <https://www.backgroundsonline.com/products-and-services>.

³¹ See, e.g., Asurint <https://www.asurint.com/solutions/criminal-background-searches>; Career Builder <https://www.screen.careerbuilder.com/services/criminal-civil.aspx>; s2verify http://s2verify.com/backgroundcheck_services.

³² 15 U.S.C. § 1681b(b)(2). There is a limited exception for certain positions in the transportation industry. 15 U.S.C. § 1681b(b)(2)(B).

³³ When employers do not use the services of a third party and instead conduct background research themselves, such activity may not be regulated by the FCRA. See generally Federal Trade Commission (FTC), *Background Checks - What Employers Need to Know* (2015) available at <https://www.ftc.gov/system/files/documents/plain-language/pdf-0142-background-checks-what-employers-need-know.pdf>.

³⁴ See, for example, the North American Background Screening Consortium (NABSC), which is a standardized criminal background screening program developed for companies hiring and using contractor employees who provide maintenance, construction and operational support services at petrochemical facilities and other industrial manufacturers. The stated purpose for standardized background screen criteria is so contractor employers do not have to comply with multiple owner requirements when using and choosing from among background screening companies that serve as Third Party Administrators (TPAs). http://d32kk2dy6bi283.cloudfront.net/hg/medialibraries/hasc-stage/media/nabspolicy2010_000.pdf.

When an employer requests a report that includes a request for a criminal background check from a background screening company, it provides identifying information about the potential or current employee to the company, such as name, date of birth, and social security number.³⁵ Identifiers are used to conduct a search in various databases to determine if there is a “match” to the information provided in the criminal record information.³⁶ Some background screening companies may utilize additional verification processes to ensure that the results match the individual who is the subject of the request.³⁷ Users may request customized background screening searches based on the type of criminal history data sought, e.g., misdemeanors or felonies, or the type of position involved.³⁸

Background screening companies vary in the way in which they obtain information on the individual and prepare reports. Background screening companies use different levels of identifiers to conduct searches,³⁹ have individual protocols to update information, and apply varying criteria to determine whether a record in a database being searched matches the individual associated with the request for background information, e.g., the job applicant. In addition, background screening companies use various databases, external and internal, to access information about individuals.

Once a background screening company uses its process to match the individual to records in databases being searched, the company prepares a report that includes any criminal history that

³⁵ See GAO Report, *supra* note 9, at 38 (private companies generally conduct name-based checks (versus fingerprint-based checks), which can decrease the accuracy of the information that the check produces). Some employers send applicants links to background screening sites for the applicant to input identifying information directly. See, e.g., Checkr, <https://applicant.checkr.com/>; Trusted Employees, <https://www.trustedemployees.com/learning-center/faqs/>.

³⁶ See generally Marina Duane, Nancy LaVigne, Mathew Lynch & Emily Reimal, *Criminal Background Checks: Impact on Employment and Recidivism* 7-9 Urban Institute (2017)[hereinafter *Duane, Criminal Background Checks*], available at https://www.urban.org/research/publication/criminal-background-checks-impact-employment-and-recidivism/view/full_report; see also U.S. Dep’t of Justice, Office of the Attorney General, THE ATTORNEY GENERAL’S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 39 (June 2006), available at https://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf.

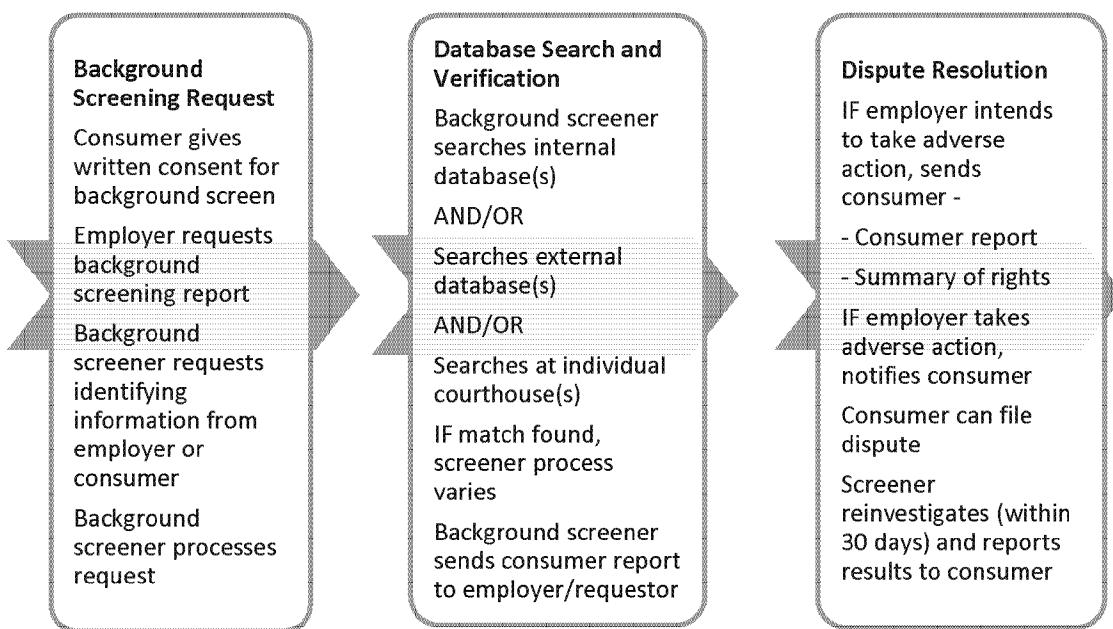
³⁷ For example, First Advantage describes its National Criminal File search as involving running the consumer’s identifying information through an automated search of that database, reviewing any “hits” to determine whether they can be matched with the consumer. *Williams v. First Advantage*, 4-6 (N.D. Fla. 2017); see also Sharon Dietrich, *Ants Under the Refrigerator* CRIMINAL JUSTICE (Winter 2016)[hereinafter *Dietrich*], available at <http://ccresourcecenter.org/wp-content/uploads/2017/03/ants-under-the-Refrigerator-published.pdf>.

³⁸ See, e.g., Hireright, *FAQs - Will a misdemeanor or felony show up on a background check?* <https://www.hireright.com/background-check-faq/answers/will-a-misdemeanor-or-felony-show-up-on-a-background-check>.

³⁹ It is unclear the extent to which identifiers are provided by employers or the applicant. According to some websites, employers send applicants links to background screening sites for the applicant to input information directly. See, e.g., ESRCheck <https://esrcheck.com/app/Applicants/AgriLogin.aspx?ib=0&un=&pw=> (applicant portal).

has been located through the matching process and any other types of information requested. The company then sends the report to the employer. If the employer intends to take any adverse action based in any part on information in the report, it must first provide to the consumer 1) a copy of the report and 2) a summary of the consumer's rights under the FCRA.⁴⁰ If the employer takes an adverse action, it must notify the individual. The individual has the right to dispute information in the report and the results of the investigation are sent to the consumer.⁴¹

FIGURE 1: BACKGROUND SCREENING PROCESS



4. Challenges

There are a number of challenges that background screening companies, employers, and individuals that are subject to background screens face. The inconsistent systems across jurisdictions for reporting criminal records may make it difficult to access complete records, or records that use consistent terminology and reporting events, e.g., different definitions of

⁴⁰ 15 U.S.C. §1681b(b)(3)(A).

⁴¹ See 15 U.S.C. §1681i.

dismissals.⁴² Criminal history information about an individual case may be included in many databases.⁴³ Primary sources include the federal and state courts, the Federal Bureau of Investigation (FBI) databases, state repositories, and law enforcement agencies.⁴⁴ There are more than 13,000 state courts of record in the United States, 94 district level and 13 appellate federal courts,⁴⁵ and how each jurisdiction keeps records and makes records available to the public vary greatly.⁴⁶

Background screening companies create, use, and sell private databases that collect public records, including from law enforcement agencies, state courts, corrections offices, and state criminal record repositories where available.⁴⁷ According to a U.S. Government Accountability

⁴² See GAO Report, *supra* note 9, at 37 (“Officials from private background check companies, states we contacted, and DOJ identified challenges that private companies face in obtaining complete and accurate criminal history records.”); see also Duane, *Criminal Background Checks*, *supra* note 36, at 7-9; Sharon Dietrich & Persis Yu, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Business* 6 (2012)[hereinafter *Broken Records*], available at <https://www.ncl.org/images/pdf/pr-reports/broken-records-report.pdf> (table 1 presents list of types of inaccuracies and poor practices authors identified in private criminal background screening reports).

⁴³ See, e.g., Federal Bureau of Investigation, National Criminal Information Center (NCIC), <https://www.fbi.gov/services/cjis/ncic> (the NCIC includes information from multiple sources); See Dietrich, *supra* note 37, at 27-28.

⁴⁴ See, e.g., 2005 Task Force Report, *supra* note 16, at 22; see also BackgroundChecks, <https://www.backgroundchecks.com/Portals/0/Docs/backgroundchecks.com%20County%20Criminal%20Sample.jpg> (sample report states: “Data is collected from state repositories counties, correctional institutions, and other government agencies. Criminal history information reflected should not be considered as 100% comprehensive history of any individual”).

⁴⁵ National Center for State Courts <http://www.ncsc.org/scottable3%201c> (state court total number based on discussion with resource specialist at NCSC, 1/10/2019); Federal Judicial Center <https://www.uscourts.gov/about-federal-courts/court-role-and-structure> (federal court numbers).

⁴⁶ See National Center for State Courts, Court Statistics Project, http://www.courtstatistics.org/Other-Pages/State_Court_Structure_Charts.aspx (Alabama, for example, has more than 400 lower level courts); Conference of State Court Administrators (COSCA), *Policy Paper 2012-2013: To Protect and Preserve: Standards for Maintaining and Managing 21st Century Court Records* 2 (2013) available at <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/12012013-Standards-Maintaining-Managing-21st-Century-Court-Records.ashx> (“While individual court systems all have rules dictating what is or is not “of record” in a particular jurisdiction, the basic principles of what constitutes a court record have not been made as clear nationally.”) According to a blog from September 12, 2013 on best practices from ebi,inc., a background screening company, which acknowledged the disparity and accuracy of criminal records data, “[a] comprehensive pre-employment criminal background check can only be conducted by using several sources of information such as county/parish, state, federal and even proprietary national criminal database information. Remember that the original reporting jurisdiction/court provides the most current and reliable case information available.” <https://www.ebiinc.com/bid/95142/What-Employers-Need-to-Know-about-the-FBI-Criminal-Records-Database-Part-2>.

⁴⁷ Federal court records are available through the Public Access to Electronic Court Records (PACER) system and are typically not included in national private databases. For descriptions by companies about the source of their records for national databases, see, for example, [backgroundchecks.com/learningcenter/nationalcriminaldatabases](https://www.backgroundchecks.com/learningcenter/nationalcriminaldatabases) (stating that the company “collect[s] public available information from hundreds of data sources which include county courts, state administrative of the

Office (GAO) analysis, the criminal records reporting system, through these repositories, has improved but there are still disparities in accuracy and reporting of dispositions to the repositories.⁴⁸ A 2016 survey of state reporting jurisdictions found that in 50 states and Guam, an average of 68 percent of all arrests in state databases have final dispositions reported.⁴⁹

Advances in information technology have made it easier to obtain access to criminal records, either directly through digitized court records, through state criminal repositories, or from private databases (third party or internally generated) that collect public criminal records.⁵⁰ Though most courts now have digitized systems, they vary in how they make their digitized systems available.⁵¹ Some court systems provide remote online access but only on an individual, rather than bulk, records basis and only from individual courts.⁵² Other states have statewide online systems, allowing the user to make one search for the entire state.⁵³ Some limit online

courts, state department of corrections, county courts and many more); Checkr, *What is the difference between national, federal, state, and county searches?* <https://help.checkr.com/hc/en-us/articles/360001093727-What-is-the-difference-between-national-federal-state-and-county-searches>. State repositories have websites where they may allow public or private sector firms access for a fee. See SEARCH, *Noncriminal Justice Background Checks & the NICS* <http://www.search.org/solutions/criminal-history-records/noncriminal-justice-background-checks-and-the-nics/>.

⁴⁸ GAO Report, *supra* note 9, at 18-19.

⁴⁹ 2016 *Criminal History Survey*, *supra* note 4, at 2.

⁵⁰ See GAO Report, *supra* note 9, at 33 (the GAO report cited a senior official from the Consumer Data Industry Association, a trade association that represents background screening companies and other companies that compile data on consumers, opining that “new companies that perform criminal records checks are regularly forming due in part to employers’ increasing demand for background checks, as well as the availability of online criminal history records and publicly available databases of court records”). The main trade associations that represent the background screening industry are the National Association of Professional Background Screeners (NAPBS), the Consumer Data Industry Association (CDIA), and the National Consumer Reporting Association.

⁵¹ For a discussion of the various types of access to court records, see Center for Court Excellence (CCE), *Remote Public Access to Electronic Court Records: A Cross-Jurisdictional Review for the D.C. Courts* (April 2017) available at http://www.courtexcellence.org/uploads/publications/RACER_final_report.pdf [hereinafter CCE Electronic Court Records] (In its findings, the organization noted the tension that exists between “fears of potential misuse by commercial data miners, e.g., real estate data firms engaged by landlords and background check agencies, and desire in some states to realize income from bulk data with commercial value” *Id.* at 5).

⁵² *Id.* at 7. See, e.g., Vermont Judiciary, Request for Access to Court Records <https://www.vermontjudiciary.org/about-vermont-judiciary/records-requests> (Vermont limits criminal court records to request for individual court records from the individual court; online access to court records only available for civil cases); State of Connecticut, Judicial Branch, <https://www.jud.ct.gov/faq/courtrec.html> (FAQ#14: Connecticut court requests for criminal file searches must be made at the individual court); Arizona Judicial Branch <https://apps.supremecourt.az.gov/publicaccess/caselookup.aspx?AspxAutoDetectCookieSupport=1> (online access to some courts available).

⁵³ See, e.g., Nebraska <https://www.nebraska.gov/justicecc/ccname.cgi>; New York https://www.nycourts.gov/courts/problem_solving/pa/home.shtml.

access to terminals at the courthouse, and/or permit online remote access only to attorneys.⁵⁴ Several states allow “bulk data purchasing.” Bulk purchasing allows those requesting records access to a one-time or ongoing “subscription service” to a compilation of a court’s records information system.⁵⁵ The cost for accessing individual records or bulk data purchasing varies from jurisdiction to jurisdiction.⁵⁶

Courts vary in their policies and practices regarding the frequency of information updates, the type of information included in a record, and terminology. Despite the increased access available by online systems, the National Center for State Courts (NCSC), as well as individual courts, acknowledge the potential for erroneous or incomplete reporting in online court records systems.⁵⁷ If a background company’s external or internal database updates do not align with the frequency of a court’s record updates, it could lead to incomplete reporting or reporting of expunged or dropped cases.⁵⁸

Although courts generally have policies related to privacy and access to court records information, these vary across jurisdictions. While companies may be able to access records, some courts have implemented policies that may remove certain types of personally identifiable information (PII), such as the last four digits of a social security number (SSN), driver’s license

⁵⁴ See *CCE Electronic Court Records*, *supra* note 51, at 8-9.

⁵⁵ See, e.g., Minnesota Court Rules, Rule 8. Inspection, Copying, Bulk Distribution and Remote Access https://www.revisor.mn.gov/court_rules/rule.php?type=ra&id=8. The precise definition and approach a state takes in providing access to court records compilations varies by state. See the list of statutes and rules of the states that permit bulk data access at <http://www.ncsc.org/Topics/Access-and-Fairness/Privacy-Public-Access-to-Court-Records/State-Links.aspx?cat=Rules%20on%20Bulk%20Data>.

⁵⁶ *CCE Electronic Court Records*, *supra* note 51, at 21-22 (fees vary and depend on whether third party vendor or court itself operates electronic access system). See, e.g., Wisconsin <https://wcca.wicourts.gov/download/RESTagreement.pdf> (\$5,000 annual subscription and \$500 for monthly subscriptions); Indiana <https://www.in.gov/judiciary/iocs/3285.htm> (\$.01 per closed case, \$.10 for open cases, and other fees); Pennsylvania <http://www.pacourts.us/assets/files/page-1089/file-266.pdf> (schedule of fees on recurring request for records form).

⁵⁷ <http://www.ncsc.org/Topics/Technology/Records-Document-Management/Background-Checks.aspx> (“[o]nline court records are not the official records of the court and are provided for informational purposes only -- and may be subject to error or omission. Users of these court systems therefore have the responsibility to verify the accuracy, currency and completeness of the information retrieved from those systems”). For individual state court disclaimer, see, e.g., New Jersey <https://portal.njcourts.gov/webe6/ACMSPA/CaptchaController> (“[t]he information displayed on this Web Site is generated from computerized records in the custody and control of the New Jersey Judiciary and is intended for informational purposes only. The Judiciary provides this information as a public service and makes no warranties, either expressed or implied, regarding its accuracy, reliability, currency, completeness, or suitability for any particular purpose. Additionally, the Judiciary assumes no liability for the improper or illegal use of information obtained from its computerized systems”).

⁵⁸ See *Duane, Criminal Background Checks*, *supra* note 36, at 3.

numbers, dates of birth, and other PII from public court records.⁵⁹ According to the industry, the lack of identifiers in records makes it more difficult to identify whether an individual has any records in the system and can increase the number of individuals associated with the limited identifying information that is sometimes provided or requested. This may result in an increase in the number of false matches.⁶⁰

Other challenges in the background screening process include the inability for individuals to access the reports or the information that will be provided to employers in advance of the application process, potential inaccuracies in the reports received by the employers, and inaccuracies in the underlying criminal history information. Individuals and employers may also experience ongoing reporting of erroneous information that has been corrected or expunged; it may be challenging to make sure that information is updated by background reporting companies once it has been corrected in the underlying criminal record history.

A challenge may arise when individuals are unable to correct an inaccurate report before a prospective employer relies on the report containing inaccurate information to make an employment decision.⁶¹ Employers are required to provide a copy of the report and a description of consumer rights *before* taking any adverse action based on information in the report.⁶² However, it may be difficult for an individual to get an inaccuracy corrected before the employer takes an action, such as a decision not to hire.⁶³

⁵⁹ See, e.g., 204 PA. CODE §§ 213.71 - 213.79

<https://www.pacode.com/secure/data/204/chapter213/subchapCtoc.html>

Some court systems, most notably Idaho, limit information that is often otherwise used to identify the subject of a search, e.g., street addresses, telephone numbers or personal identification number, such as driver's license numbers, see <https://icourt.idaho.gov/public>. For federal court records, the Public Access to Court Electronic Records (PACER), www.pacer.gov, is an electronic public access service that allows users to obtain case and docket information online from federal courts. An industry trade group, the National Association of Background Screening Professionals (NAPBS), stated that PACER presents challenges because it does not provide for searches by date of birth. Letter to The Honorable Wm. Terrell Hodges, Chair, Judicial Conference Committee on Court Administration and Case Management (March 6, 2018) available at

<https://pubs.napbs.com/pub.cfm?id=oECDA301-BBDD-B24A-B419-3B8F43A71B90>.

⁶⁰ National Association of Professional Background Screeners, *NAPBS Position: Availability of Identifiers in Public Records* <https://pubs.napbs.com/pub.cfm?id=3D84DA2D-B91B-4E7D-CBD0-3BD971C06242> (last visited June 11, 2019).

⁶¹ For an example of company link for consumers to access background report, see, e.g., Sterling <https://www.sterlingcheck.com/about/fact-act-disclosure/> ("If Sterling Talent Solutions has prepared a consumer report or investigative consumer report in your name, you are entitled to a free copy of the completed report").

⁶² 15 U.S.C. §1681b(b)(3)(A).

⁶³ The FTC stated that "There is no specific period of time an employer must wait after providing a pre-adverse action notice and before taking adverse action against the consumer. Some reasonable period of time must elapse, but the minimum length will vary depending on the particular circumstances involved," Federal Trade Commission (FTC), 40

Individuals may be able to request a background screening report from a company in advance of seeking employment. However, unlike the credit reporting industry, which includes three national consumer reporting companies, there are a few thousand background screening firms that employers may use. It may be difficult to identify in advance which background screening company a particular employer uses. Even if the company can be identified in advance, the company may or may not have information on the individual or the information that they may provide to an individual in advance of the application process may not be the same as the information provided as part of a request by an employer. While many companies provide background screening reports to individual consumers at their request and as a service separate from requests by employers, not all companies may have the same information on the individual.

A review of complaints received by the CFPB as well as cases brought by the CFPB and the FTC about background screening reports shows that some individuals have complained that their reports contain inaccurate and incomplete information. For example, in some instances inaccuracies result from mismatches, possibly from reliance on non-unique identifiers to identify the individual. Identifiers that are insufficient, common or erroneous, e.g., wrong social security number, can increase the possibility of false positives in matching records to the individual.⁶⁴

Other inaccuracies may result from duplicative reporting of accurate criminal information, resulting in multiple listings of the same convictions or arrests, leaving the impression that there

YEARS OF EXPERIENCE WITH THE FAIR CREDIT REPORTING ACT, AN FTC STAFF REPORT WITH SUMMARY OF INTERPRETATIONS (July 2011) 52-53 available at <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720ferareport.pdf>. One company told the Bureau that it automatically imposes a 7-day waiting period between pre- and post-adverse actions and longer if required under applicable law. Industry information, April 18, 2018. See <https://help.checkr.com/hc/en-us/articles/216873808-The-Adverse-Action-process-deciding-not-to-move-forward-with-a-candidate>.

⁶⁴ See 2005 Task Force Report, *supra* note 16, at 17-18; see also Consumer Financial Protection Bureau, In the Matter of General Information Services, Inc. and e-Backgroundchecks.com, Inc. Consent Order 2015-CFPB-0028 Document 1 Filed 10/29/2015[hereinafter *GIS Consent Order*], available at <http://www.consumerfinance.gov/about-us/newsroom/the-bureau-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/> (the Bureau alleged that the companies failed to use basic procedures for matching public records information to the correct consumer. For example, the Bureau found that GIS did not require employers to provide consumers' middle names, and neither company had a written policy for researching consumers with common names); Federal Trade Commission v. RealPage, Inc., Stipulated Order for Permanent Injunction and Civil Penalty Judgment No. 3:18-cv-02737-N (N.D.TX) Filed 10/16/2018 (the FTC alleged that in its tenant screening services RealPage used broad criteria to match applicants to criminal records and applied limited filters to the results, i.e., matching criteria only required an exact match of an applicant's last name along with a non-exact match of a first name, middle name, or date of birth, and did not have policies or procedures in place to assess the accuracy of those results.)

were multiple offenses.⁶⁵ Some errors in the background screening report may be the result of records that may have accurate but incomplete information. For example, the record may show an accurate arrest but not show that there was a later dismissal or deferred prosecution.

In some instances, information may be reported that is out of date or prohibited by law. For example, under the FCRA, an arrest is generally not allowed to be reported when it is older than seven years, or outside the governing statute of limitations.⁶⁶

Another challenge involves reports that contain information that has been expunged or sealed.⁶⁷ Industry claims that it is difficult to determine which cases have been expunged in order to update their databases to remove criminal records that no longer exist. Even where information is available indicating that a record has been expunged, companies with private databases vary in their processes for updating their databases to remove such records and there may not be an industry-wide standard practice.

In addition, while the FCRA provides a dispute resolution process to request that the background screening company correct errors in the background screening reports, e.g., a reporting of an arrest that is older than seven years, a consumer may face challenges in attempting to correct an underlying error. For example, if an error exists in a court record itself, the process for the consumer to resolve the error varies by court and can be difficult and time consuming.⁶⁸

⁶⁵ See, e.g., *Broken Records*, *supra* note 42, at 26-27 (example of redacted background screening report which reported single cases multiple times); *GAO Report*, *supra* note 9, at 5 (provided example from an FTC complaint that alleged a private background company failed to follow reasonable procedures to prevent the company from including the same criminal offense information in a consumer report multiple times, failed to follow reasonable procedures to prevent the company from providing obviously inaccurate consumer report information to employers, and in numerous cases provided the records of the wrong person to employers).

⁶⁶ See, e.g., *GIS Consent Order*, *supra* note 64, at 8 (the Bureau found that GIS and BGC failed to take measures to prevent non-reportable civil suit and civil judgment information older than seven years from being illegally included in its reports). Some state laws also limit time for reporting of convictions to seven years.

⁶⁷ See Press Release, Federal Trade Commission, Employment Background Screening Company to Pay \$2.6 Million Penalty (August 2012) <https://www.ftc.gov/news-events/press-releases/2012/08/employment-background-screening-company-pay-26-million-penalty> (2012 action brought against HireRight Solutions, Inc. in which the FTC alleged HireRight was using a legacy database to compile its consumer reports and did not ensure that the information it provided on its reports was current and reflected expungements).

⁶⁸ See, for example, the Federal Bureau of Investigation <https://www.fbi.gov/services/cjis/identity-history-summary-checks> and National HIRE Network <http://hirenetwork.org/clearinghouse> for links to state criminal repositories and other state-by-state information.

5. Developments

Technology involving machine learning and ever-increasing access to data about individuals appears to be changing the way some background screening firms conduct their search process to verify identity and match criminal records. Some companies may use staff to make the determination of whether there is a “hit” in the database while others may rely on algorithmically driven database searches.⁶⁹

Over the past few years, several states have issued or expanded expungement laws, often broadening the type of crimes or situations eligible for expungement.⁷⁰ Pennsylvania recently passed a law requiring that records for certain lower-level, nonviolent crimes automatically be sealed from public review after 10 years.⁷¹ In addition, at least two state court systems that provide bulk data purchasing, Minnesota and Pennsylvania, have adopted an approach referred to as the “lifecycle file” to help address the issue of expunged record reporting. Under the “lifecycle file” approach, when companies (subscribers) enter into contracts for bulk data purchasing from the courts in those states, the subscribers agree to update the files with updated court records to reflect expungement and other record events to ensure accuracy on a near real-time basis.⁷² The subscriber must also agree to allow court audits of the subscriber’s database.⁷³ Some advocates, a representative from a leading trade association, and court administrators have stated that they think the “lifecycle file” helps improve the reporting of up-to-date criminal

⁶⁹ Industry information, April 18, 2018.

⁷⁰ See, e.g., Indiana, IN Code 35-38-9-10. See generally Brian M Murray, *A New Era for Expungement Law Reform? Recent Developments at the State and Federal Levels*, 10 Harv. L. & Pol'y Rev. 361 (2016) available at http://harvardlpr.com/wp-content/uploads/2016/06/10.2_4_Murray.pdf (In the past decade, due to heightened interest in criminal law reform, several states have enacted specific laws attempting to expand the range of expungement remedies available to individuals with publicly available criminal records). For a state-by-state inventory of expungement-related laws, see www.cleanslateclearinghouse.org.

⁷¹ See Act 56 of 2018, <https://www.legis.state.pa.us/cfdocs/Legis/LI/uconsCheck.cfm?txtType=HTM&yr=2018&sessInd=o&smthLwInd=o&act=56>. (18 Pa.C.S. §9122.2 provides for automatic sealing of certain offenses that meet eligibility criteria).

⁷² Minnesota Court Rules, Rule 8. Inspection, Copying, Bulk Distribution and Remote Access http://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Court%20Rules/pub_access_rules.pdf; Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania 204 PA. CODE §§ 213.71 - 213.79 <https://www.pacode.com/secure/data/204/chapter213/subchapCtoc.html>

⁷³ *Id.*; Minnesota Court Rule 8, Subd. 3(b) http://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Court%20Rules/pub_access_rules.pdf (bulk purchasing rules require verification of records).

record information.⁷⁴ Court staff reported fewer disputes or complaints about criminal records since implementing the lifecycle approach.⁷⁵

As part of the employment application process, employers often ask whether the applicant has been arrested or convicted of a crime. This question is often included in a list of questions, the response to which can be checked off in an accompanying box. As of early 2019, thirty-five states, the District of Columbia, and more than 150 cities and counties have adopted some form of “Ban-the-Box” or fair-chance laws or policies, which prohibit prospective employers from inquiring about a person’s criminal history until after the initial employment screening or, in some cases, after an offer of employment has been made.⁷⁶ The background screening industry has expressed concern about ban-the-box laws, stating that the “current framework of fragmented and varying legislation at the state and local levels is not ideal.”⁷⁷

⁷⁴ See, e.g., Dietrich, *supra* note 37, at 29; comment of industry panelist representing NAPBS at the Center for Legal and Court Technology (CLCT) 10th Conference on Privacy and Public Access to Court Records (October 12-13, 2015).

⁷⁵ CFPB staff discussion with staff from Pennsylvania and Minnesota court administrative offices on March 22, 2018.

⁷⁶ See Beth Avery & Phil Hernandez, *Ban the Box: U.S. Cities, Counties and States Adopt fair Hiring Policies*, National Employment Law Project (April 20, 2019). <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-April19.pdf>. See, e.g., Illinois, IL Public Act 098-0774(2014); Philadelphia Bill No. 150815 <https://www.phila.gov/HumanRelations/PDF/BanTheBoxOrdinance.pdf>.

⁷⁷ See National Association of Professional Background Screeners (NAPBS) *Position: Ban the Box* <https://www.napbs.com/government-relations/policy-positions/>

January 2017

Market Snapshot: Online Debt Sales

Consumer Financial Protection Bureau

Office of Consumer Lending, Reporting, and Collections Markets



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1. Introduction

This report provides an introduction to the online marketplace for charged-off debt. This market consists of websites and in at least one case, a Facebook page, where portfolios of charged-off consumer debt are listed for sale. These portfolios, once purchased, are likely to provide sensitive personal and financial information about consumers.

Currently, online marketplaces appear to be a very small part of the broader debt collection industry. If designed properly, online marketplaces may have the potential to help responsible debt collectors acquire charged-off debts from responsible sellers more efficiently. However, the ease with which debts can be bought and sold online may increase the risk that debts – and the sensitive consumer information associated with them – will fall into the wrong hands.

Assuming the online portfolios are similar to those traded in more traditional channels, the charged-off accounts available for purchase in these portfolios are likely to include personal information such as the consumer’s name, social security number, home and work telephone number, and street address; they would also generally include financial information such as account number, original creditor name, current balance, date of last payment, and date of charge-off associated with the debt.¹

There are troubling signs that some online marketplaces may not have adequate practices in place to prevent consumer data from falling into the wrong hands. An FTC complaint in 2014 alleged that Bayview Solutions, LLC, an online debt marketplace, “posted at least twenty-one

¹ For discussion of industry practices, see Federal Trade Commission. *The Structure and Practices of the Debt Buying Industry*. January 2013. <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>. See also DBA International. *Introduction to DBA’s Response to Advanced Notice of Proposed Rulemaking*. February 2014. P. 6-7 footnote 4 for a list of data elements “required to sufficiently identify the consumer on [an] associated account.”

portfolios of purported debts ... containing the unencrypted, unmasked, sensitive personal information of more than 28,000 consumers.” The FTC also stated in the complaint that “Traffic counters on the website show that visitors to the website have accessed ... consumers' sensitive personal information over 340 times.” In this case, according to the FTC, the websites failed to even protect sensitive consumer information from website visitors.² The FTC filed a similar complaint against another online debt sales website, Cornerstone and Company. In that complaint, the FTC wrote that, “On at least six occasions, Defendants have offered their debt portfolios for sale by posting them on this website in the form of unencrypted, unprotected Excel spreadsheets. By this means, they have exposed to public view consumers' sensitive personal information.” The complaint states that the personal information of at least 40,600 consumers was exposed.³ Both cases were ultimately settled. These early indications suggest that some online marketplaces may not be fully protective of consumer privacy.

This report describes the types of accounts available through online debt marketplaces which may contain sensitive information for hundreds of thousands of consumers and allow buyers to acquire debts at very low costs. In some cases these debt portfolios cost less than \$1 per consumer account and in many cases less than \$5. The asking prices for these debt portfolios on online marketplaces are often fractions of a cent per dollar of original debt.

This report is based on a review the CFPB conducted of 298 portfolios which entered at least one of three online marketplaces which the CFPB observed between January of 2015 and August of 2015. Altogether, these portfolios were advertised as containing the information of more than 1.2 million consumer accounts. We reviewed only the debt listings, including advertised asking price, number of accounts, face value, age, and number of prior placements, and did not review other characteristics of these specific websites (such as operating practices or safeguards). We reviewed these marketplaces because we believe them to be typical for online debt vendor websites. We believe that the debt characteristics and price trends are generalizable to the online debt market as a whole.

² *FTC v. Bayview Solutions, Tomko, and Ortiz*. Civil Complaint, United States District Court – District of Columbia. Filed October 31, 2014. Accessed at <https://www.ftc.gov/system/files/documents/cases/111014bayviewcmp.pdf>

³ *FTC v. Cornerstone and Company and Lambert*. Civil Complaint, United States District Court – District of Columbia. Filed August 27, 2014. Accessed at <https://www.ftc.gov/system/files/documents/cases/141001cornerstonecmpt.pdf>

The characteristics and trends which we will discuss in this report, if combined with questionable practices that have been highlighted at some other websites by the FTC, may create a situation where private personal information – including names, social security numbers, dates of birth, addresses, and account numbers – can be cheaply and easily acquired by anyone online, including for illegitimate purposes.

Section 2 of this report will describe the characteristics of the debt we found in online marketplaces. Section 3 contains an analysis of the debts, including information on source, number of prior placements, and asking prices (3.1), a model documenting the strong downward trend in price exhibited by these debts as they age (3.2), and an analysis of the distribution of debt ages in the portfolios (3.3). The appendix describes the methodology we used and contains images from the websites we reviewed.

2. Overall findings

- The three online marketplaces reviewed offered 298 portfolios with an aggregate face value of almost \$2 billion and an aggregate asking price of roughly \$18 million.⁴ These portfolios include at least 1.2 million accounts, each of which may contain consumers' personal information.⁵ The average asking price per dollar of face value is just under one cent. More than one hundred of the portfolios had asking prices of \$0.004 (or 0.4¢) or less per dollar. There are some portfolios, including one with a face value of \$156 million on sale for \$125,000, which had asking prices lower than \$0.001 (or 0.1¢) per dollar.
- Of the 214 portfolios with both asking prices and numbers of accounts listed, 25 cost less than \$1 per consumer account. Another 37 had prices between \$1 and \$2. Most of the portfolios (114) had prices under \$5 per consumer account.
- Measured by face value, most of the debt offered on the websites we reviewed was credit card debt. These online marketplaces list debts that originated from at least three of the largest credit card lenders.
- Payday loan portfolios (including internet, store-front, or a mix of both) make up a significant share of the online debts for sale at the websites we reviewed. We estimate that the price of debt in the portfolios we reviewed decreases by an average of roughly 33% each year for the first five years after charge-off and roughly 29% each year for years

⁴ Not every portfolio includes price data. For the 28 portfolios in our sample without pricing information, we assume that they are priced at the sample average.

⁵ Of 298 portfolios we reviewed, 242 included the number of accounts. If the 56 portfolios in our sample without this information follow the same pattern of accounts per dollar of face value as the rest of the sample there would be 1.48 million accounts with consumer personal information.

6-10. After 10 years, the price levels off. This trend is consistent with the behavior of debt prices in other markets for charged-off consumer debt: as debts age, they become more difficult to collect and thus less valuable. This trend may enable buyers to acquire debts and consumer information related to those debts very cheaply.

- Most of the portfolios we reviewed were advertised as being five or more years past charge-off. Eighteen of the portfolios were nine or more years past charge-off. More than 75% of the portfolios had been collected upon by two or more prior collectors.
- Some of the debt portfolios were advertised as including “media” – or documentation with additional information about the debt, such as original account documents which may be used to ensure that a debt collector is collecting legitimate debts from the correct consumer or to respond to a consumer dispute about the debt. This type of documentary support may be used to ensure that a debt collector is collecting legitimate debts from the correct consumer or to respond to a consumer dispute about the debt, but it may also contain sensitive personal or financial information, such as account numbers or social security numbers. Other debt portfolios listed on the same websites did not advertise the presence of “media.”

3. Detailed findings

The following section gives a detailed description of the online data collected by the CFPB for use in the report.

3.1 Descriptive statistics

As shown in Figure 1, payday debt comprised 46% of the accounts in the portfolios we reviewed and credit card debt accounted for another 27%. While these two debt types were the most common on the websites we reviewed, we also observed medical debts, auto deficiencies, telecom, utility, retail, and other types of debt for sale.

Figure 1: Number of accounts by debt type

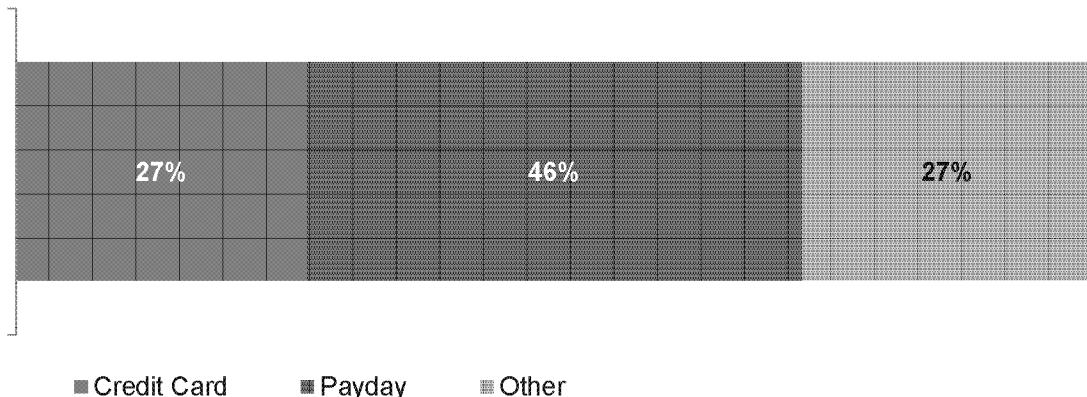


Figure 2 illustrates the number of times (as advertised on the websites) a given portfolio had been placed with collection agencies or sold to debt buyers before placement on the online marketplace we reviewed. Figure 2 shows information from only those portfolios that specified a number of prior placements (255 of the 298 in our sample). It is important to note that the composition of debt portfolios typically changes from placement to placement as a result of consumers paying off their debt or accounts being sent back to the original creditor. More than three quarters (78%) of portfolios we observed were advertised as having been worked by at least two collectors before being placed for sale online. This does not account for collection efforts undertaken by the originating creditor before placing portfolios with collection agencies or selling the debt.

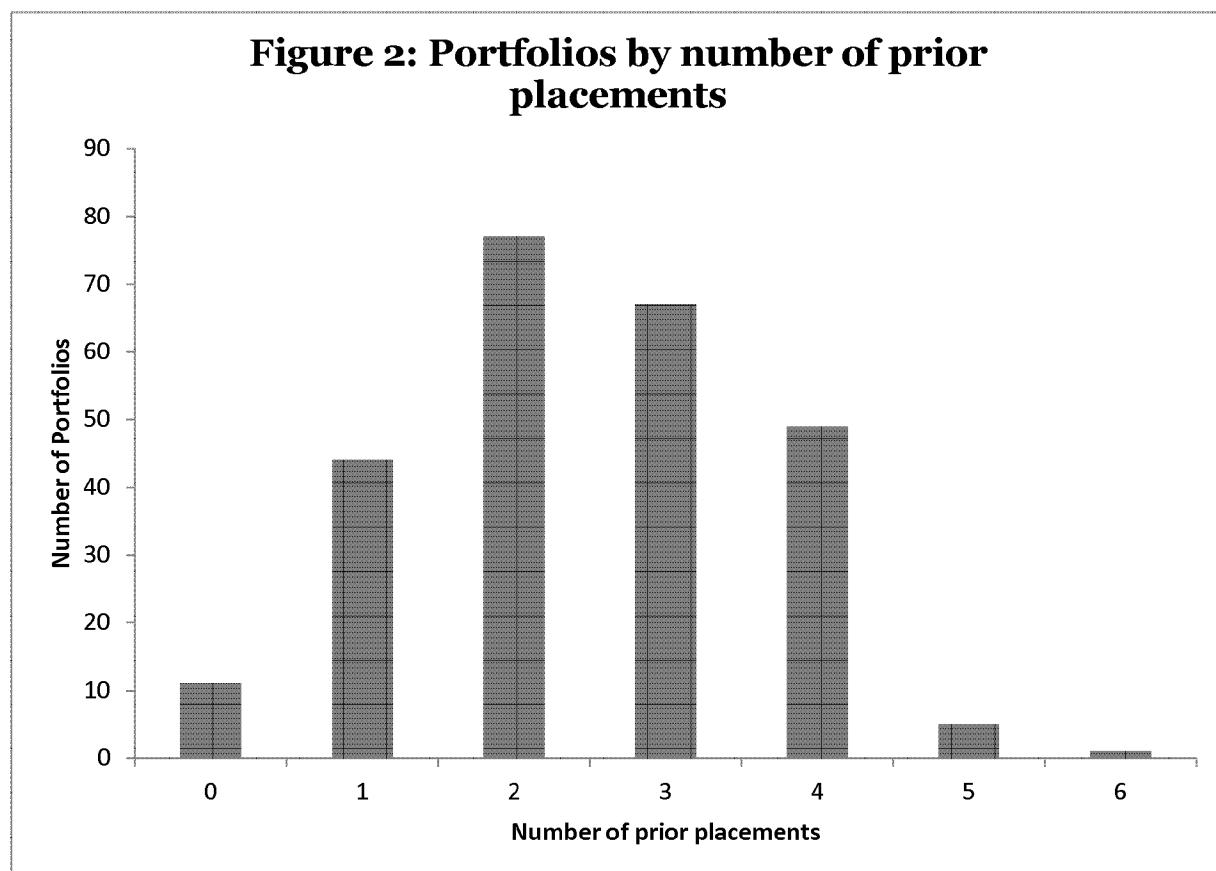
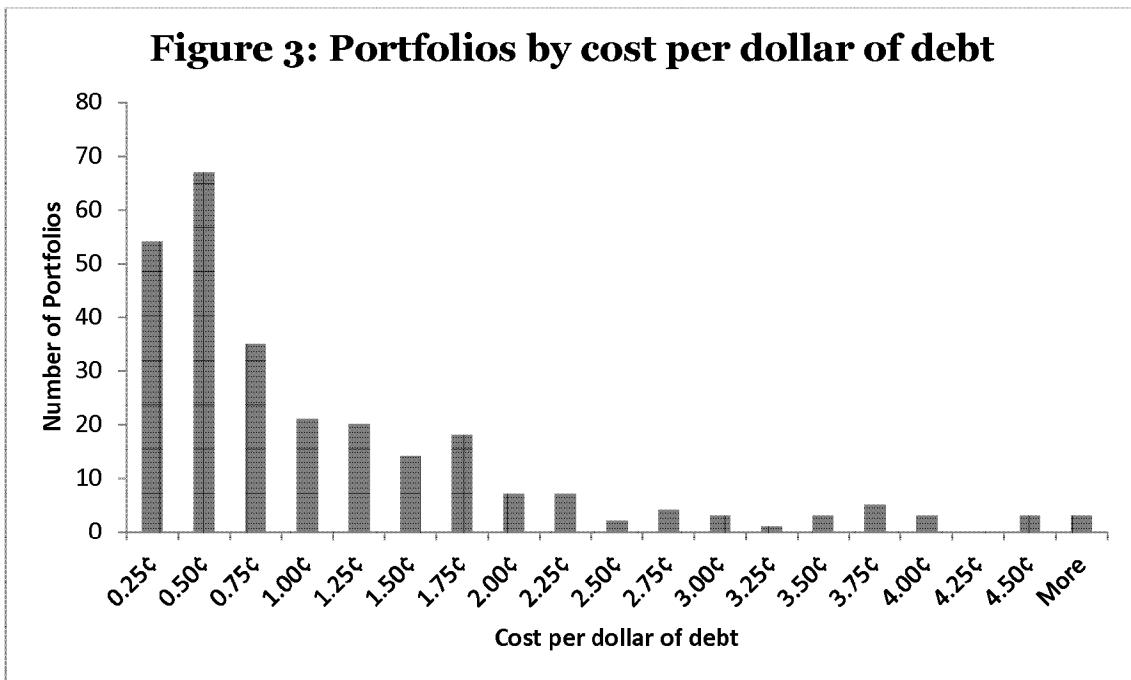
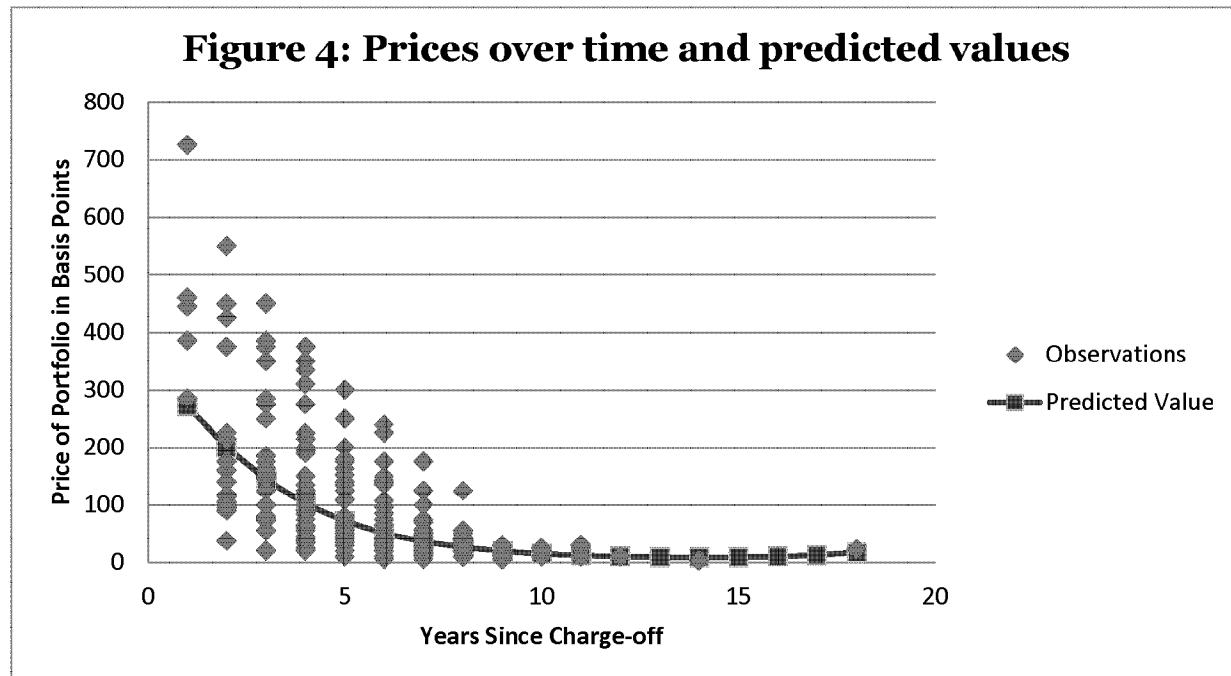


Figure 3 depicts the price of the portfolios in our sample per dollar of face value. A majority of the portfolios (168) cost less than a cent per dollar of debt. One hundred and seventeen of the portfolios cost less than one-half cent per dollar of debt, while 44 of the portfolios cost less than a quarter-cent per dollar of debt. The lowest price was \$0.0003, or 0.03¢, per dollar of debt. These prices suggest that many debts in online marketplaces can be acquired very cheaply.



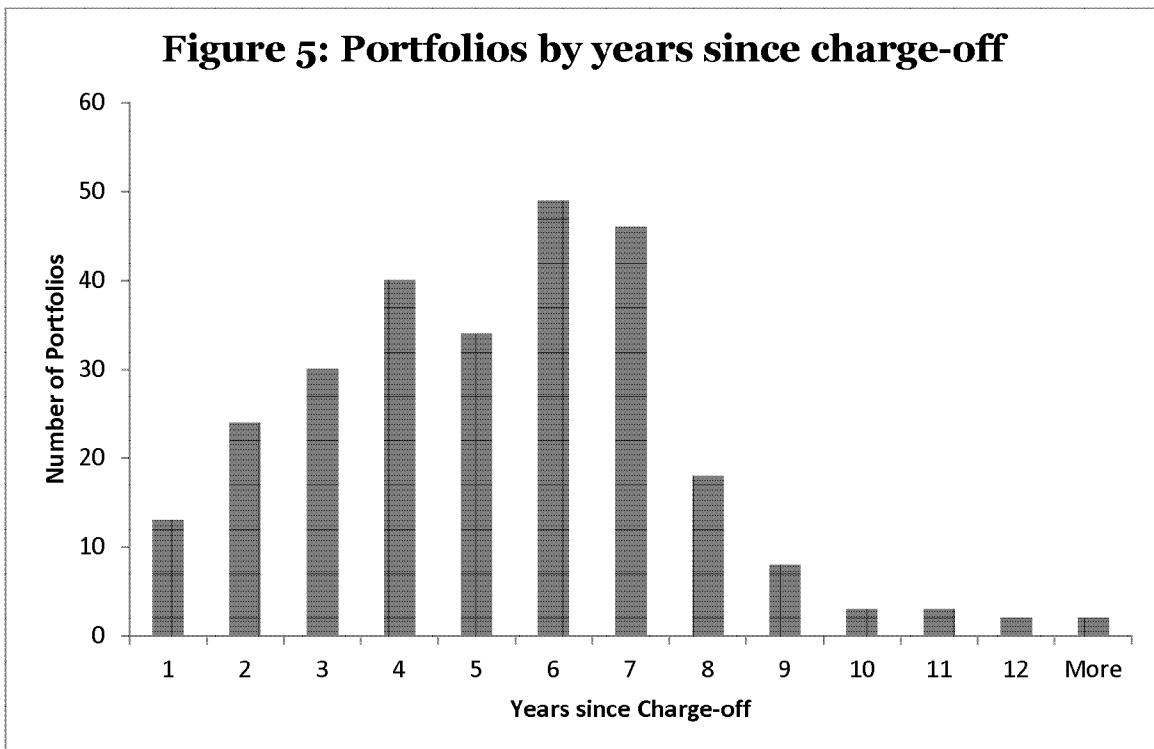
3.2 Pricing over time

The following figure shows charged-off debt prices in our portfolios by time, and the values our model predicts for the average trend of prices.



The drop in price by age of debt (years from charge-off) follows an exponential depreciation pattern, as seen in Figure 4. Regression analysis confirms this pattern and shows that the price of debt decreases by an average value of roughly 33% each year for the first five years and roughly 29% each year for years 6-10. After 10 years, the price levels off. Our findings suggest that, as debts on online debt marketplaces become older, they can be acquired more and more cheaply. This trend is consistent with the normal behavior of debt prices in markets of charged-off consumer debt: as debts age, they become more difficult to collect and therefore can be bought and sold more cheaply. This suggests that online market places may contain debts that are very old and very cheap.

3.3 Age of Portfolios



Many of the accounts we reviewed contained old debts. Figure 5 shows the ages of the 277 portfolios in our sample (of 298 portfolios overall) that listed year of charge-off. The median age for a debt portfolio in our sample was five years past charge-off. 18 portfolios were nine or more years past charge-off.

A substantial portion of accounts in our sample are likely to be time-barred (in other words, past the statute of limitations for debts). Accounts generally reach the statute of limitation after three to fifteen years of delinquency depending on the state and type of debt.

Appendix: Data Collection

Source of data and data collection

The data set was compiled from publicly available websites listing debts for sale. These websites connect debt sellers with debt buyers. We reviewed three such websites. We also noted a company that sells debt portfolios on Facebook but did not include those debts in the survey. We believe the three markets we reviewed to be fairly typical online debt vendors. We observed listings between January and August 2015. Each observation (298 portfolios) entered the market between January of 2015 and August of 2015.

The four websites discussed in this report (with names of individuals and contact information redacted) were:

- Debtconnection.com
- Debtselling.net
- This Facebook account advertises sales from Portfolio Investment Solutions, LLC
- Accountsrecovery.net – Once individuals sign up and receive approval, they can view a section that shows portfolios for sale.

Market Snapshot: Third- Party Debt Collections Tradeline Reporting



Consumer Financial
Protection Bureau

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1. Introduction¹

This report provides a brief overview of two types of third-party debt collections² tradelines reflected on credit reports compiled by the nationwide consumer reporting agencies (NCRAs)³—debt buyer tradelines and non-buyer debt collections tradelines.⁴ Debt buyers purchase portfolios of charged-off debt from creditors, generally for a fraction of the original face value of the debt. By contrast, the majority of debt collectors, measured by revenue, attempt to collect debt that is still owned by the original creditor.⁵ It is possible for a single debt collections firm to collect both on debts it owns and debts that others own.

A tradeline is information about a consumer account that is sent, generally on a regular basis, to a consumer reporting agency.⁶ Tradelines contain data such as the account balance, payment history, and the status of the account (e.g. current, past due, or charged-off). Debt collections tradelines, which are considered negative, generally may appear on a consumer report for up to

¹ Report prepared by Michael Furey and Ryan Kelly.

² The term “third-party debt collections” refers to a situation where collections on a consumer account are not handled by the original creditor. When a creditor collects on its own account, the term used is “first party debt collections.”

³ The three NCRAs are Equifax, Experian, and TransUnion. These three firms are sometimes referred to as “credit bureaus.”

⁴ Debt collections tradelines that are not listed as being from debt buyers are referred to in this report as “non-buyer tradelines.” Debt collectors usually work traditional, non-buyer accounts on a contingency fee basis while they work buyer accounts by purchasing portfolios of accounts and keeping all of what they collect.

⁵ See Section 2.1 in: CFPB, “Fair Debt Collection Practices Act: CFPB Annual Report 2018” available at, <https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2018/>.

⁶ Information is typically sent to consumer reporting agencies monthly.

seven years.⁷ Credit scoring models, such as those produced by FICO or VantageScore, use the information contained in tradelines to generate a consumer’s credit score.⁸

An entity that sends information that relates to consumers to a consumer reporting agency for inclusion in consumer reports is known as a “furnisher.”⁹ A consumer may dispute information in his or her credit file under the Fair Credit Reporting Act (FCRA) indirectly with a consumer reporting agency, directly with the furnisher, or both. If a consumer files a dispute with the consumer reporting agency, the consumer reporting agency is generally required to investigate the consumer’s claim to determine if the disputed information is accurate, which includes notifying the furnisher of the dispute so that the furnisher can conduct an investigation. If a consumer files a dispute with the furnisher, the furnisher is generally required to investigate the consumer’s claim to determine if the disputed information is accurate.¹⁰ The furnisher may not thereafter furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer, in which case the consumer reporting agency must indicate that fact in each consumer report that includes the disputed information. If a consumer disagrees with the outcome of a completed investigation by a consumer reporting agency, the consumer may file a brief statement setting forth the nature of the dispute and the consumer reporting agency generally must, in any subsequent consumer report containing the disputed information, clearly note that it is disputed by the consumer and provide either the consumer’s

⁷ The length of time that a tradeline persists as part of a consumer’s credit record depends on the type of tradeline and whether the information contained is positive or negative. For more information, see, for instance: Ask CFPB, “How Long Does Information About Me Stay On My Consumer Report” available at <https://www.consumerfinance.gov/ask-cfpb/how-long-does-information-about-me-stay-on-my-consumer-report-en-1121/>.

⁸ For more information on these credit scores, see: FICO, “What is a FICO Score?” available at <https://www.myfico.com/credit-education/credit-report-credit-score-articles/> and VantageScore, “Understand Your Score: What Do These Three Numbers Say About You?” available at <https://your.vantagescore.com/understand>.

⁹ For more information on credit reporting markets, see: CFPB, “Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureaus Manage Consumer Data” available at <https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/>.

¹⁰ There are certain exceptions to these requirements. For instance, consumer reporting agencies and furnishers are not required to investigate disputes they reasonably determine to be irrelevant or frivolous. Also, certain disputes filed with a consumer reporting agency may be handled internally by the consumer reporting agency.

statement or a summary of that statement. While some credit scoring models ignore certain information from tradelines indicating an active dispute, these models may factor in information from accounts where a dispute is considered resolved, even if the consumer disagrees with the results of the investigation.¹¹

This report considers only tradelines furnished by entities other than the original creditor, which it refers to as “third-party debt collectors.”¹² Starting with the universe of third-party debt collections tradelines, any tradelines listed as coming from debt buyers are flagged as “buyer tradelines.” Any third-party collections tradelines not listed as coming from debt buyers are flagged as “non-buyer tradelines.” “Total third-party collections” refers to the universe of third-party collections tradelines and includes all buyer and non-buyer tradelines.

This report is based on information from the CFPB’s Consumer Credit Panel (CCP), which is a longitudinal, nationally representative sample of approximately five million de-identified credit records from one of the three NCRAs. The figures in this report cover various time periods, each beginning with the time period when the data for which the analysis is conducted becomes available in the CCP.

¹¹ See, for instance: Ask CFPB, “Will I Damage My Credit Score If I Do Not Pay a Portion of My Bill That I Am Disputing?” available at <https://www.consumerfinance.gov/ask-CFPB/will-i-damage-my-credit-score-if-i-do-not-pay-a-portion-of-my-bill-that-i-am-disputing-en-66/>.

¹² Designating an entity as a “third-party debt collector” for purposes of this report is not intended to suggest anything about whether the debt collector is subject to the FDCPA.

2. Overall Findings

- As of Q2 2018, over one in four consumers in the sample had a third-party collections tradeline on their file. Between Q2 2004 and Q2 2018, the percentage of consumers in the sample with a third-party collections tradeline on their file never went below 27% or above 34%.
- There was considerable volatility in the number of reported third-party collections tradelines over the past fifteen years. The number of buyer tradelines grew by more than 350 percent between Q2 2004 and Q3 2009 and then declined through Q4 2016, when the number was 50 percent higher than Q2 2004 levels. For non-buyer tradelines, the period of growth in the number of reported tradelines was longer but less steep; these tradelines continued to grow until Q1 2013 and peaked at a number over 75 percent higher than the Q2 2004 baseline. The number reported then fell, with the number of non-buyer tradelines reported in Q2 2018 only 11 percent higher than the Q2 2004 level.
- These trends in the reporting of third-party collections tradelines by buyers and non-buyers necessarily changed the composition of the reported tradelines. In Q2 2004, fewer than 10 percent of reported third-party collections tradelines were attributable to buyers. In Q2 2009, when the furnishing of buyer tradelines peaked, those tradelines accounted for 22.5 percent of reported tradelines. As of Q2 2018, the comparable percentage was 12.5 percent.
- Although the number of third-party collections tradelines in our sample has increased over the last 15 years, the number of collectors furnishing such tradelines has declined 60 percent from its peak. There are an estimated 9,330 debt collectors and debt buyers in the United States, but our sample only had 898 furnishers of third-party collections tradelines in Q2 2018.
- There was much greater concentration in reporting among buyer furnishers than non-buyer furnishers. In Q2 2018, the top four largest debt buyers by tradelines reported 90 percent of buyer tradelines while the top four largest non-buyers by tradelines reported 13 percent of non-buyer tradelines.
- As of Q2 2018, about two-thirds of non-buyer tradelines indicated medical debt. In contrast, buyer tradelines primarily indicated banking, retail, and financial debt while only 1 percent of buyer tradelines showed medical debt. Medical debt accounted for 58 percent of total third-party collections tradelines in Q2 2018.
- More than three out of four (78 percent) total third-party debt collections tradelines were for medical, telecommunications, or utilities debt in Q2 2018; these represent non-financial debts where positive payment information is generally not reported to consumer reporting agencies.

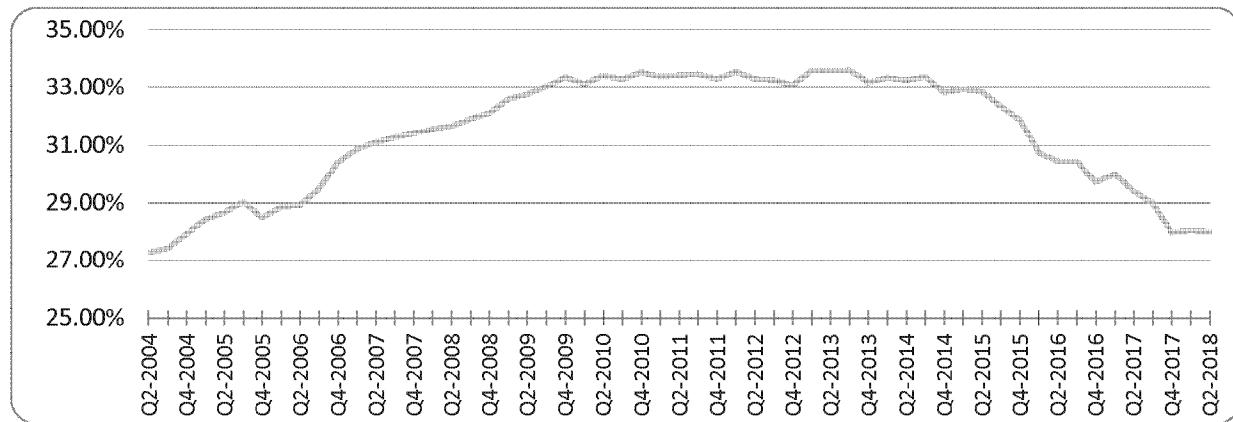
- In Q2 2018, .09 percent of total third-party collections tradelines in the sample indicated a new consumer disagreement with the result of a FCRA dispute investigation. This was triple the incidence of such disagreements submitted in Q2 2012. This growth was driven by trends in buyer tradelines: between Q2 2012 and Q2 2018, the percentage of buyer tradelines in the sample with new instances of this status grew from .07 percent to .56 percent while the percentage of non-buyer tradelines in the sample with new instances of this status was roughly steady at around .02 percent.

All of the findings above are descriptive and the data do not allow for a conclusion on the cause of the effects observed.

3. Detailed Findings

Percentage of Consumers with a Third-Party Collections Tradeline

FIGURE 1: PERCENTAGE OF CONSUMERS IN THE SAMPLE WITH AT LEAST ONE THIRD-PARTY COLLECTIONS TRADELINE



As of Q2 2018, more than one-in-four consumers (28 percent) in the sample had a third-party collections tradeline on their file. Figure 1 shows that between Q2 2004 and Q2 2018, the percentage of consumers in the sample with a third-party collections tradeline on their file never went below 27% or above 34%.

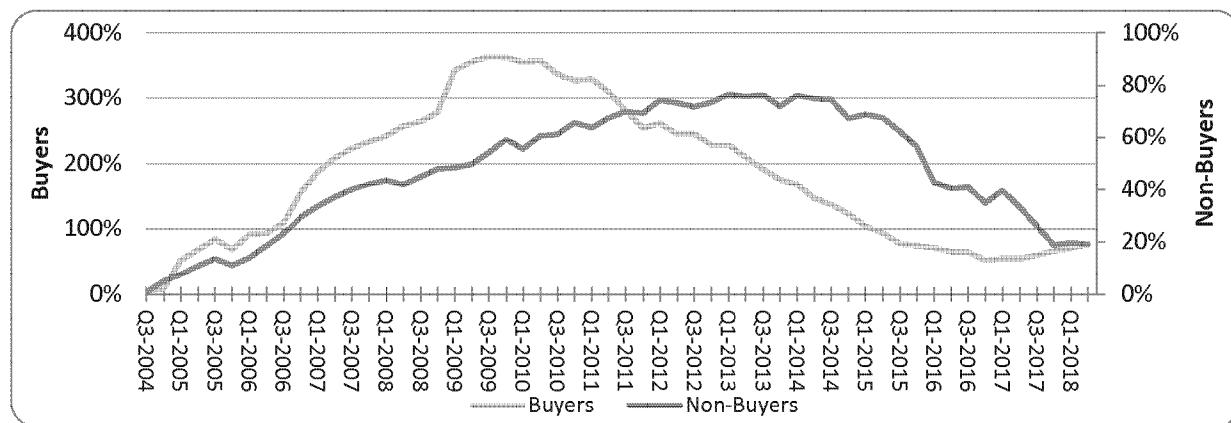
Because third-party collections tradelines can generally remain on a credit record for up to seven years, the presence of such a tradeline is not necessarily an indication that the debt collector is actively seeking to collect from the consumer.¹³ One alternative measurement looks at the percentage of credit files on which a new third-party collections tradeline appears within the preceding 12 months. Using that measurement, as of Q2 2018, 13 percent of consumer

¹³ However, a tradeline may affect the consumer's credit score as long as it appears on a credit report regardless of whether debt collectors are actively seeking to recover on it. It should also be noted that debt collectors may attempt to collect on accounts without reporting a tradeline. In fact, a prior Bureau survey found that almost 80 percent of consumers who were contacted by debt collectors about a single debt in collection in the prior year did not have a new collections tradeline, and about half of consumers who reported having been contacted about two or more debts in the prior year had no new collections tradeline. See: CFPB, "Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt" available at, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/>.

credit files in the CCP contained a new collections tradeline.¹⁴ Note that not all newly reported collections accounts are necessarily the subject of collections activity whereas older collections accounts may be, so that this measurement is an imprecise means of measuring collections activity.

Changes in Third-Party Debt Collections Tradelines Reported

FIGURE 2: PERCENTAGE CHANGE IN TRADELINES REPORTED IN THE SAMPLE RELATIVE TO Q2 2004 LEVELS



As shown in Figure 2, the number of buyer tradelines in the sample increased more than 350 percent between Q2 2004 and Q3 2009. The number of buyer tradelines in the sample then fell until Q4 2016, when the number was 50 percent higher than Q2 2004 levels. The number of buyer tradelines reported then turned upwards, reaching a number 75 percent higher than Q2 2004 levels by Q2 2018. The number of non-buyer tradelines in the sample increased over 75 percent between Q2 2004 and Q1 2013. It then fell, with the number of non-buyer tradelines reported in Q2 2018 only 11 percent higher than the Q2 2004 level.

These data may reflect changes in the number of collection accounts being handled by buyers and non-buyers; the increases observed through 2012 for non-buyers and 2009 for buyers is consistent with the fact that during and after the Great Recession, an increasing share of

¹⁴ This is similar to the measurement that the Federal Reserve Bank of New York reports in its Quarterly Report on Household Debt and Credit. For more information, see: FRBNY Center for Microeconomic Data at <https://www.newyorkfed.org/microeconomics/hhdc.html>.

consumers fell behind on their bills.¹⁵ These data may also reflect changes in the practice of furnishing information on such accounts.

Share of Third-Party Collections Tradelines Reported by Buyers

FIGURE 3: PERCENTAGE OF TOTAL THIRD-PARTY COLLECTIONS TRADELINES REPORTED BY BUYERS

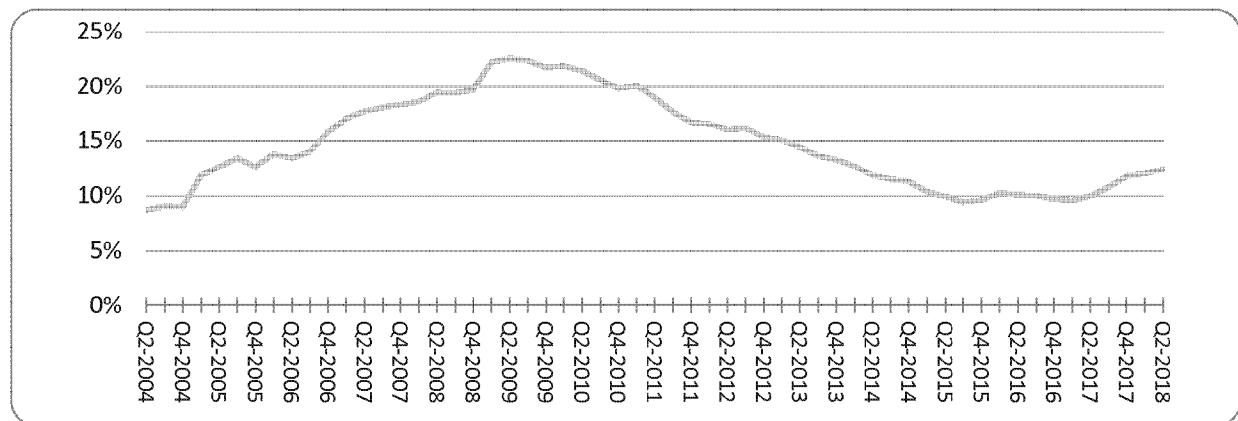


Figure 3 shows that buyers have never reported more than 25 percent of the total third-party collections tradelines in the sample. However, the composition of total third-party collections tradelines furnished by buyers and non-buyers changes over time. Between Q2 2004 and Q2 2009, the share of total third-party collections tradelines reported by buyers increased over 150 percent. The share then fell steadily, reaching levels similar to 2004 by 2015 before turning upward slightly. Buyers reported 12.5 percent of collections tradelines in Q2 2018.

Number of Third-Party Debt Collections Furnishers

There are an estimated 9,330 debt collectors and debt buyers in the United States, but only an estimated 4,000 have any paid employees.¹⁶ Most debt collectors are small (roughly 98 percent are small businesses as defined by the Small Business Administration) and therefore unlikely to

¹⁵ The number of delinquent and severely derogatory consumer credit accounts was high by historical standards during this period. For more information, see: <https://www.newyorkfed.org/microeconomics/hhdc.html>.

¹⁶ See the discussion on page 425-427 in CFPB, "Proposed Rule with Request for Public Comment to Implement the Fair Debt Collection Practices Act" available at, <https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-regulations-implement-fair-debt-collection-practices-act/>.

report to any consumer reporting agency.¹⁷ Indeed, based on data in the CCP, it appears that only a small fraction of collectors furnish third-party collections tradeline information. In Q2 2018, there were just under 900 unique furnishers of third-party collections tradelines in our sample. As the CCP is a 1-in-48 sample at the credit report level, it is probable that some furnishers of third-party collections tradelines were not captured. Furthermore, many collectors likely reported to only a single NCRA and so may be missed in the CCP which is based on data from one NCRA. Table 1 shows the number of unique furnishers of third-party collections tradelines reported in Q2 of each year in the CCP.

TABLE 1: TOTAL NUMBER OF UNIQUE FURNISHERS OF THIRD-PARTY COLLECTIONS TRADELINES IN THE SAMPLE REPORTED IN Q2 OF EACH GIVEN YEAR

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|---------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------|
| Buyer | 57 | 73 | 100 | 132 | 157 | 162 | 155 | 149 | 133 | 107 | 88 | 54 | 47 | 42 | 40 |
| Non-Buyer | 2,253 | 2,255 | 2,175 | 2,150 | 2,150 | 2,139 | 2,074 | 1,984 | 1,833 | 1,669 | 1,547 | 1,393 | 1,222 | 986 | 872 |
| Total | | | | | | | | | | | | | | | |
| Third-party Collectors | 2,294 | 2,298 | 2,244 | 2,237 | 2,249 | 2,235 | 2,168 | 2,082 | 1,923 | 1,741 | 1,608 | 1,429 | 1,253 | 1,013 | 898 |

The number of unique total third-party collections tradeline furnishers in the sample peaked at 2,298 in 2005, but then fell 61 percent to 898 in 2018.¹⁸ The total number of unique buyer furnishers peaked at 162 in Q2 2009, but then fell 75 percent to 40 by Q2 2018. The total number of unique non-buyer furnishers peaked at 2,255 in Q2 2005, but then fell 60 percent to 898 in Q2 2018.

¹⁷ See page 8 in: CFPB, “Fair Debt Collection Practices Act: CFPB Annual Report 2018” available at, <https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2018/>.

¹⁸ The number of unique buyer furnishers added to the number of unique non-buyer furnishers is higher than the total number of third-party collections tradeline furnishers because some firms report both buyer and non-buyer tradelines.

In Q2 2018, the top four debt buyers furnished 90 percent of buyer tradelines, up from 66 percent in Q2 2004.¹⁹ In Q2 2018, the top four non-buyers furnished 13 percent of non-buyer tradelines, up from 10 percent in Q2 2004. This increased concentration of third-party collections tradelines reported by larger furnishers, especially non-buyer furnishers, coupled with the decline in the number of unique buyer and non-buyer furnishers may reflect ongoing consolidation in the collections industry, a change in the furnishing practices of smaller entities relative to larger entities, the furnishing practices of buyers relative to non-buyers, or some combination of all of these.²⁰

Types of Third-Party Collections Tradelines Accounts

There is a marked difference in the types of third-party collections tradelines reported by buyers as compared to non-buyers. Figure 4 shows that buyer tradelines primarily reported banking, retail, and financial debt while Figure 5 shows that roughly two-thirds of non-buyer tradelines reported medical debt in Q2 2018. By comparison, only about 1 percent of buyer tradelines reported medical debt in Q2 2018. The buyer focus on banking and financial debt may stem, at least partially, from the historical origins of debt buying as a response to the savings and loan crisis of the late 1980s.²¹

¹⁹ In fact, 64 percent of buyer tradelines came from just the two largest debt buyers in Q2 2018, up from 45 percent in Q2 2004. The largest debt buyers furnish almost exclusively buyer tradelines. The four largest debt buyers were responsible for only one non-buyer tradeline in the sample in Q2 2018.

²⁰ See Section 8.2 in: CFPB, “The Consumer Credit Card Market 2017 Report” available at <https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market-2017/>.

²¹ For more information on the history of debt buying, see Section IV, part B in: FTC, “The Structure and Practices of the Debt Buying Industry” available at <https://www.ftc.gov/reports/structure-practices-debt-buying-industry>.

FIGURE 4: DISTRIBUTION OF ORIGINAL CREDITOR TYPE AMONG BUYER TRADELINES IN THE SAMPLE IN Q2 2018

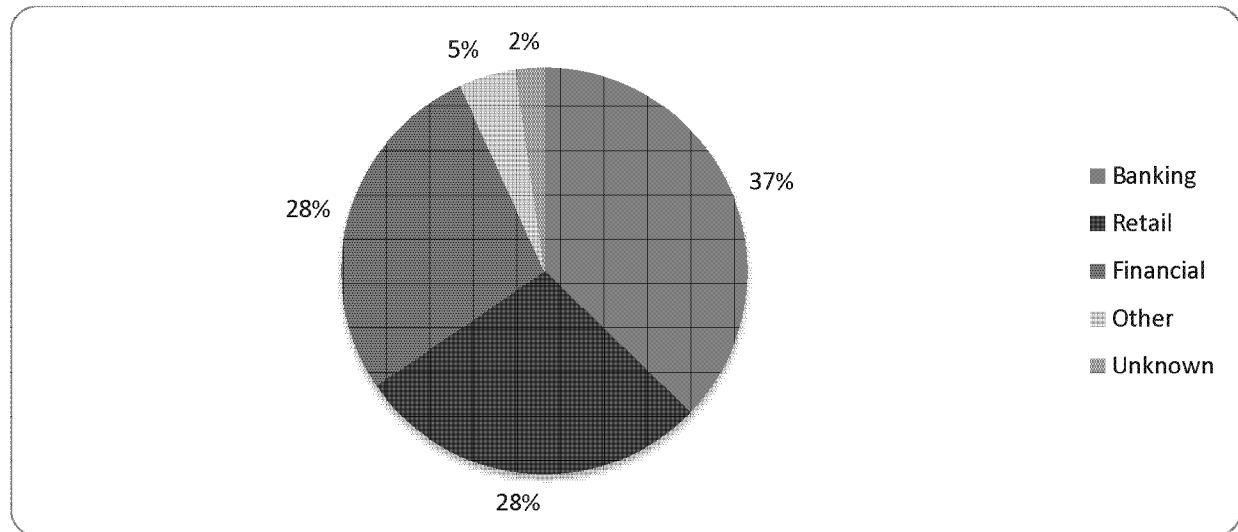


FIGURE 5: DISTRIBUTION OF ORIGINAL CREDITOR TYPE AMONG NON-BUYER TRADELINES IN THE SAMPLE IN Q2 2018

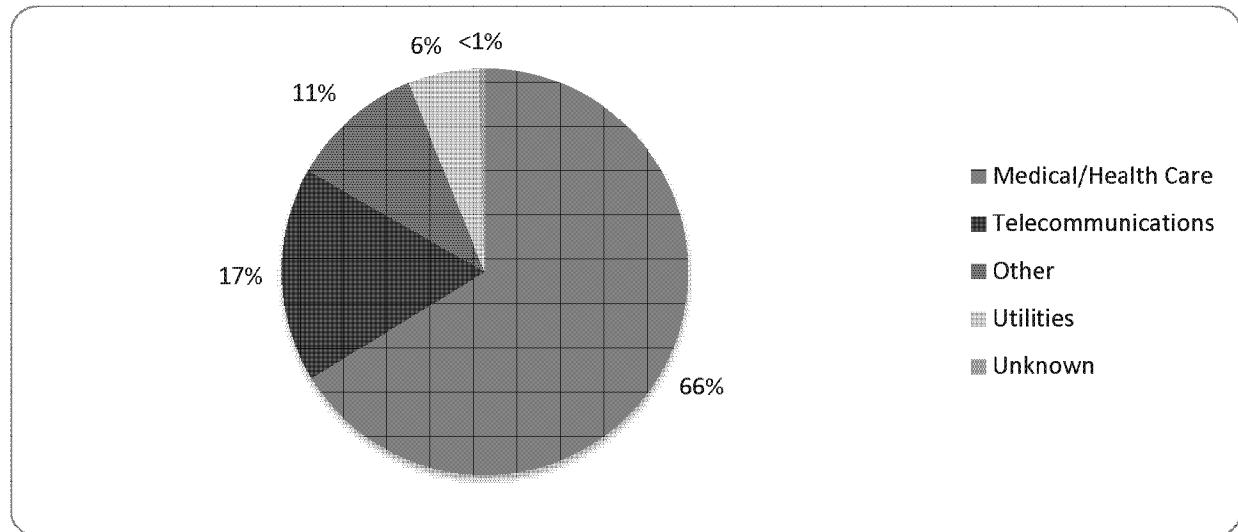
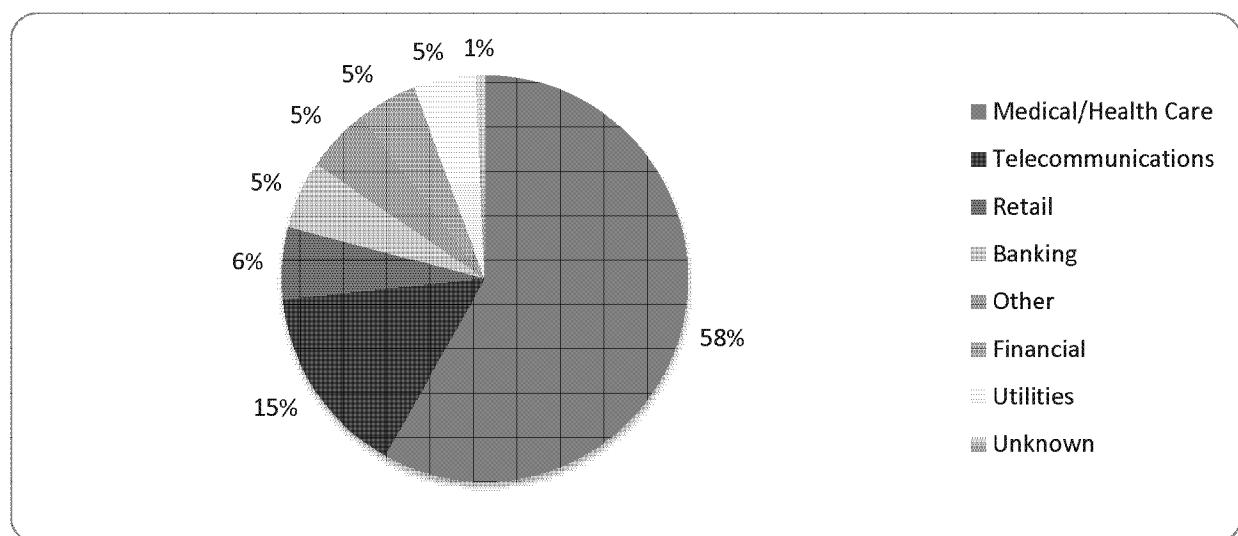


Figure 6 shows the original creditor type for all third-party collections tradelines. As non-buyers furnished most third-party collections tradelines, the distribution for all firms in the market resembles the non-buyer distribution. Total third-party debt collections tradelines

primarily reported medical, telecommunications,²² retail, banking, financial, or utilities debt in Q2 2018. More than half (58 percent) of total third-party debt collections tradelines were for medical debt alone. More than three out of four (78 percent) total third-party debt collections tradelines were for either medical, telecommunications, or utilities debt; these represent non-financial debts where positive payment information is generally not reported to consumer reporting agencies. The largest single furnisher of total third-party collections tradelines furnished just 5.5% of the total third-party debt collections tradelines in Q2 2018.

FIGURE 6: DISTRIBUTION OF ORIGINAL CREDITOR TYPE AMONG TOTAL THIRD-PARTY COLLECTIONS TRADELINES IN THE SAMPLE IN Q2 2018



It is interesting to contrast these data with estimates as to the sources of collection industry revenue. In particular, a leading industry analyst estimates that healthcare, which represents 58 percent of reported third-party collections tradelines, only generates 11 percent of collection industry revenue.²³ This may reflect differences in the reporting of different types of collections

²² For a more comprehensive view of telecommunications debt collection, see: CFPB, “Quarterly Consumer Credit Trends: Collection of Telecommunications Debt” available at <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-telecommunications-debt-collection/>.

²³ See Section 2.1 in: CFPB, “Fair Debt Collection Practices Act: CFPB Annual Report 2018” available at, <https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2018/>.

accounts, differences in the revenue generated per account across different types of accounts, or a combination of the two.

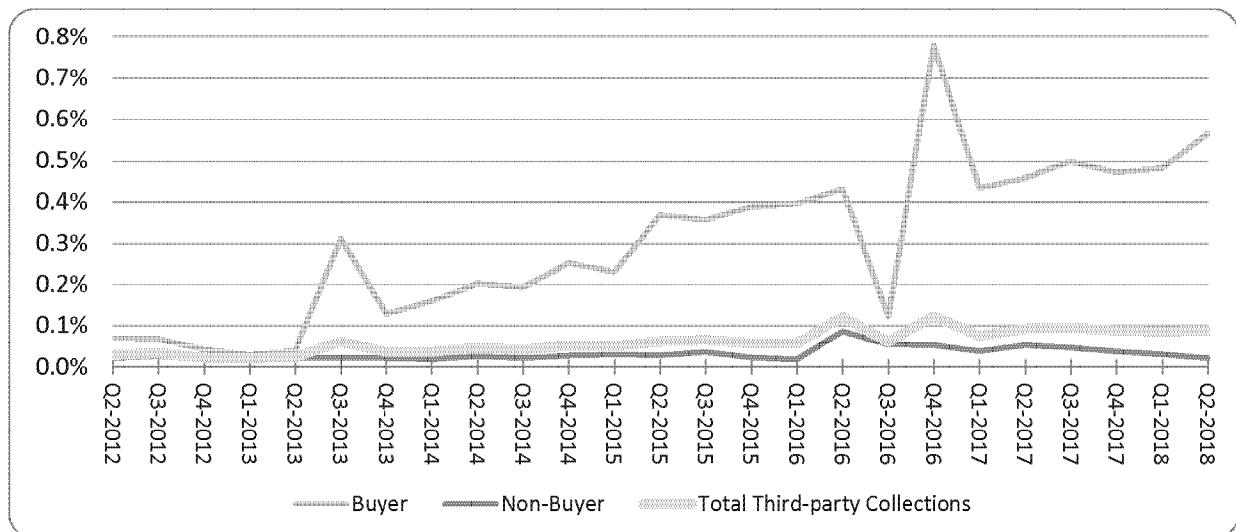
Disputes

Prior CFPB research has found that, under the FCRA, consumers dispute third-party collections tradelines at a greater rate than they dispute other types of tradelines. For example, in 2011 disputes were filed with respect to over 1 percent of third-party collections tradelines compared to .29 percent for student loans, the next highest category.²⁴ This in part reflects the fact that third-party collections tradelines are inherently negative so that consumers have a larger incentive to dispute these tradelines, but it may also reflect differences in the underlying accuracy of the data.

As previously noted, a consumer may dispute information in his or her credit file indirectly with a consumer reporting agency, directly with the furnisher, or both. If a consumer disagrees with the outcome of a completed investigation of a dispute by a consumer reporting agency, the consumer may file a brief statement setting forth the nature of the dispute and the consumer reporting agency generally must, in any subsequent consumer report containing the disputed information, clearly note that it is disputed by the consumer and provide either the consumer's statement or a summary of that statement. If a consumer files a dispute with a furnisher, the furnisher may not thereafter furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer, in which case the consumer reporting agency must indicate that fact in each consumer report that includes the disputed information. Figure 7 reports for each quarter the number of tradelines with a new flag compared to the total number of tradelines for buyers, non-buyers, and the total third-party collections market.

²⁴ See Section 7.2 in: CFPB, “Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureaus Manage Consumer Data” available at <https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/>.

FIGURE 7: PERCENTAGE OF TOTAL TRADELINES REPORTED IN THE SAMPLE WHICH INDICATE NEW INSTANCES OF CONSUMER DISAGREEMENT WITH A COMPLETED FCRA DISPUTE INVESTIGATION²⁵



The percentage of buyer tradelines in the sample that showed a new instance of consumer disagreement with a completed FCRA investigation was small in absolute terms throughout the observation period. However, it has increased steadily, with a few fluctuations. For non-buyer tradelines, it has been very low and close to flat.²⁶ By Q2 2018, 0.09 percent of total third-party collections tradelines, 0.6 percent of buyer tradelines, and 0.02 percent of non-buyer tradelines showed new instances of this status. In Q2 2012, 0.03 percent of total third-party collections tradelines, 0.07 percent of buyer tradelines, and 0.02 percent of non-buyer tradelines showed new instances of this status.

Some of the differences highlighted here may reflect differences in furnishing practices between buyers and non-buyers.²⁷ Also, the likelihood of errors in furnishing resulting in a consumer

²⁵ As discussed above, the debt buying market is highly concentrated with four firms furnishing roughly 90% of the tradelines by Q2 2018. Therefore, the spikes in this data series may be the result of furnishing issues at a small number of debt buyers.

²⁶ If a furnisher were to start and stop furnishing a given tradeline multiple times over its life, this measure could be artificially inflated. This report does not explore such patterns.

²⁷ In particular, it is possible that non-buyers are more likely to return accounts to the original creditor if they receive a dispute rather than continuing to report the tradeline. Buyers may also be able to return an account to the original creditor in certain situations, but “put back” language in debt purchase and sale agreements often limits

dispute may increase if a given debt is placed with a succession of non-buyers or sold and resold among buyers.²⁸ The data do not allow for a conclusion on the cause of the effects observed.

this option. For more information, see Section V, part F in: FTC, “The Structure and Practices of the Debt Buying Industry,” available at <https://www.ftc.gov/reports/structure-practices-debt-buying-industry/>.

²⁸ For more information, see Section 7.2 in: CFPB, “Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureau’s Manage Consumer Data” available at <https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/>.

Market Intelligence

Market Information from RMR Markets Teams

Spotlight: Auto Repossession

BCFP Office of Consumer Lending, Reporting, and Collections Markets

Damion English and Diego Marcogliese

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal workproducts of the Market Offices. They are intended for background informational purposes only and do not represent of the view of the Bureau.*



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Introduction

This spotlight focuses on the automobile repossession industry. Repossession occurs when a lender physically seizes a vehicle in response to a consumer’s failure to make on-time loan payments, adequately insure the vehicle, or otherwise satisfy material terms of a loan where the automobile being financed is the collateral.¹ In 2016, there were roughly 1.7 million vehicle repossession in the U.S and as of June 2018 there have already been 1.8 million; the industry expects to approach 1.9 million by the end of the year.^{2,3} Repossessions can have a significant impact on consumers’ lives—consumers can be left without reliable transportation to get to work, school, or medical facilities. Additionally, the loan default plus the actual repossession significantly damage a consumers’ credit report and can be expensive and difficult for consumers to remediate.

Repossession related harms cited by consumers in complaints to the BCFP include:

1. Consumers having their vehicle improperly repossessed;
2. Inconsistent industry standards for initiating repossession;
3. Abuses by the lender and its service providers during the repossession process; and
4. Monetary cost of repossession.

¹ For purposes of this spotlight, when auto loans are discussed, the text is referring to collateral auto loans. The spotlight does not address auto title loans. Collateral auto loans are loans obtained to finance a vehicle where the same vehicle that is being financed is the collateral attached to the loan. In contrast, auto title loans are a short-term loan obtained by placing the title of a vehicle that is under the debtor’s name as the collateral.

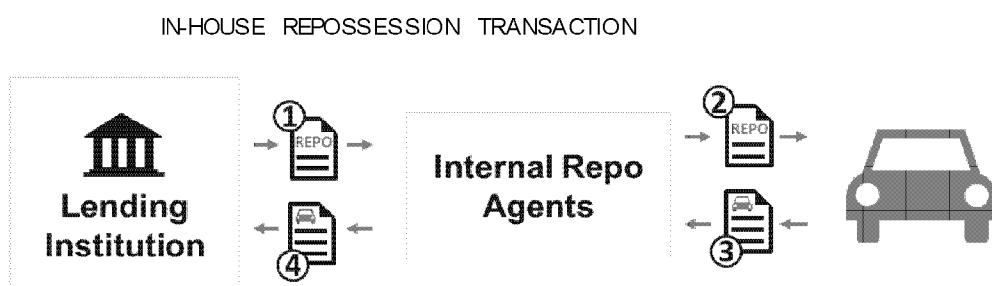
² See Manheim, 2017 Used Car Market Report, (2017) <https://publish.manheim.com/en/services/consulting/used-car-market-report.html>

³ Meeting with MV Trac., in Washington, DC (Jun 28, 2018).

Industry participants, size, and insight

The American Recovery Association (ARA) estimates that approximately 900 repossession firms and 15,000 agents operate in the US.⁴ In 2017, the repossession industry generated \$1.1 billion in revenue and employed 16,777 people.⁵

The repossession industry has changed drastically in recent decades. Historically, most repossession agents were employed directly by lenders who assigned collateralized auto loans. This system was known as “in-house” repossession, as the companies that provided credit also specialized in recovering the assets their debtors placed as collateral. Figure 1 depicts the in-house repossession transaction.



The modern repossession industry gives lenders more options to recover their collateral. A lender can hire a repossession agent directly, contract a third-party asset recovery firm (repossession agency), or hire a forwarding company (discussed in detail below) to handle the recovery. This market structure provides more options for lenders to manage repossession.

Perhaps the most significant structural change in the repossession industry is the emergence of forwarding companies as intermediaries between lenders and repossession agents. Rather than the creditor managing relationships with dozens or hundreds of repossession agents, the

⁴Meeting with American Recovery Association, in Washington, DC (Oct 1, 2014).

⁵ Maksim Soshkin, *Repossession Services in the US*, IBISWorld Industry Report OD4877, (Feb. 2017)

creditor need only manage one relationship with one forwarder, who, in turn, works directly with repossession agents to recover vehicles.

A forwarding company is a third-party service provider that takes repossession orders from many lenders, may provide technology for locating target vehicles, and hires local repossession agents to execute the recovery operation. Forwarding companies usually conduct business in a select number of states, but the largest forwarders operate nationally. They market themselves as providers of quick and economical asset recovery services. Additionally, they make it clear they are not repossession companies but leverage a broad network of independent repossession agents that they contract with to recover assets. In essence, forwarding companies connect lenders to repossession agents while facilitating the repossession process for lenders and a steady work stream for agents.

Forwarding companies receive a large and growing percentage of repossession orders (their precise market share is unknown). The forwarding business is highly concentrated and dominated by five large companies, each of which generates over \$100 million in revenue annually:⁶

- Primeritus: Founded in 2012, offices located in Nashville, TN and El Dorado, CA. Nationwide services include location, recovery, and remarketing of vehicle.
- Del Mar Recovery Solutions: Founded in 2010, headquartered in Carlsbad, CA. Nationwide services include location, recovery, and remarketing of vehicle.
- ALS Resolvion: Founded in 1994, headquartered in Shelton (CT) with offices in Sandy Springs, GA, and Charlotte, NC. Nationwide services include location and recovery of vehicle.
- PAR North America: Founded in 1992 and headquartered in Carmel, IN. Nationwide services include location, recovery, and remarketing of vehicle.
- Consolidated Asset Recovery Systems (CARS): Founded in 2005 with headquarters in Raleigh, NC, with a footprint in Canada and Europe as well. Nationwide services include location and recovery of vehicle.

Forwarding companies have gained traction with lenders because they have some competitive advantages and service efficiencies over direct use of local repossession agents. Local

⁶ Meeting with MV Trac., in Washington, DC (Jun 28, 2018).

independently contracted repossession agents or small repossession firms may not have access to the same technology that forwarding companies utilize to efficiently locate vehicles. Forwarding companies can often be faster, more convenient, and higher performing as they are able to put out a repossession order for a vehicle and have many agents on the streets looking for it. They also can cut lender costs by leveraging economies of scale and by generating competitive bids from repossession agents for the contracts to find the lowest possible price. Forwarders can cover a larger geographic area than most individual agencies and agents. If a targeted vehicle has crossed state lines, national forwarders already have business infrastructures in place to recover that vehicle. Managing a handful of contracts with forwarders is cheaper and preferable to the creditor than managing hundreds of contracts with individual forwarders. Dealing with forwarders also helps promote consistent prices, technological platforms, and industry standards.

Even with the expanding roles of forwarding companies, independent agents still conduct the physical repossession or “recovery.” The recovery portion of the industry remains fragmented. No one operator claims more than five percent of the total revenue collected in the industry and single operators (non-employers operating as independent contractors) claimed over 60% of the industry’s total employment in 2017.⁷

Today, approximately 80% of the work agents do originates from depository institutions, insurance firms, and other financial institutions.⁸ Most agents are independent contractors and do not work directly for financial firms or forwarding companies—agents are usually a part of one or more agent networks contracted by forwarders.

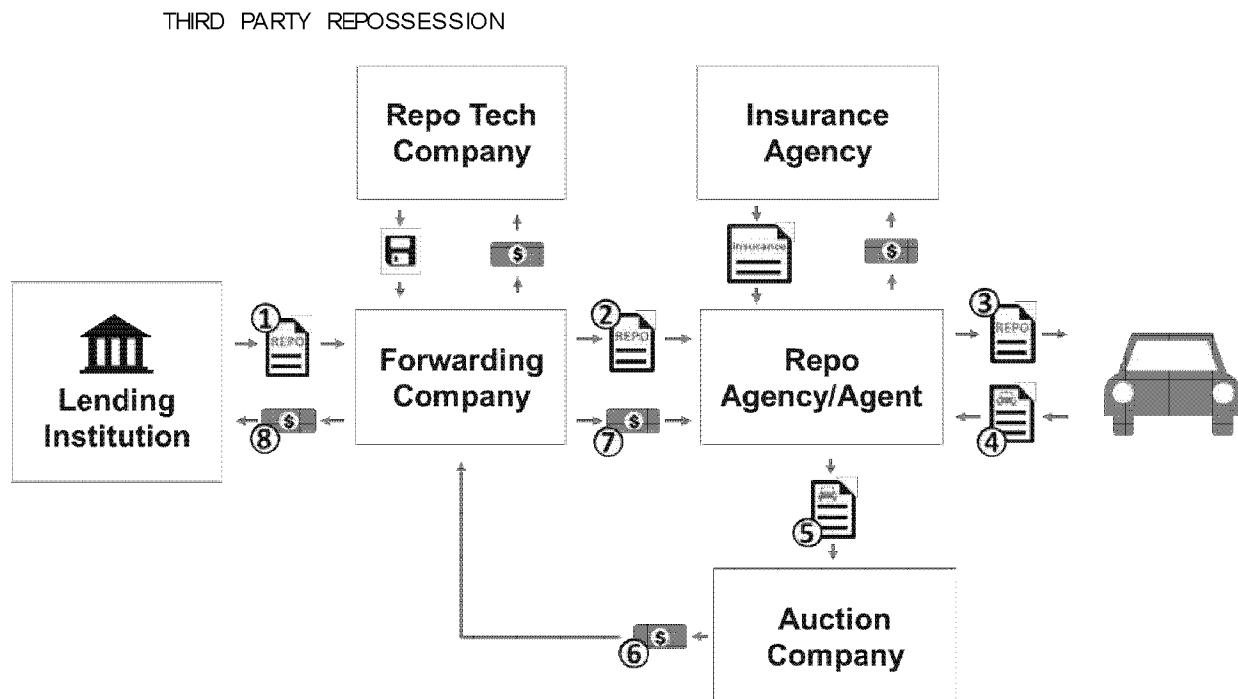
Agents are usually compensated on an asset delivery model. This means that unless they successfully recover a vehicle, they are not paid. Generally, if agents work on searching and recovering a vehicle for 12 hours, they are paid the same amount as if it took them one hour to do so. As a result, the faster a vehicle is located and recovered, the more vehicles that can be recovered and the more money an agent can make on any given day. Compensation differs from

⁷ Maksim Soshkin, *Repossession Services in the US*, IBISworld Industry Report OD4877, (Feb. 2017)

⁸ Id.

company to company, but agents can earn anywhere from \$150 - \$400 per vehicle repossession.⁹

A range of specialized service providers support the current repossession ecosystem. These firms include repossession technology and software providers, auctioning firms, and insurance firms (see Figure 2 for a depiction of the current repossession industry’s structure). Examples of repossession technology and software providers include MVTrac, which specializes in license plate recognition (LPR) systems, and MBSi, which provides compliance management software.^{10, 11} Auctioning companies specialize in arranging the resale of repossessed vehicles. Insurance providers also play a significant role—repossession agents are required to have insurance covering damages to the assets recovered. In fact, the highest business expense for repossession agents are insurance premiums, which have only increased overtime.



⁹ repomanjobs.com, *Repo Man Salary*, <http://www.repomanjobs.com/repo-man-salary/> (last visited Apr. 26, 2013).

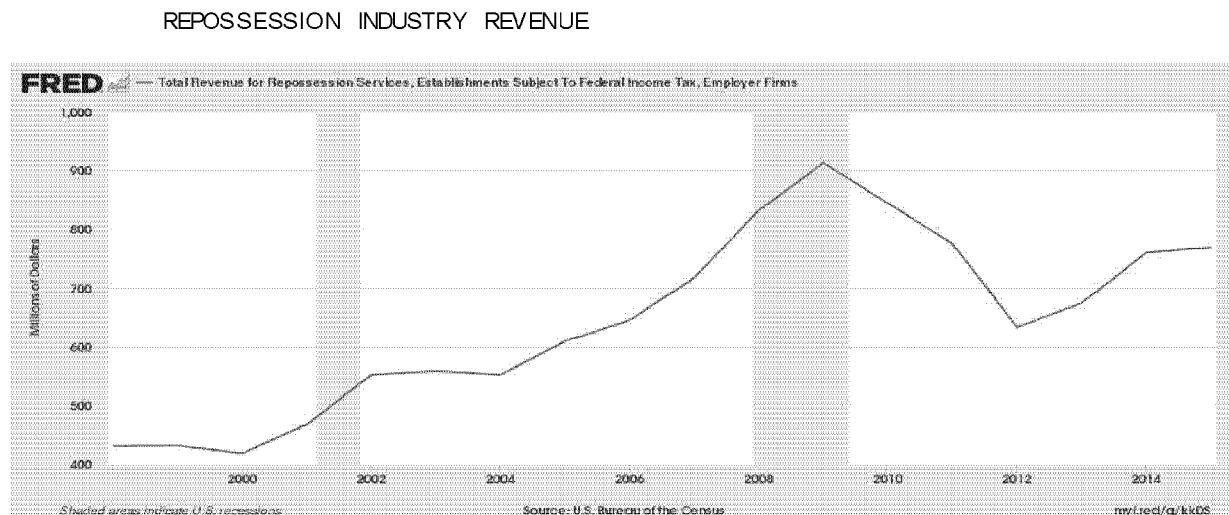
¹⁰ Meeting with MV Trac., in Washington, DC (Jun. 28, 2018)

¹¹ Meeting with MBSi., in Washington, DC (Jan. 22, 2018)

Industry Performance

The repossession industry has generally had a positive revenue trend over the past 20 years (See Figure 3). The industry has generated the sharpest growth during recessionary periods, as shown by the shaded areas. In other words, when consumers have trouble making payments, creditors will more often rely on repossession to recover their collateral.

During periods of economic expansion, the repossession industry also has shown a steady growth rate. The one exception, where revenue declined, occurred between 2009 and 2012, at the tail end of the Great Recession and its aftermath.¹²



More work needs to be done on defining the drivers behind the growth trends in the auto repossession market. Key drivers of industry revenue may include: (1) trends in household debt, (2) delinquency rates on vehicles loans, and (3) the number of outstanding auto loan accounts. These factors could influence industry growth irrespective of larger recessionary or expansion trends in the economy.

¹² Federal Reserve Bank of St. Louis, *Total Revenue for Repossession Services, All Establishments, Employer Firms*, Economic Data (citing US Census Bureau Data), <https://fred.stlouisfed.org/series/REVEF561491ALLEST>

The Process of an Auto Repossession

This section will discuss in detail the process by which a car is repossessed and covers key decision points for both lenders and consumers.

Loan Delinquency and Default

Repossessing a vehicle is the last resort effort that loan servicers employ to collect on debt. Lenders will usually work through various stages of loan delinquency before electing to repossess. Delinquency is a debtor status indicating the lender has not received a timely payment per the terms of the loan agreement. Specifically, borrowers become delinquent on credit when they fail to make at least the minimum payment by the due date stipulated in the contract or fail to meet any other material loan terms. In general, most auto lenders do not take action on delinquency until the consumer is 61 days (three payments) or more delinquent but some may take action at the first instance of delinquency.¹³ Once the loan is classified as in default, loan servicers order repossession of the collateral, and the entire loan balance is due.

The creditors' loss mitigation strategies, their availability, and effects are explained in detail below.

Due-date changes:

One auto loan modification agreement that can be reached between consumers and lending institutions is a due date change. This agreement may alter the due date of the current bill or permanently change the due date for all billing cycles. In most cases, consumers must be current on their debt in order to apply. For example, Wells Fargo's auto loan due date change form

¹³ Delvin Davis, *The State of Lending in America & its Impact on U.S. Households: Auto Loans*, Center for Responsible Lending, (Dec. 2012), <http://www.responsiblelending.org/state-of-lending/reports/4-Auto-Loans.pdf>

states that the consumer must be current on the loan and that only one due date change can be applied to an auto loan account for the term of the loan.¹⁴ These sorts of limitations underscore the importance of consumers taking action prior to becoming delinquent rather than after missing a payment. After delinquency, it may be difficult for the consumer to reach an agreement with the lender.

Loan-term extension:

Another type of loan modification consumers can pursue is a loan term extension. Usually a debtor applies for a loan extension with the lending institution or with a third party loan modification company prior to delinquency. Like due-date changes, lenders usually require debtors to be current on their loans. The purpose of extending the loan term is to lower monthly payments. This costs the consumer more in the long run as the debt accrues more interest but may help the consumer make complete on-time monthly payments. Generally, loan modification applications ask that consumers provide proof of financial hardship and may take weeks to process.¹⁵ As a result, loan modification after delinquency may be very hard and in some cases impossible to obtain.

Refinancing:

An additional option consumers have to prevent repossession is refinancing their auto loan. Refinancing is the method of obtaining a new loan with better terms to pay off another loan. This can be done to shorten the term of the loan or in most cases, extend the term of the loan and lower the interest rate and monthly payments. As this is essentially obtaining a new loan, depending on the consumer's credit profile, this may not be a feasible option for many consumers facing delinquency.

¹⁴ Wells Fargo Dealer Services, *Payment Due Date Change Form*, https://www.wellsfargodealerservices.com/Consumers/RxCMS/PDF/WFDS_Payment%20Due%20Date%20Change%20Form%20-%20Final.pdf (last visited Mar. 20, 2010)

¹⁵ Cars Direct, *Managing Your Auto Loan*, <https://www.carsdirect.com/auto-loans/get-an-auto-loan-extension-in-4-easy-steps> (last visited Jan. 27, 2012)

Transferring equity:

In a transfer of equity, the original debtor transfers the responsibility of the vehicle to another person, who assumes the responsibility of the loan contract. Transfer of equity is done through the lender, and the new customer would need to go through the lender's underwriting process. Of course, vehicle owners can attempt to sell the vehicle to relieve themselves of financial hardship. Once the car is sold and the loan is either paid off or transferred to the next owner, the original consumer becomes free of financial liability.

Voluntary surrender:

If the consumer is unable to sell or transfer the equity of the vehicle, the consumer can voluntarily surrender the vehicle, which is also known as a “voluntarily repossession.” This means the consumer is giving up the vehicle to the lender rather than having the lender generate a repossession order and repossess the vehicle. According to Experian, a voluntary surrender and a repossession hurt the consumer’s credit score equally, as it shows the inability to repay a debt as agreed.¹⁶ Given that a voluntary surrender and a regular repossession hurt credit scores equally, the only benefits of voluntarily surrendering a vehicle are:

1. The consumer’s convenience of knowing when he/she will no longer have a car rather than having it repossessed while at work or at the grocery store;
2. Saving the embarrassment that can be associated with having property repossessed; and
3. Potentially ending the loan contract on better terms with the lender by showing the willingness to relinquish the collateral.

Repossession

Once a lender has that a repossession is required, a lender can send a repossession order to a forwarder or directly to a repossession agency/agent. Regardless of who the lender hires to manage its order, the repossession will be physically executed by a repossession agent.

¹⁶ Experian Information Solutions, *Voluntary Surrender vs. Repossession*, <https://www.experian.com/blogs/ask-experian/difference-between-a-voluntary-surrender-and-repossession/> (last visited Aug. 13, 2013).

Repossession Agents: Overview

The agent's role is to recover the lender's collateral by gaining access to the vehicle in order to hook it on their tow truck, safely transport it, and secure the collateral at a recovery lot. The job can be highly stressful and even dangerous. Recovery agents can recover collateral at any time of day. Typically agents recover assets during non-traditional business hours. Vehicles are recovered in the later hours due to the likelihood the target car would be at the home address and while the customer is asleep, so that they can limit any consumer interaction. For the safety of both the agent and the custodian of the vehicle, agents attempt to have no interaction with the consumer while repossessing. Consumers sometimes resist having vehicles repossessed and an agent-debtor encounter can become a hostile environment putting both people at risk.

Repossession Agents: Training and Certifications

State requirements differ for agents, some requiring licensing and/or registration to operate. The training and type of certification for agents also varies by state. Some states require certification as a repossession agent, and others only require the appropriate licensing to operate a tow truck. CARS, ARA, and Vendor Transparency Solutions (VTS) are the three nationally recognized companies that provide certifications and continuing education to keep repossession agent certifications. Agents affiliated with these national certifiers have to recertify yearly.¹⁷

Forwarding companies' role in repossession

By altering how traditional repossession operations function, forwarding companies may increase the efficiency of repossession. The technology used by forwarders today is quite extensive. Companies like MVTrac have developed sophisticated systems that pair license plate recognition cameras with data tracking software, allowing subscribers to have access to a database full of geographic coordinates and times that vehicles have been identified by the LPR cameras. This technology has been widely adopted by the industry.

¹⁷ Vaughn Clemmons, *email*, (Jul. 27, 2018)

In addition to improving efficiency, technologies used by forwarding companies can also improve compliance and minimize errors. Some provide technology that allows repossession agents to communicate directly with the financial institutions prior to actually executing the repossession. This real-time capacity allows agents to ensure the loan account attached to the asset is still delinquent and notifies the lender once a repossession has been completed.¹⁸ Technological developments like these have improved day-to-day repossession operations.

Other technological advancements, mainly used by ‘Buy Here, Pay Here’ (BHPH) dealerships, have also enhanced the location and recovery aspects of repossession. Dealers can install starter interrupters in vehicles, which disable the ignition mechanism remotely when payments have not been received. Additionally, the dealers can pair the interrupters with Global Positioning System (GPS) transponders, which allow repossession agents to know the exact location of the target vehicle while it is disabled, in turn better insuring a successful repossession. The consumer must agree to have these pieces of technology installed in the vehicle.

Post-Repossession

Once a repossession has been executed, the vehicle typically is delivered to the contractor’s recovery lot. It may remain there from a few hours to a few days while it awaits auction, return to consumer, or delivery to the lender. Repossession agencies try to limit the amount of time repossession assets sit on their lots as the cars take up space for other vehicles and the agent/agency remains liable for any damages to the recovered assets while in their possession. The agencies usually charge storage fees for the days the vehicle is on their lot and may also charge fees for separately storing or inventorying the consumer’s personal items found in the vehicle. These fees are ultimately passed down to the consumer.

If not returned to the consumer, the lender may decide to keep the vehicle as compensation or resell it. If the lender decides to resell the vehicle, it is usually done so via an auction. The remarketing industry (reselling of repossession vehicles) provides essential support for the repossession process. Liquidating the assets via remarketing allows lenders to recover at least a

¹⁸ Meeting with MV Trac., in Washington, DC (Jun 28, 2018)

part of the outstanding loan balance if the consumer is unable to pay the full amount of the loan. The largest automobile wholesale auctioning company in the world is Manheim, which provides various services to its clients including reconditioning of the vehicle, transporting vehicles to and from auctions, asset valuations, and marketing tools to advertise the vehicles.¹⁹

Repossession Regulation

There is significant variability in how states regulate repossession, and some states even have county or parish specific regulations. Regulations typically cover the activities leading up to the repossession, the repossession itself, as well as lender interactions with the debtor post repossession. This section will discuss the various activities in the repossession process that states regulate. Figure 7 below shows the type of law sorted by the stage in the repossession process it falls under.

¹⁹ Manheim, *Services*, (2018), <https://www.manheim.com/>.

FIGURE 7: PREVALENCE OF STATE REPOSSESSION LAWS (INCLUDING WASHINGTON, DC)

| Law Type | Number of States with Law |
|---|---------------------------|
| Activities Prior to Repossession | |
| Repossession agent licensing requirement | 14 |
| Right to cure notice | 4 |
| Physical Repossession | |
| Breach of peace clause | 49 |
| Personal property handling | 19 |
| Post – repossession Activities | |
| Debtor may be liable for deficiency balance | 44 |
| Redemption provisions | 48 |
| Notice of intent to sell | 45 |

Below, we review key areas where state laws vary on the implementation of repossession.

REPOSESSION AGENT LICENSING

Fourteen states require repossession agents obtain a license and register with the state to lawfully operate. These states are: California, Colorado, Florida, and Hawaii, Illinois, Louisiana, Maine, Maryland, Michigan, Nevada, New Mexico, Oregon, Pennsylvania, and Washington, DC. The mechanisms for registration vary. In Washington D.C., Hawaii, Maine, Maryland, Oregon, and Michigan, the repossession business must obtain state licensure as a debt collector. In Louisiana, individual agents must obtain licenses from the State of Louisiana Office of Financial Institutions. In Colorado, the agent must file a surety bond with the Colorado Attorney General. Mississippi has no state licensure, although there are city and county business licensures. The remainder of the states do not have any specific requirements for agents.

RIGHT TO CURE NOTICES:

Eight states—Kansas, Maine, Massachusetts, Minnesota, Missouri, Nebraska, West Virginia, and Wisconsin—have “right to cure notice” laws, which requires lending institutions provide a “heads up” or advance notice to the consumer that a repossession order has been generated and that recovery of the property is intended. These states require notices be sent anywhere from ten to twenty one days before assets can be recovered.²⁰ The other states do not require advance notice be sent to the consumer.

BREACH OF PEACE CLAUSES:

All states except for Colorado and Maryland have “breach of peace” clauses imbedded in their repossession laws. These clauses prevent agents from entering enclosed parking garages, threatening debtors, or using physical force against debtors to recover vehicles.²¹ The clauses protect consumers from wrongful repossession and adherence to the clauses prevent agents from engaging in illegal activities like trespassing, assault, or vandalism.

PERSONAL PROPERTY:

In many instances, the recovered vehicles contain the consumer’s personal property (e.g. car seats, money, or anything else that was not sold as part of the car). Nineteen states address how repossession agents should handle personal property. The remaining states are silent. Maryland requires repossession agents send a certified letter within five days after repossession notifying the owner of possession of their personal property; Indiana requires a certified letter be sent to the debtor listing the personal property recovered and its value; and California requires that the repossession agency notify the debtor within 48 hours after repossession via mail or in person that personal property was found in the recovered vehicle. The other states allow agencies to charge for storing the personal items or for retrieving them from the repossessed vehicle.

²⁰ Kristy Welsh, *Automobile Repossession Laws by State*, Credit Infocenter (Oct. 21, 2017), <https://www.creditinfocenter.com/legal/auto-repossession-laws.shtml>

²¹ American Recovery Association, *State Requirements* (2018), <https://repo.org/member-tools/state-requirements/>

DEFICIENCY BALANCES:

Consumers also face the risk of deficiency balance collections. Lenders operating in the majority of states may be entitled to sue the original debtor for a “deficiency balance,” which is the amount that remains outstanding after the car has already been re-sold. For example, if the car was sold at an auction for \$8,000 but the debtor owed \$10,000, the lender may be able to obtain the deficiency balance of \$2,000 from the consumer.²² This deficiency balance is still owed even though the vehicle has been re-sold and is no longer in the possession of the creditor nor the debtor.

43 states and Washington, DC have laws allowing creditors to hold debtors liable of the deficiency balance after the collateral has been sold. Colorado and California do not allow creditors to hold debtors liable for the deficiency balance if the collateral has been repossessed. Louisiana law does not permit debtors to be held liable for a deficiency balance unless the vehicle was seized via a chattel mortgage foreclosure and sale. Iowa law stipulates that a debtor cannot be held liable for a deficiency balance if the creditor fails to dispose of the repossessed collateral in a “commercially reasonable manner.” In New Mexico, the debtor can only be found liable if the original loan contract outlines this liability.²³ There are many nuances around the terms needed to collect a deficiency balance, nevertheless, the concept of a deficiency balance remains consistent nationally.

REDEMPTION PROVISIONS:

Under a redemption provision, the lender allows the debtor to pay the full balance of the outstanding loan attached to the vehicle in addition to any interest and fees accrued in the repossession process (recovery, storage, or personal property) to obtain full ownership of the vehicle. Redemption provisions vary greatly between states. Arizona, Colorado, Kansas, Maine, Wyoming, Washington, Texas, Tennessee, Oregon, New Hampshire, Montana, Missouri, Mississippi, and Minnesota all have ten day redemption periods. This means that the debtor has ten days to redeem the vehicle after repossession or the lender has no obligation to enter into a redemption agreement with the debtor. Most of the remaining states recognizing redemption provisions have redemption periods ranging from five to twenty one days. A couple of states,

²²See, Federal Trade Commission, *Vehicle Repossession* (Nov. 2008), <https://www.consumer.ftc.gov/articles/0144-vehicle-repossession>.

²³ Id.

namely New Jersey and Indiana, do not tie redemption to a specific number of days. For example, in New Jersey, redemption can occur any time prior to sale but re-sale of the vehicle is mandatory where 50% or more of the purchase price has been paid; re-sale is optional with the buyer where less than 50% has already been paid. In Indiana, redemption is possible as long as the debtor provided a reasonable notice to pay all outstanding amounts owed in full.²⁴ Alaska, Kansas, and Louisiana do not have redemption provisions.²⁵

NOTICE OF INTENT TO SALE:

45 states including Washington, DC mandate that creditors notify the debtor that experienced the vehicle repossession when and where the vehicle is intended to be sold on the secondary market. As discussed previously, this is usually done via an auction. Delaware, Iowa, Kansas, Maine, New Mexico, and North Dakota do not have laws that require lenders to send notifications of the intent to sale to debtors.

²⁴ Confidential Document

²⁵ American Recovery Association, *State Requirements* (2018), <https://repo.org/member-tools/state-requirements/>

Conclusion

Despite a downturn after the Great Recession, the repossession industry has experienced growth since the turn of the century. It has also experienced changes in the way repossession are handled from lender to agent with the emergence of forwarding companies and significant technological innovations. Despite the physical act of a repossession remaining the same, the traditional business model has been remade. Before the emergence of forwarding companies, thousands of agents dealt directly with creditors. Today, thousands of agents deal with a few forwarding companies. Creditors are able to transact with one forwarder to manage the entire repossession process from start to finish rather than transacting with a repossession agency, an auctioning company, and the consumer every step of the way. Furthermore, locating assets has become very streamlined and overall efficacy has increased. The regulations across state lines vary greatly and are inconsistent. Further research is warranted to better understand the consumer risk and harm associated with vehicle repossession.

Market Intelligence

Market Information from RMR Market Offices

Spotlight: Automated Savings Apps

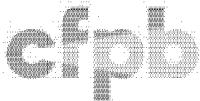
Office of Consumer Credit, Payments, and Deposit Markets | November 2019

Andy Braden

Noah Bream

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

*Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.



Consumer Financial
Protection Bureau

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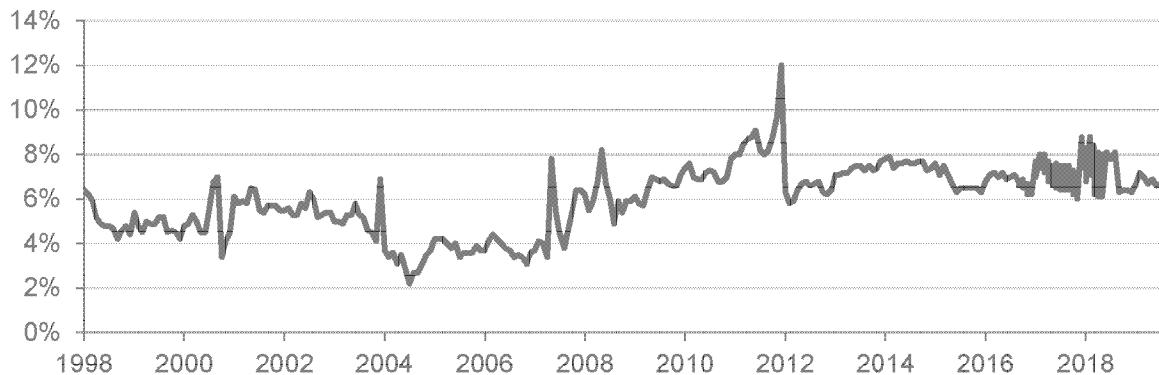
1. Introduction

In recent years, banks and non-banks alike have introduced financial technology products designed to increase consumer savings levels. Collectively, these products employ a variety of approaches to encourage consumers to save more money. This spotlight profiles seven savings apps that automate aspects of saving money on consumers' behalf. To better understand savings apps, we first summarize the state of personal savings in the U.S. We next examine various characteristics of savings apps before profiling individual apps' functionality and reported adoption rates.

2. State of personal savings in the U.S.

There are multiple ways to measure the state of personal savings. A traditional measure is the “savings rate” which measures the percentage of personal income that is not used for consumption or to pay taxes and which thus is available for savings or investments. In the decade leading up to the 2008 financial crisis, the average personal savings rate in the United States was roughly five percent. Since 2008, the average savings rate has hovered near seven percent.¹

FIGURE 1: PERSONAL SAVINGS LEVELS



A second way to measure the state of personal savings is to examine the percentage of households which are currently (e.g., within the prior twelve months) setting aside a portion of their income for savings. A 2017 FDIC - Census survey found that 57.8% of households reported putting aside money that could be used for emergency expenses in the prior twelve months, up from 56.3% two years earlier.² Correlatively, 44% of respondents to a Financial Health Network survey said they are not currently saving either regularly or irregularly.³

¹ FRED, Federal Reserve Bank of St. Louis, *Personal Savings Rate*, (as of October 2nd, 2019), available at <https://fred.stlouisfed.org/series/PSAVERT>. Note: the personal savings rate is defined as “Personal saving as a percentage of disposable personal income (DPI)... Personal saving is equal to personal income less personal outlays and personal taxes.”

² FDIC, *National Survey of Unbanked and Underbanked Households* (October 2018), available at <https://www.fdic.gov/householdsurvey/2017/2017execsumm.pdf>.

³ Center for Financial Services Innovation (CFSI), *U.S. Financial Health Pulse 2018 Baseline Survey Results*, available at <https://finhealthnetwork.org/research/u-s-financial-health-pulse-2018-baseline-survey-results/>. The Financial Health Network was formerly CFSI.

Yet a third way to measure the state of personal savings is to examine the percentage of households with no or minimal savings. The Bureau's Financial Well-Being Survey found that 24% of households report having less than \$250 in liquid savings. Relatedly, last year the Federal Reserve found that 12% of adults would not be able to cover a \$400 emergency expense and that 27% would choose to borrow or sell something to cover such an expense; the combined percentage is down from 49% in 2013.⁴

⁴ Federal Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2017* (May 2017), available at <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

3. Automated savings app characteristics

A number of financial management applications have been created to help consumers save. These savings apps vary in purpose and structure and can be differentiated across a number of dimensions:

- Scope of services
- Provider entities and branding
- Types of automatic savings
- Goal setting and incentives
- Revenue

3.1 Scope of services

A wide universe of digital apps and services exist to assist consumers in managing their personal finances. Many apps' marketing materials list increased savings levels as a primary or secondary outcome of using the product.

Many apps offer personal financial management capabilities that potentially help consumers save by enhancing their understanding of their personal finances. Common examples include spending breakdowns, data visualizations, budgets, and retirement planning. Some apps also offer services that relate less directly to increasing savings, but that serve other personal financial goals, such as managing debt.

This spotlight analyzes savings apps that move funds on behalf of consumers from a transaction account to a savings vehicle. This excludes a number of personal financial management tools that provide insights and information that may help consumers save but do not move funds on behalf of consumers. Note, however, that even within this definition of apps that move funds on behalf of consumers, savings apps vary in the scope of services offered.⁵

⁵ This spotlight largely focuses on the short term savings functionality of the analyzed apps, however, several apps—Acorns and Qapital, for example—also offer investing capabilities and functionality aimed towards longer terms savings goals like retirement.

3.2 Provider entities and branding

Savings apps are offered by both banks and non-banks.⁶ In this section, both categories of savings apps are described; however, with one exception, this spotlight only analyzes apps provided by non-bank third-parties.⁷

3.2.1 Non-bank offered

Non-bank firms offer savings apps that require users to authorize access to an existing “source” transaction account from which they transfer funds, and in many cases, collect account and transaction information to analyze. These savings apps then move funds, generally through ACH network “debit pulls” or across debit card networks, into savings accounts held at bank or credit union partners.⁸ Consumers and the institutions holding their “source” accounts bear some risk if and when consumers share their account credentials.⁹

Some non-banks that offer saving apps also offer transaction accounts and associated services, such as debit card access, and in doing so typically position themselves as banking “disruptors.” These firms often promote the absence of fees and other features that are commonly associated with deposit accounts. The neobank Chime is an example of a non-bank provider that offers savings app functionality in addition to a transaction account and debit card access. Non-banks that offer transaction accounts often connect the savings app or program to those transaction accounts in the same manner that a bank would do so for its own checking account customers.

3.2.2 Bank-offered and branded

Although this spotlight does not, for the most part, profile bank-offered savings apps, some financial institutions offer similar functionality as the non-bank savings apps analyzed below.

Bank-offered savings apps are generally only available to consumers that hold deposit accounts at those institutions. Some banks that offer savings app functionality structure their savings accounts with minimum balance requirements or charge monthly maintenance fees. These pricing practices may motivate some consumers to maintain a balance at or above the balance

⁶ We identified no credit-union-sponsored apps for this spotlight.

⁷ The one exception is Dobot. The app was created by a non-bank in 2015 and acquired by Fifth Third Bank in 2018.

⁸ The transparency about where deposits are held—i.e., how easily a consumer can discern where his or her savings are maintained—varies by app.

⁹ Risks related to credential sharing and third-party data access are core focuses of Bureau work related to data aggregation; this risk analysis and the state of how consumers authorize third-party access to their accounts is beyond the scope of this spotlight.

requirement but may dissuade other more fee-averse consumers with insufficient funds to maintain an account at no cost from partaking in the savings service.

Banks generally make their savings features available through the bank's core digital banking service, and bank programs often offer automated, recurring transfers based on specific events or time periods (the next section discusses types of savings transfers in greater detail).

Accountholders are not defaulted into these savings features and have to take additional steps to enroll. Financial institutions that position their mobile banking channel as a key component of their value proposition, including larger banks and online-only banks, may promote an embedded savings function as a differentiating, competitive feature.

Large banks, such as Bank of America, Wells Fargo, and Capital One, allow savings account depositors to enroll in savings programs.¹⁰ For example, Bank of America's "Keep the Change," introduced in 2005, allows depositors' debit card purchases to be rounded up to the nearest dollar. Since the "Keep the Change" launch, Bank of America reports that over 12 million consumers have enrolled and saved over \$2 billion in aggregate.¹¹ PNC Bank offers an account with automated event-based savings and the ability to set savings goals.¹² In August, KeyBank announced a new savings program that transfers \$1 to a savings account from the consumer's checking account each time a consumer uses a KeyBank debit card.¹³

Some banks create separate brands for their savings apps to distinguish them from their flagship offerings. In some instances, banks have acquired third-party app providers and retained the original app's branding; Fifth Third's purchase of Dobot and Goldman Sach's purchase of Clarity Money are two examples.¹⁴ Generally, banks that offer savings apps under separate branding allow non-depositors of the bank to access the app. This may facilitate the bank to use the app as a customer acquisition tool but also requires the consumer to provide access to their

¹⁰ *Capital One 360 Mobile Banking Features*, (as of October 28th, 2019), available at <https://www.capitalone.com/bank/online-banking/>. *Wells Fargo Way2Save*, (as of October 28th, 2019), available at <https://www.wellsfargo.com/savings-cds/way2save/>. *Bank of America Keep the Change*, (as of October 28th, 2019), available at <https://www.bankofamerica.com/deposits/keep-the-change/>.

¹¹ Bank of America asserts that 99% of program enrollees remain in the program. *Bank of America Helps Customers to "Keep the Change"*, (September 2018), available at <https://thisisdesignthinking.net/2018/09/feeling-in-control-bank-of-america-helps-customers-to-keep-the-change/>.

¹² *PNC Virtual Wallet* (as of October 28th, 2019), available at <https://www.pnc.com/content/pnc-com/en/personal-banking/virtual-wallet-overview.html#>.

¹³ *KeyBank Rolls Out No-fee Overdraft, Debit-linked Savings Accounts*, (August 2019), available at <https://www.americanbanker.com/news/keybank-rolls-out-no-fee-overdraft-debit-linked-savings-accounts?brief=00000158-97c7-d3f4-a9f9-37df9bc10000>.

¹⁴ *Fifth Third Launches Dobot, an App to Help Consumers Achieve Goals*, (February 2019), available at <https://www.53.com/content/fifth-third/en/media-center/press-releases/2019/press-release-2019-01-11.html>. *Marcus by Goldman Sachs Announces Acquisition of Clarity Money*, (April 2018), available at <https://www.businesswire.com/news/home/20180415005101/en/Marcus-Goldman-Sachs%C2%AE-Announces-Acquisition-Clarity-Money>.

“source” account as they would for a non-bank-offered app, even if they are a customer of the bank that owns the app.

3.3 Types of automatic savings

All savings apps analyzed in this spotlight offer automatic savings functionality that transfers consumer funds from a source account to a savings account. Some apps do so on a periodic basis, some do so on the occurrence of a discrete event using a rules-based engine, and some do so on the occurrence of a set of events or conditions identified by using algorithms. Some apps use more than one of those approaches.

Automatic transfers come with some consumer risks. For example, consumers may forget about automatic transfers into a savings account and attempt to draw on funds no longer in their checking accounts. Consumers that do this may incur overdraft fees (in instances in which their checking institution covers their payment attempt) or be precluded from completing attempted payments, and depending upon the type of attempted payment, incur non-sufficient fund (NSF) fees. Similarly, automatic transfers themselves could, without other controls, result directly in an NSF or overdraft. The apps profiled below each attempt to counter these risks, often through notifications and fee reimbursement promises.

Additionally, all the savings apps analyzed in this spotlight also let consumers manually move funds to savings accounts whenever they choose.

3.3.1 Periodic transfers

When using periodic transfer functionality, a consumer sets a rule for a dollar amount to be withdrawn from their source account and deposited into their savings account on a recurring basis and at a designated time interval.¹⁵ Periodic transfers may benefit consumers who generally have sufficient funds in their accounts to make savings contributions but need assistance to maintain diligence to reach their savings goals. Consumers can generally customize the frequency, amount, and associated alerts, among other settings. Some apps that use periodic transfers will analyze users’ checking account balances or transaction patterns to attempt to confirm consumers have sufficient balances before withdrawing funds to move to savings. Savings apps that do not attempt to confirm sufficient balances, or do not attempt to anticipate

¹⁵ All apps reviewed refer to these source transaction accounts as checking accounts. Some of the apps can support a connected savings account but advise against it due to Regulation D transfer limits. Some of the nonbank services include a prepaid account as the associated transaction account; otherwise, the savings apps reviewed generally do not support prepaid accounts as a source account. This may be because some prepaid cards restrict ACH transfers.

future changes to inflows and outflows, raise the risk of the consumer incurring overdraft or NSF fees, either on the periodic transfer itself or on future transfers from the source account.

3.3.2 Event-based transfers

Savings apps utilizing event-based transfer functionality generally do so in one of two ways: per-transaction and per-deposit.

PER-TRANSACTION

When consumers authorize this functionality, the savings app transfers money to the consumer’s savings account each time they make a purchase with their checking account. For example, a per-transaction rule might save a certain percentage of each transaction amount (such as with Acorns, profiled below), might transfer a constant, fixed amount (such as with the service offered by KeyBank), or it might ‘round up’ a consumer’s transaction by saving the difference between a purchase amount and the next highest whole dollar (as with Bank of America’s Keep the Change). Because many of the per-transaction amounts are fractions of the purchase themselves, contributions from these types of apps may be smaller than other transfer types.

PER-DEPOSIT

This type of functionality allows users to set either a percentage or fixed amount of money which the app transfers to the consumer’s savings account each time it identifies an incoming payroll deposit, or in the case of one profiled app, each time it identifies any type of deposit. For example, a user could instruct an app to transfer \$100 to his or her savings account for each payroll deposit credited to his or her checking account.

3.3.3 Algorithmic transfers

Algorithmic transfers analyze transaction patterns and history and make automated decisions about when and how much to save from a consumer’s source account, based at least in part upon a projection of what the consumer can afford to transfer. Apps that use algorithms aim to leverage more sophisticated logic to enable consumers to save within the user’s financial capacity while mitigating the risks associated with periodic or event-based transfers.

However, algorithmic transfers pose their own risks to consumers. The nature of these apps means that funds may be moved at differing intervals and in differing amounts, and consumers may be unable to anticipate funds transfers without advance and timely notifications. App providers tend not to disclose the rules and logic of their algorithms; as a result, consumers may only have limited—and perhaps insufficient—information to evaluate the likelihood that an app

can cause overdrafts or related issues.¹⁶ Further, should the algorithm ever err in its forecast, consumers could unknowingly incur NSF or overdraft fees. Finally, while the apps attempt to estimate a user’s future financial capacity, no app is likely to predict unexpected events that may impact a consumer’s finances, such as the sudden loss of a job or a medical emergency.

3.3.4 Overdraft mitigation efforts

All of the apps analyzed employ measures to mitigate the risks otherwise inherent to automatic transfers. Some apps provide notifications that alert consumers in advance of money movement. Other apps monitor the connected source account balances. When the source account is deemed to be at risk of overdraft, the apps cancel any automated transfers. However, traditional ACH transfers settle two days after origination, and third-party apps may elect to initiate an ACH debit from a consumer’s checking account based upon a balance that is higher than when the debit actually posts to the account. As a result, these apps can still run the risk of overdrawning a consumer’s account or causing the consumer to incur an NSF fee. Several apps acknowledge this risk in their disclosures.

Another way savings apps mitigate risks is through overdraft fee reimbursement “guarantees.” An initial review of app terms and conditions and reimbursement “guarantees” reveals that these assurances can vary, both in coverage and transparency. All analyzed apps that use algorithmic functionality have overdraft policies that offer reimbursements if and only if there is proof the overdraft was caused by an automatic transfer, not a manual transfer by the consumer. No app we studied has a clearly disclosed process to verify the cause of the overdraft; many apps simply request the consumer contact customer support. Some apps that advertise reimbursement still express they are not liable for any overdrafts in their terms and conditions.

3.3.5 Customization

All analyzed apps enable consumers to customize the above types of transfers, such as by setting parameters on frequency, amount, and events (such as by size or type of deposit). Specific flexibility and freedom vary by app and by transfer type—for example, algorithmic transfers generally offer less customization than periodic transfers.

¹⁶ Some apps do provide useful parameters, however, such as projected numbers and aggregate amounts of transfers per month.

3.4 Goal setting and incentives

In addition to offering automatic transfers, the savings apps reviewed for this spotlight also use other tools to encourage savings.

3.4.1 Goal setting

Some savings apps use goal-setting to help consumers save. Specifically, these apps encourage consumers to designate savings targets and specify the purpose for which they are saving—common goals include saving funds for a vacation, a new car, or a rainy-day fund. Consumers can have multiple savings goals. The apps then establish subaccounts for each goal and often provide goal-related images or reminders for motivation. Generally, a user can either use automated or manual savings functionality to save towards their goals.

3.4.2 User rewards and gamification

Some savings apps offer rewards to incentivize users to create an account. Apps frequently reward users through interest rates, currently ranging up to roughly 1.00%.¹⁷

Gamification is a relatively new rewards-based approach to incentivize saving. Gamification applies common features of games, such as points, rewards, and competition, to encourage users to some targeted action. For example, in the savings app Long Game, users earn “coins” based on the amount of money they save. Those coins are then used to play games that can earn users additional savings in prizes. More details on Long Game are presented in the app profiles below.

3.5 Revenue

Savings apps produce revenue in three ways: from consumers, from deposits, and from monetizing their customer relationship. Not all apps attempt to earn revenue from all three channels.

First, some savings apps produce revenue directly from consumers through subscription fees. Subscription fees charged by savings apps typically range from \$1-\$12 per month. Most of the profiled apps that charge subscription fees offer several tiers of bundled services with different

¹⁷ Some recent bank account offers—such as KeyBank and GreenDot—advertise interest rates up to 2.00 or 3.00%, respectively. These high-interest rate offers help banks attract depositors and often also include mobile banking functionality that incorporates some of the features of the savings apps profiled below.

levels of functionality (and thus, the fees are intended to cover services beyond the savings functionality). Just as bank savings account maintenance fees and minimum balance requirements could deter consumers from establishing savings accounts, app subscription fees could deter consumers from establishing relationships with providers that offer useful savings tools.

Second, savings apps produce revenue from consumer deposits. Non-bank app providers, like the ones highlighted below, may have contractual arrangements with their bank partners in which they are paid, based upon some formula, for customers and balances acquired and retained. Deposit customers can provide banks with stable funding to make loans and obtain other investible assets.

Third, for some non-bank app providers that also offer additional services, savings apps may help providers attract and retain customers and further monetize the customer relationship. For example, for app providers that also offer transaction accounts, debit card interchange income could become a source of shared revenue with the partner bank.

None of the apps profiled below report revenues from selling consumer data. However, savings apps offer windows into consumer transaction accounts from which many insights unrelated to savings could be gained—and profited from—a possible consumer risk to continue monitoring.

4. Product case studies

The application characteristics explored above will be used in this section to assess seven savings apps: Digit, Dobot, Chime, Qapital, Acorns, Long Game, and Albert. All of these savings apps are offered by non-banks, except Dobot, which was purchased by Fifth Third Bank in 2018. As noted earlier, this spotlight does not analyze bank-offered and branded savings apps.

The product list highlighted below is not exhaustive. There are more non-bank savings apps that automate fund transfers for users—for example, Tip Yourself, Moneyclouds, and Qoin.¹⁸ However, the below apps highlight the diverse approaches that apps are currently taking.

FIGURE 2: SAVINGS APP SUMMARY¹⁹

| <u>Service</u> | <u>Provider Entity</u> | <u>Focused Exclusively on Savings?</u> | <u>Interest Bearing Savings?</u> | <u>Approach(es)</u> | <u>Disclosed User Fees/Revenue Model²⁰</u> |
|------------------|------------------------|--|----------------------------------|-------------------------------------|---|
| Digit | Third-party | Yes | Yes, 1.00% | Algorithmic, goal-focused | \$2.99/month |
| Dobot | Fifth Third Bank | Yes | No | Algorithmic, goal-focused | Customer and deposit acquisition |
| Chime | Third-party | No | Yes, 0.01% | Event-based | Interchange |
| Qapital | Third-party | No | Yes, 0.10% | Goal-focused, periodic, event-based | \$3, \$6, or \$12/month |
| Acorns | Third-party | No | No | Event-based, periodic | \$1, \$2, or \$3/month |
| Long Game | Third-party | Yes | Yes, 0.10% | Gamification, periodic | Consumer deposits |
| Albert | Third-party | No | Yes, 0.25% or 1.00% | Algorithmic, periodic | >\$4/month |

¹⁸ Other non-bank savings apps include Blast, HoneyFi, and Trim. We will continue to monitor this space for new apps and additional functionality.

¹⁹ All data in the table was accurate as of August 2019.

²⁰ The apps may have other sources of income other than known revenues that are disclosed to the consumer or have been discussed publicly.

4.1 Digit

Digit was founded in 2013 and analyzes a user’s spending patterns, automatically transferring funds on the user’s behalf when the app projects a sufficient balance for doing so. The Digit algorithm assesses the consumer’s checking account balance and recent inflows and outflows to project future credits (deposits) and debits (such as bill payments). The amount that the Digit algorithm deems “safe” is transferred to the customer’s separate Digit account that offers a “1% annual Savings Bonus,” paid quarterly and held at one of Digit’s FDIC-insured bank partners.²¹ Digit also claims to be a “closed-loop system,” implying if it were to go bankrupt, all account balances would be transferred back to a linked account.²²

While Digit employs algorithmic transfers, users do have some control over fund transfers. For example, users have the ability to pause and resume the automatic algorithmic transfers.²³ Users can also set a “safe balance amount” for their connected checking account; if the balance ever falls below that amount, Digit transfers sufficient funds back to the checking account.²⁴ However, Digit states that such transfers from the user’s Digit savings account can take up to 1 business day to settle. As an alternative, Digit offers transfer withdrawals “within minutes” for \$0.99.²⁵ Digit also offers a goal-setting feature and allocates the savings funds transfers to each user-created goal.²⁶ Finally, Digit states it will reimburse up to 2 overdraft fees caused by algorithmic transfers but does not disclose if the 2 instances reset after a given time period.²⁷

²¹ <https://help.digit.co/hc/en-us/articles/203931118-Does-my-Digit-account-earn-interest->.

²² Digit Bankrupt FAQ, (as of August 1st, 2019), *available at* <https://help.digit.co/hc/en-us/articles/203931308-What-happens-to-my-funds-if-Digit-goes-out-of-business->.

²³ <https://help.digit.co/hc/en-us/articles/204033948-How-do-I-pause-unpause-Digit-s-automatic-savings->

²⁴ Digit Bankrupt FAQ, (as of August 1st, 2019), *available at* <https://help.digit.co/hc/en-us/articles/203931308-What-happens-to-my-funds-if-Digit-goes-out-of-business->.

²⁵ *Available at:* <https://help.digit.co/hc/en-us/articles/360028154771-How-can-I-have-my-withdrawal-from-Digit-instantly->.

²⁶ See <https://help.digit.co/hc/en-us/articles/235244107-How-do-I-create-change-cancel-or-withdraw-from-a-Goal->.

²⁷ See <https://help.digit.co/hc/en-us/articles/205360247-I-ve-received-an-overdraft-from-a-Digit-transfer-how-do-I-get-reimbursed-for-this->.

FIGURE 3: DIGIT APP SCREENSHOT²⁸



“Rainy Day” overall fund and other personal goal funds (“Retirement”)

Days remaining until annual Savings Bonus is paid/deposited

\$5 per person referral program

Connected checking account balance

Scope: Savings

Provider: Third-party

Identified Bank Partners: Wells Fargo and Axos Bank (previously branded as BofI Federal Bank)²⁹

Savings Interest Rate: 1.00%

Approach: Algorithmic, goal-focused

Disclosed Fees/Revenue Model: \$5.00/month (recently repriced from \$2.99/month; 30-day free trial available)³⁰

Reported Metrics: Digit reports that the average user has a yearly income of \$50,000 and saves about \$2,500 annually with the product. In February 2018, Digit reported it had helped its users transfer over \$1B into savings.³¹

²⁸ Digit App Image, (as of June 15th, 2019), available at, https://help.digit.co/hc/article_attachments/360001498348/mceclip2.png.

²⁹ This money-saving app never returns the interest its users earn—and it just raised another \$11 million to do it, (May 2015), available at <https://www.businessinsider.com/digit-app-raises-11-million-2015-5>. Digit’s bank partners may have changed since this article was published.

³⁰ See <https://help.digit.co/hc/en-us/articles/216648627-How-much-does-Digit-cost->.

³¹ Digit, with \$1 billion saved, turns its attention to consumer debt, (February 2018), available at, <https://www.fastcompany.com/40533914/digit-with-1-billion-saved-turns-attention-to-consumer-debt>.

4.2 Dobot

Dobot was founded in 2015 and purchased by Fifth Third Bank in 2018. The app is available to any consumer with a domestic deposit account. The accumulated savings through Dobot are held at Fifth Third Bank.³² The app allows users to create multiple savings goals, encouraging users to upload an image for each goal.³³ Customers can also elect to use the app's algorithms to calculate and transfer funds (consumers that do not consent to the algorithmic transfers are still able to use other savings features).³⁴ The Dobot algorithm, once activated by the consumer, determines a “safe” savings amount and transfers this amount regularly into a Dobot non-interest-bearing savings account.³⁵ The amount saved is allocated by the user to his or her various goals. Users can receive text messages from Dobot to review recent transfers and track progress.³⁶ Dobot states it will reimburse overdraft fees caused by Dobot and provides FDIC insurance on deposited savings.³⁷

FIGURE 4: DOBOT APP SCREENSHOTS³⁸



³² See <https://www.thedobotapp.com/terms-of-service>.

³³ See <https://www.thedobotapp.com/faq>.

³⁴ *ibid.*

³⁵ See <https://www.thedobotapp.com/terms-of-service>.

³⁶ See <https://www.thedobotapp.com/faq>.

³⁷ *ibid.*

³⁸ Dobot Screenshot, (as of July 10th, 2019), available at <https://www.thedobotapp.com/>.

Scope: Savings

Provider: Fifth Third Bank

Approach: Algorithmic, goal-focused

Savings Interest Rate: 0.00%

Disclosed Fees/Revenue Model: Free to consumers; Dobot helps Fifth Third to acquire new customers and deposits, both as a feature and by providing insight to externally linked accounts.

Reported Metrics: Dobot had nearly 24,000 users prior to Fifth Third Bank's acquisition. The app was shut down temporarily for maintenance and conversion to Fifth Third's platforms. The app was relaunched in January 2019,³⁹ and Fifth Third reported approximately 4,000 total users in February 2019, most of which were Fifth Third employees.⁴⁰

4.3 Chime

Chime was founded in 2013 and offers a transaction account with a Visa debit card that generates interchange revenues for Chime and its bank partner.⁴¹ Chime offers event-based transfers that allow users to move funds into a savings account that receives 0.01% interest.⁴² Deposits for both the transaction and savings accounts are held at Bancorp Bank.⁴³ Chime accounts also support mobile check deposit and enables users to set up, within Chime, recurring electronic transfers to the user's Chime transaction account from a list of 13 bank and credit unions.⁴⁴ The app further offers users the ability to save by rounding up (and transferring the rounded up portion of) payment transactions using Chime's debit card as well as by transferring funds to their Chime savings account upon direct deposit.⁴⁵ The app also offers expedited funds availability for direct deposits into the Chime transaction account and transaction notifications. Consumers that use a Chime debit card receive instant notifications after each transaction.

³⁹ *Fifth Third Launches Dobot, an App to Help Consumers Achieve Goals*, (February 2019), available at <https://www.53.com/content/fifth-third/en/media-center/press-releases/2019/press-release-2019-01-11.html>.

⁴⁰ *The app that stashes savings in a 'money jail'*, February 2019, available at <https://www.americanbanker.com/news/the-app-that-stashes-savings-in-a-money-jail>.

⁴¹ See <https://www.chimebank.com/faq/>.

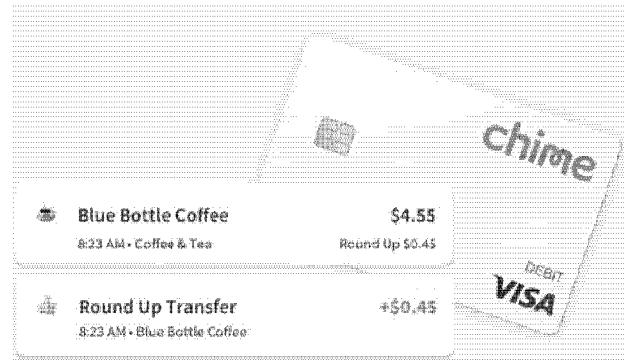
⁴² See <https://chime.zendesk.com/hc/en-us/articles/221487887-What-do-I-need-to-know-about-the-Chime-Savings-Account->.

⁴³ See <https://chime.zendesk.com/hc/en-us/articles/223176968-How-do-I-deposit-money-into-my-account->.

⁴⁴ *ibid.*

⁴⁵ See <https://www.chimebank.com/2019/03/15/chimes-automatic-savings-features/>.

FIGURE 5: CHIME ROUND UP SAVINGS AND DEBIT CARD⁴⁶



Scope: Savings, checking account, debit card, and other transaction services

Provider: Third-party

Identified Bank Partner: Bancorp Bank

Savings Interest Rate: 0.01%

Approach: Event-based

Disclosed Fees/ Revenue Model: Chime earns a share of debit card interchange from the associated spending account

Reported Metrics: Valued at \$1.5 billion as of 2019, with over 5 million accounts.⁴⁷ Industry commenters have noted that accounts are not the same as customers, and many accounts may be unfunded.⁴⁸

4.4 Qapital

Qapital was founded in 2012 and offers savings, checking, and investment products as well as personal financial management tools. An outside bank account is required to fund a Qapital savings account.⁴⁹ Qapital enables instant transfers between Qapital savings and checking accounts. Qapital offers extensive customization for periodic and event-based transfers; its “If This Then That” feature allows users to make creative “rules” which trigger savings from the

⁴⁶ Chime Screenshots, (as of June 11th, 2019), available at, <https://www.chimebank.com/automatic-savings/>.

⁴⁷ Branchless bank Chime adds another million customers this summer, September 2019, available at <https://www.cnbc.com/2019/09/04/branchless-bank-chime-adds-another-million-customers-this-summer.html>.

⁴⁸ The warning signs ahead for Chime, September 2019, available at <https://www.forbes.com/sites/ronshaylin/2019/09/15/the-warning-signs-ahead-for-chime/#3ecf59c02f04>.

⁴⁹ <https://support.qapital.com/hc/en-us/articles/360011963674-Opening-a-Qapital-Goals-Account>. Qapital checking account funding requirements are less clear.

linked funding account. The “Payday Divvy” feature prompts users to address their needs until their next deposit and then allocates the deposit to those various goals and needs.⁵⁰ A “Spending Sweet Spot” feature monitors Qapital debit card spending patterns on a Qapital checking account to help users track amounts spent on various goods.⁵¹ Qapital has an overdraft “fail-safe” feature that rejects transfers to a Qapital savings account if the underlying source account has less than \$100. However, the company warns that given the speed of ACH transfers, the “fail safe” feature doesn’t work 100% of the time and users can still overdraft.⁵² The app doesn’t advertise any overdraft fee reimbursement if the “fail-safe” does not work. Qapital is FDIC-insured through Lincoln Savings Bank and potentially other bank partners (see below).

FIGURE 6: QAPITAL APP SCREENSHOTS⁵³



(Left to right: optimal monthly spending, investment tracking, goal and account balances).

Scope: Savings, transaction account, and investment services

Provider: Third-party

Identified Bank Partners: Lincoln Saving Bank; possibly others⁵⁴

⁵⁰ <https://support.qapital.com/hc/en-us/articles/360011970594-Payday-Divvy>.

⁵¹ <https://support.qapital.com/hc/en-us/articles/360011970674-Spending-Sweet-Spot->

⁵²Qapital Fail Safe and Overdrafts. (December 2018), available at <https://support.qapital.com/hc/en-us/articles/360012066613-Fail-safe-and-Overdrafts>.

⁵³ Qapital Screenshots, (as of June 21th, 2019), available at <https://www.qapital.com/>.

⁵⁴ See <https://www.qapital.com/terms/>.

Savings Interest Rate: 0.10%

Approach: Goal-focused, periodic, event-based

Disclosed Fees/Revenue Model: Three tiers of service: \$3/month for “Basic”, \$6/month for “Complete”, \$12/month for “Master.” The Basic tier features include goal setting, the ability to configure rules to trigger savings transfers, and FDIC insurance. The Complete tier includes all of the Basic level features plus access to a transaction account with a Visa debit card, Payday Divvy, Spending Sweet Spot, and market investment options. The Master tier features include all Complete features and services plus access to Qapital webinars and first looks at new app features.⁵⁵

Reported Metrics: 1.3 million users as of December 2018.⁵⁶ Qapital claims to save users an average of \$5,000 annually for “Master” account users.⁵⁷

4.5 Acorns

Acorns, founded in 2012, helps consumers set aside funds through event-based and periodic transfers. Unlike some savings apps, Acorns users fund investment accounts rather than savings accounts. Acorns is a member of the Securities Investor Protection Corporation (SIPC)⁵⁸ and provides investment users five portfolio types with risk profiles ranging from conservative to moderate.⁵⁹ Acorns also aims to educate investors through its blog which explains various investment-related terms.⁶⁰

Acorns does offer an associated transaction account. Deposit balances are held at Acorns’ partner bank, Lincoln Savings Bank.⁶¹ Acorns transaction accounts include typical checking services and debit card access.⁶² Acorns uses an event-based service called “Found Money” to transfer a percentage of each purchase made at 200+ prominent merchant partners into an Acorns

⁵⁵ See <https://www.qapital.com/pricing/>.

⁵⁶ *Facing consumers’ fears: How fintechs target money anxiety*, December 2018, available at <https://www.americanbanker.com/news/how-qapital-moneylion-titan-target-consumers-money-anxiety>.

⁵⁷ *Qapital Pricing and Account Levels*, (as of July 17, 2019), available at <https://www.qapital.com/pricing/>.

⁵⁸ See <https://www.acorns.com/support/is-my-account-sipc-insured/>.

⁵⁹ See <https://www.acorns.com/invest/>.

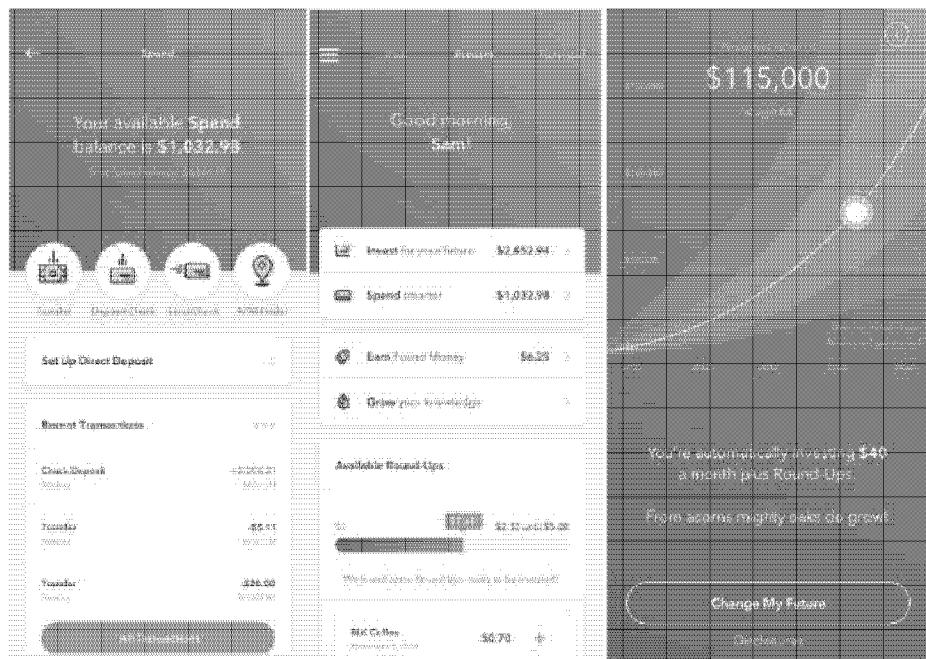
⁶⁰ See <https://grow.acorns.com/>.

⁶¹ See <https://www.acorns.com/support/spend/what-is-my-actual-bank-as-an-acorns-spend-customer-/>.

⁶² See <https://www.acorns.com/spend/>.

investment account.⁶³ The percent invested varies by merchant and can take 30 to 120 days to transfer and appear.⁶⁴

FIGURE 7: ACORNS APP SCREENSHOTS⁶⁵



(Left to right: Acorns Spend, Present home options, projected balance growth)

Scope: Savings (via an investment account) and transaction account services

Provider: Third-party

Identified Bank Partner: Lincoln Savings Bank

Savings Interest Rate: N/A; fund transfers held in investment accounts

Approach: Event-based, periodic

Disclosed Fees/Revenue Model: Three tier subscription structure; \$1/month for “Core”, \$2/month for “Core + Later”, and \$3/month for “Core + Later + Spend.” “Core” user features include per-transaction transfers, portfolio investment options, Found Money, access to Acorn’s customer magazine, and customer service. The “Core+Later” tier also includes IRA’s, automatic updates in investments to align with user goals, periodic transfers, and assisted rollover of

⁶³ See <https://www.acorns.com/earn/foundmoney/>.

⁶⁴ *ibid.*

⁶⁵ Acorns App Screenshots, (as of August 1st, 2019), available at <https://www.acorns.com/press/>.

existing IRA and 401(k) accounts to Acorns. Lastly, the “Core+Later+Spend” tier also includes a “Spend” checking account with a debit card, direct deposit, ATM access and host fee reimbursement, mobile deposit, overdraft protection, and the like.⁶⁶

Reported Metrics: Acorns reports that its average user is 32 years old, has an income of \$50,000-\$60,000, and invests \$50-\$60 per month into their core Acorns account. Acorns claimed to have 4.5 million users as of January 2019.⁶⁷

4.6 Long game

Founded in 2015, Long Game uses rewards and gamification to encourage consumers to save, awarding users “coins” based on their savings level and enabling those rewards to be used to play games with chances to win cash, cryptocurrency, or more coins. Long Game also offers a savings account that earns 0.10% interest.⁶⁸

To use the app, a consumer needs to connect an outside bank account to fund his or her Long Game savings account. Once an outside account is connected, customers can set up an event-based AutoSave feature that transfers funds to Long Game on a user specified time interval.⁶⁹ Customers can transfer money from their Long Game savings accounts back to their connected bank accounts at any time. Long Game savings accounts are held with their partner bank, Blue Ridge Bank.⁷⁰

The app’s gamification functionality resembles a lottery, encouraging consumers to play frequently to unlock new levels, rewards, and additional games.⁷¹ While Long Game reports low odds of winning prizes—e.g., 1:108,228 to win \$100⁷²—consumers neither pay fees nor risk

⁶⁶See <https://www.acorns.com/pricing/>.

⁶⁷*Fintech start-up Acorns valued at \$860 million after latest funding round*, January 2019, available at <https://www.cnbc.com/2019/01/28/fintech-start-up-acorns-valued-at-860-million-after-latest-funding-round.html>.

⁶⁸ See <https://www.longgame.co/about/>.

⁶⁹ See <https://longgame.zendesk.com/hc/en-us/articles/115005575508-How-do-I-setup-AutoSave->.

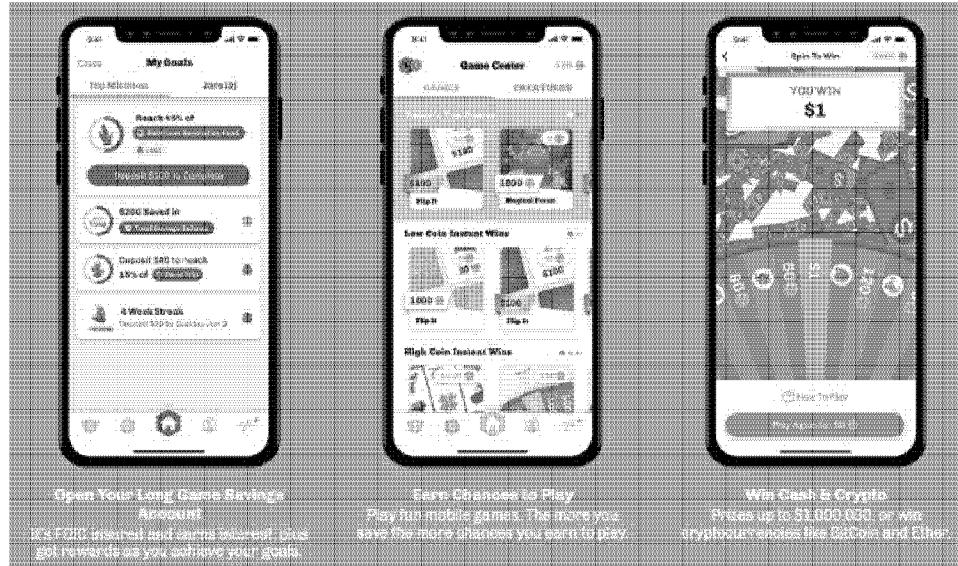
⁷⁰ See <https://longgame.zendesk.com/hc/en-us/articles/115002791748-Where-is-my-money-held->.

⁷¹ *ibid.*

⁷² *Long Game Disclosed Odds and Sweepstakes*, (as of August 9th, 2019), available at <https://www.longgame.co/terms-conditions/numbers-game-promotion-rules/>.

savings to play. Customers can win up to \$1,000,000 cash and up to one Bitcoin (BTC) or Ethereum (ETH) cryptocurrency coin.⁷³

FIGURE 8: LONG GAME SCREENSHOT⁷⁴



Scope: Savings

Provider: Third-party

Identified Bank Partner: Blue Ridge Bank (uses Dwolla's ACH APIs to initiate transfers)⁷⁵

Savings Interest Rate: 0.10%

Approach: Gamification, periodic

Disclosed Fees/Revenue Model: Blue Ridge Bank pays Long Game a referral fee for opening new savings accounts⁷⁶ and a percentage of deposits held from Long Game's users' accounts.⁷⁷

Reported Metrics: As of June 2019, Long Game reports it has given out over \$100,000 in prizes to over 200,000 users⁷⁸

⁷³ id

⁷⁴ Long Game Screenshots, (as of July 10th, 2019), available at <https://www.longgame.co/>.

⁷⁵ <https://www.longgame.co/terms-conditions/>

⁷⁶ How Long Game Creates Revenue, (as of July 10th, 2019), available at <https://www.longgame.co/about/>.

⁷⁷ <https://longgame.zendesk.com/hc/en-us/articles/115002791988-How-does-Long-Game-work->

⁷⁸ Forbes, *Gamify Your Finances: Three Apps That Make Personal Finance A Game*, June 2019, available at <https://www.forbes.com/advisor/kstoller/2019/06/26/gamify-your-finances-three-apps-that-make-personal-finance-a-game/>.

4.7 Albert

Albert, founded in 2015, offers a savings account with algorithmic and periodic transfer functionality in addition to personal financial management tools. Users must connect a funding account to Albert—the app uses the data aggregator Plaid to do so.⁷⁹ There are two tiers of services. The free tier offers periodic transfer functionality and simple personal financial management tools. The subscription tier—Albert Genius—also offers algorithmic transfers (which users can pause and resume) and the ability to customize periodic transfers.⁸⁰ Albert Genius offers a personalized financial plan for each user and employs live analysts that engage in text conversations about personal finance questions. Albert’s savings account interest rate for Genius users is 1.00% and 0.25% for standard users.⁸¹ Deposits are held by outside banks partnered with Albert. Albert also offers investment services.

FIGURE 9: ALBERT GENIUS SCREENSHOT⁸² & ALBERT ALERT SCREENSHOT⁸³



⁷⁹ See <https://help.albert.com/hc/en-us/articles/222694168-I-can-t-find-my-financial-institution>.

⁸⁰ See <https://help.albert.com/hc/en-us/articles/115000823027-Can-I-set-a-fixed-amount-to-save->.

⁸¹ See <https://help.albert.com/hc/en-us/articles/223174048-How-much-does-Savings-pay-in-bonuses->.

⁸² Albert Screenshots, (as of July 10th, 2019), available at <https://albert.com/>.

⁸³ *ibid.*

Scope: Savings and investments

Provider: Third-party

Identified Bank Partner: Wells Fargo (per third-party reporting)⁸⁴

Savings Interest Rates: 1.00% (Genius) or 0.25% (standard account)

Approach: Algorithmic, periodic

Disclosed Fees/Revenue Model: While Albert's offers free functionality, Albert Genius starts at \$4/month Albert encourages users to pay more if they are able and reports that most users pay \$6 per month or more.⁸⁵ The first month of Genius is free.

Reported Metrics: N/A

⁸⁴ *Albert*, available at <http://finlab.finhealthnetwork.com/challenges/2016/albert/>.

⁸⁵ *Albert Genius Cost Information*, (as of July 10th, 2019), available at <https://help.albert.com/hc/en-us/articles/115002408633-How-much-does-Genius-cost->.

5. Conclusion

The proliferation of savings apps, and their potential to help consumers, is promising. Non-bank-offered savings apps may help push depository institutions to offer similar services and make savings accounts more accessible. Additionally, many of the aforementioned apps and companies are growing, successfully raising money, and/or being acquired by larger institutions.

However, it remains unclear as to how effectively any savings app can solve the challenges that consumers face in establishing and maintaining savings. The profiles of consumers that use savings apps is largely unknown. Moving forward, it would be helpful to understand the extent to which the consumers that use savings apps reflect the profiles of consumers that have lower savings levels.

In the meantime, we will continue to monitor this competitive space for new apps and enhancements or modifications to those profiled and welcome inquiries for further analysis.

November 2018

Market Intelligence

Market Information from RMR Market Offices

Spotlight: Dynamic Disclosure

Office of Card, Deposits, and Payments Markets | October 2018

Max Bentovim
Austin Mueller
Michael Thompson

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*



Introduction

This spotlight provides a general overview of the concept of “dynamic disclosure.”

It has three sections:

- First, it reviews the general concept of dynamic disclosure, broadly understood to mean disclosure that responds to the input of data about consumers;
- Second, it provides some examples of dynamic disclosure in use in consumer finance markets today; and
- Third, it briefly assesses potential upsides and risks associated with current and future trends in the development of dynamic disclosure.

What is dynamic disclosure?

In much of the Bureau’s work, “disclosure” means *mandatory* disclosure. In part because a number of interesting developments in dynamic disclosure are occurring outside of the context of mandatory disclosure, however, this spotlight views disclosures as a broad category that encompasses both regulatory mandates as well as a much wider universe of “statement[s] that provide[] relevant information to consumers for informed decision-making.”¹ Within consumer financial services, non-mandatory disclosures such as online banking interfaces’ disclosure of transaction history and available balance, are increasingly common and the information that they provide integral to the way many consumers manage their accounts.²

Academic literature on consumer disclosures has *not* established a consensus definition for static versus dynamic disclosure. The most widely-cited academic treatment of static and dynamic disclosure in the consumer context is by Richard Craswell. Craswell describes static disclosure as being intended “to improve consumers’ choice from among the set of products ... already available on the market,” and dynamic disclosure as aiming “to improve the range of products from which consumers must choose, by sharpening sellers’ incentives to improve the quality of their products.”³

¹ Angela A. Hung, Min Gong, and Jeremy Burke. *Effective Disclosures in Financial Decisionmaking*. RAND Corporation, 2015, available at <http://www.jstor.org/stable/10.7249/j.ctt19w7296>. Disclosures can be relatively complex—like account opening disclosures for checking accounts—or relatively simple—like nutrition facts on a cereal box. Some may not even seem like disclosures, like a car’s “low fuel” notification or the “gluten-free” label on a restaurant menu. No matter the medium, however, all these disclosures pass along information to consumers to inform decisions.

² More than 70 percent of respondents to the Federal Reserve Board’s study of mobile financial services reported using online banking and 38 percent reported using mobile banking in the last 12 months. See Federal Reserve Board, *Consumers and Mobile Financial Services 2016* (Mar. 2016).

³ See Richard Craswell, *Static versus Dynamic Disclosures, and How Not to Judge Their Success or Failure*, 88 Wash. L. Rev. 333 (2013) at 333. Craswell’s distinction is cited by, *inter alia*, Talia B. Gillis,

In our view, however, Craswell's treatment does not align with broader—but less systematically defined—use of the terms by a range of consumer disclosure stakeholders, including regulatory practitioners. We see at least two general strands in that broader use: first, disclosures are dynamic to the extent that they reflect *personalized* information; second, disclosures are dynamic to the extent that they present information *interactively*.⁴ These same two strands are also evident in recent industry responses to the Bureau's Call For Evidence.⁵

In line with both strands of stakeholder usage—personalized and interactive—this spotlight defines dynamic disclosures as those that reflect consumer attributes of some kind, such as consumer behavior or consumer disclosure choice. As we discuss further below, a consumer's interactive choice about disclosure can be one such consumer attribute, but it is not the only consumer attribute that can underlie a dynamic disclosure.

In contrast, the spotlight defines *static* disclosures as those that do not vary according to such consumer attributes. In consumer finance markets, purely static disclosures tend to vary only by product attributes—particularly cost attributes.

Putting Disclosure to the Test: Toward Better Evidence-Based Policy, 28 Loyola Consumer L. Rev. 31 (2015).

⁴ For examples of practitioner and academic commentary illustrating one or both of these general strands, see, e.g., Jeanne Hogarth & Ellen Merry, *Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing*, 97 Fed. Res. Bull. 3 (2011) (describing online disclosures as potentially interactive and therefore dynamic); John Finneran (Capital One), Testimony to House Financial Services Committee (June 7, 2007) (noting Capital One's use of dynamic disclosures triggered by specific consumer behavior such as late payment of credit card bills), available at archives-financialservices.house.gov/hearing110/htfinneran060707.pdf; Notice of Proposed Rulemaking, Amendments to Rules Concerning Prepaid Accounts (describing proposed short form disclosure as having dynamic and static fee disclosures) available at http://files.consumerfinance.gov/f/documents/20170615_cfpb_NPRM_Prepaid-Accounts-Amendments.pdf; Jeremiah Buckley, *How CFPB Can Turn Restrictive Mortgage Rule Into A Win For All*, American Banker (2012) (“using the power of advanced financial technology that is available now, it is possible to supplement standard static disclosures with dynamically presented empirical data and calculations based on a consumer's personal financial profile”) available at <https://www.americanbanker.com/opinion/how-cfpb-can-turn-restrictive-mortgage-rule-into-a-win-for-all/>; Edmund Mierzwinski, *Policy recommendations of U.S. PIRG to Address Abusive Credit Card Practices* (2005) (describing a personalized minimum payment warning as dynamic because “it would tell consumers how many actual years it would take to payoff their specific credit card, at their current balance and interest rate.”); Christoph Busch, *Implementing Personalized Law: Personalized Disclosures in Consumer Law and Privacy Law* (forthcoming Chi. L. Rev. 2018) (“Whether personalized information is really more useful than standardized disclosures very much depends on the quality of the data that is used for profiling and the algorithm used for generating personalized disclosures...In order to avoid such errors, personalized disclosure should be conceived as a dynamic and ‘learning’ system in the sense that the content of the information can change over time. In such a dynamic system the relevance of the information can continuously be improved.”)

⁵ See, e.g., Visa Letter (June 19, 2018) at 4 & n.12 (recommending that disclosures become more personalized and interactive); ABA Letter (June 22, 2018) at 4-8 (noting the potential for electronic disclosures to become more tailored and interactive).

To illustrate this basic distinction, consider two different approaches to minimum payment warnings on credit card statements.⁶ Prior to the passage of the CARD Act, the Board of Governors of the Federal Reserve System (the “Board”) tested a proposal to disclose on monthly billing statements how long it would take a credit cardholder to repay a balance of \$1,000 at 17 percent APR, making only minimum payments.⁷ (The answer is about seven years.) This purely static disclosure would not have varied across consumers or by consumer behavior. In contrast, the CARD Act requires issuers to disclose on statements how long a consumer would have to make minimum payments in order to pay his or her *actual balance* on the account. The CARD Act disclosure is dynamic because it varies according to a consumer attribute—in this case, the consumer’s statement balance, which varies over time according to the consumer’s behavior.

As the next section illustrates, a wide range of consumer attributes can be used to make disclosures dynamic. In some cases, the consumer’s individualized use of the product triggers particular disclosures that other consumers may not get because they use the product differently. In other cases, the relevant attribute is the consumer’s selection—such as by interacting with a disclosure using a slider or hovering over a key term, or by providing instructions for what kind of disclosure to receive and when. Disclosures based on non-individualized consumer attributes—such as all consumers’ use of the product—can also be seen as dynamic.⁸ Of course, more than one of these forms of dynamism may be reflected in any particular disclosure. In addition, as we explore further below, consumer attributes can be connected, dynamically, to different dimensions of a disclosure—such as content, delivery form, and timing.⁹

Understood in this way, dynamic disclosure is not new. In the consumer finance area specifically, mandatory disclosures already make extensive use of dynamic components. Monthly checking account or credit card statements, for example, are inherently dynamic because their content varies according to how the consumer used the product in question.¹⁰ Even longstanding account opening disclosures that are mostly static have some dynamic elements to the extent that the price changes depends on a consumer’s particular level of credit risk. Direct mail and other marketing campaigns have long made use of credit risk and other elements to vary offers across different tiers.

⁶ See www.federalreserve.gov/pubs/bulletin/2011/articles/DesigningDisclosures/default.htm.

⁷ The Board’s proposal would have implemented the 2005 Credit Card Minimum Payment Warning Act.

⁸ As explained in the next section, the Bureau’s short-form prepaid disclosure is dynamic in this sense.

⁹ The Bureau’s Office of Research has identified three core dimensions that bear on a disclosure’s efficacy: “the information that is provided in the disclosure (its content); the way in which that information is presented, such as the format of the disclosure and its channel of delivery (its form); and the features of the environment in which consumers interact with the disclosure and the timing of its receipt (its context).” Heidi Johnson and Jesse Leary, *Policy Watch: Research Priorities on Disclosure at the Consumer Financial Protection Bureau*, 36 J. Pub. Pol. & Mktg. 184, 187 (Spring 2017).

¹⁰ Maintaining, updating, and producing individualized account records is one of the core functions of banking. In contrast to servicing disclosures, mandatory origination disclosures have tended to be much more static, although specific price terms may vary according to specific consumer attributes.

The scope of dynamic disclosures, however, has significantly expanded. Companies now have more information about consumer attributes, more computer power and expertise to process that information, and more ability to effect timely delivery of potentially-valuable disclosures based on that information to consumers. In particular, they can engage consumers interactively, which gives consumers more ability to shape disclosures in ways that respond to consumer preference. Consumers, in turn, carry handheld computers—smartphones and tablets—that can receive and, via interactivity, generate dynamic disclosures.

Examples of dynamic disclosure

Dynamic disclosures can be categorized in several ways. Below we lay out one possible way of categorizing current forms of dynamic disclosure, illustrating each category with recent examples. Our categories revolve around the kind of consumer attributes on which dynamic disclosures can be based: the consumer’s product use; the consumer’s interactive choice of a certain disclosure or disclosure timing; the overall use of the product by consumers generally; or the consumer’s delegation of disclosure choice to third parties. Not all our categories are mutually exclusive.

We recognize that numerous different typologies could be offered here. The categorization and examples that we use below are primarily intended to illustrate how newer forms of dynamic disclosure leverage enhanced data availability, delivery platforms, and providers’ ability to respond to consumer preferences about disclosure.

Consumer-specific product use

One common form of dynamic disclosure provides consumers with additional information based on their individual product use or predicted product use. Often this form of dynamic disclosure alerts consumers to events that, if unaddressed, could be costly to the consumer or, in some cases, the provider. As noted above, this is a longstanding form of dynamic disclosure, even as the newer examples cited below show an expanding range for disclosures enabled by this form of dynamism.

- Many card providers alert consumers via text message or other digital means whenever the relevant card product is used in a “card not present” (or “CNP”) transaction. Following the introduction of chip cards in the U.S., CNP fraud has expanded significantly. A common industry response has been increased real or near-time disclosure, often via text messaging, to the consumer of CNP transactions on the account. If the consumer sees a CNP transaction that they do not immediately recognize, the disclosure generally prompts the consumer to alert the provider, sometimes using a low-transaction-cost digital response. In this way, dynamic disclosure to the consumer is used to control fraud costs to the provider and thus to consumers generally.
- Capital One has experimented with alerting consumers when tipping at a bar or restaurant exceeds 30% of the purchase price, in case the wait staff was less than honest after the check

was signed. As suggested by the user screenshot below, many consumers might not think twice about a \$14 dinner tab that appeared on the statement as \$19, but the automatic alert helps consumers to spot the potential overcharge and take action to resolve it. (The screenshot also shows that Capital One solicited direct digital feedback on the use of this disclosure—more on that later.)

Figure 1: Capital One tip alert mobile screenshot



- In the wake of a 2014 Bureau bulletin on credit card promotion disclosure, several issuers revised their balance transfer practices so that a revolved balance transfer balance no longer ends a consumer’s grace period on new purchases.¹¹ At least one of those issuers has also rolled out a new statement disclosure for consumers with outstanding balance transfer balances, which flags the consumer how much he or she needs to pay that month to maintain a grace period on new purchases.¹² Like the CARD Act minimum payment disclosure, this disclosure is dynamically based on the consumer’s specific balance—in this case, the consumer’s promotional balance transfer balance.
- The fintech app Dave analyzes a consumer’s income and expense history, as reflected in checking account data, to alert the consumer when they might be likely to overdraft, potentially enabling them to take action to avoid the overdraft.¹³ Competitor Cinch provides

¹¹ See https://files.consumerfinance.gov/f/201409_cfpb_bulletin_marketing-credit-card-promotional-apr-offers.pdf.

¹² Prior to implementing this change in practice, these issuers followed what remains the predominant market practice of outstanding balance transfer balances ending the consumer’s grace period. Under that practice, a transactor who takes a balance transfer and does not immediately pay off that transferred balance in full will start to incur interest charges on new purchases from the date of purchase. If the consumer had been covered by a grace period, such charges on new purchases may represent the first time the consumer incurs interest on the account. See https://files.consumerfinance.gov/f/201409_cfpb_bulletin_marketing-credit-card-promotional-apr-offers.pdf.

¹³ See <https://www.dave.com/>.

well-timed disclosures in much the same manner, but instead looks for patterns or opportunities for consumers to save money.¹⁴

- An example outside of consumer financial services shows the extent to which technological advances and new consumer data enables consumers to be alerted of important and time-sensitive information. Driver warning systems in many cars are able to learn normal driver behavior and thereby detect when drivers may be drowsy. On that basis, they send alerts to the driver to take a break.

General consumer product use

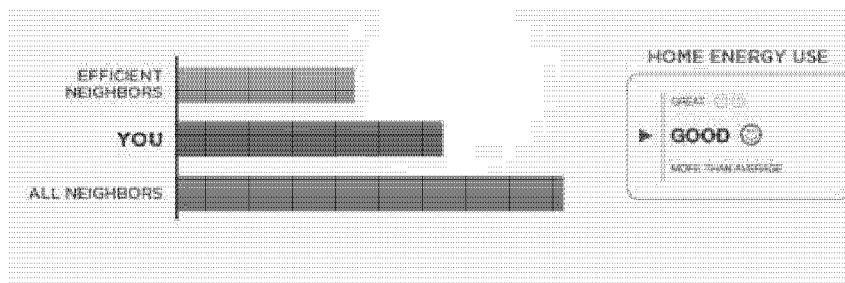
Other examples of dynamic disclosure leverage information gleaned from observing consumers more generally.

- Based on mandatory compliance with the Bureau's prepaid rule, prepaid cards will soon disclose fees dynamically based on how much consumers, overall, pay for them. In addition to some static fees, companies are now also required to list out the two fees that produce the most revenue for them, as mandated by the Bureau's final rule.¹⁵ In this way, these disclosures do not try to predict which fees a particular consumer is likely to incur. Instead, they focus on which fees are most costly to consumers overall.

In some instances, disclosures may be based on a comparison between individual and general consumer attributes.

- One example shows up on electric energy bills. Many utilities employ a graphic (like the one below) in each electric bill that compares a specific consumer's energy consumption with that of his or her neighbors. The disclosure is intended to encourage consumers to be more mindful of their energy consumption.

Figure 3: Opower electric energy consumption comparison example mailer



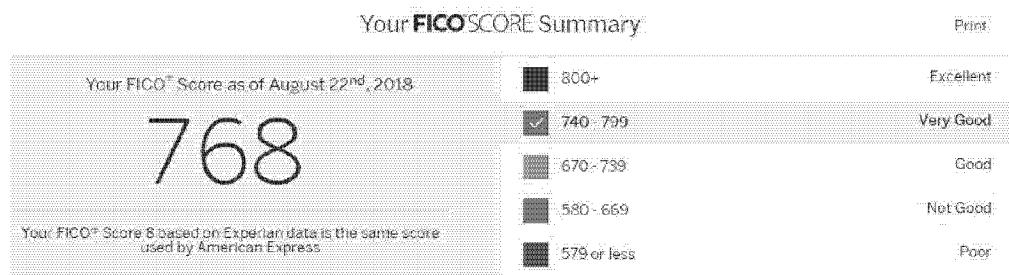
- There are related examples in the consumer financial space as well. A number of products—particularly credit cards—now offer to disclose the consumer's credit score together with

¹⁴ See <https://cinchfinancial.com/>.

¹⁵ The Bureau specifically described this as a “dynamic disclosure” in the accompanying administrative record. 83 Fed. Reg. 6364, 6375 (Fed. 13, 2018).

some qualitative assessment (“excellent” or “good”) showing how the score compares to the creditworthiness of other consumers. One example is shown below.

Figure 4: Screenshot of American Express disclosure of FICO score



Consumer disclosure choice

Another kind of dynamic disclosure involves a two-step process whereby consumers first select the kind of information they want to see and then the disclosures they receive are tailored accordingly. This is a fast-developing form of dynamic disclosure, and the following list illustrates only some of the potential use cases.

- Citibank is one of several card issuers that offers customized alerts so consumers can choose when they want to be notified if, for example, their balance is getting too close to their credit limit.¹⁶ Chase offers the option to be notified if a rewards balance reaches a certain threshold, a purchase is made online, or a payment due date is approaching.¹⁷
- With consumer consent, some merchants use location features to engage with customers. For example, Macy's phone app uses the phone's GPS, Bluetooth, and Wi-Fi capabilities to send offers to consumers who happen to be near one of their stores, a welcome message when the consumer steps inside, and exclusive deals when they walk past in-store “beacons.” Some Macy's app users also report receiving Macy's discount promotion alerts when entering competitor stores.¹⁸
- Wells Fargo now uses artificial intelligence to analyze consumers' banking transactions to offer consumers tailored suggestions and predictions based on their regular spending and earning patterns. Consumers, using their online account servicing platform, select from a list of account behaviors of which they would like to be notified, such as when the account is

¹⁶ See <https://www.cardbenefits.citi.com/Products/Account-Alerts>.

¹⁷ See <https://www.chase.com/digital/alerts>.

¹⁸ See <https://abcnews.go.com/Technology/retailers-tracking-shoppers-locations-real-world/story?id=47825826>.

likely to be overdrawn. Through predictive modeling, the app can flag potential shortages so consumers can take corrective action.¹⁹

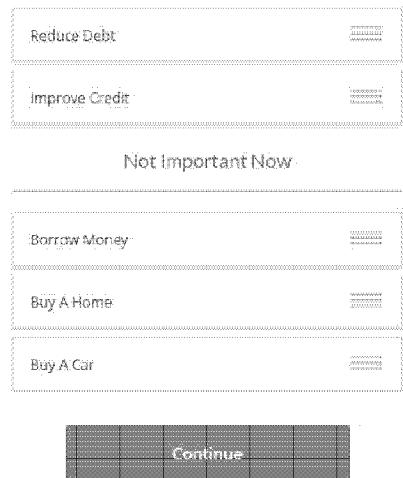
Some companies offer services that give consumers access to tailored information on-demand in an interactive environment. In these cases, consumers provide personal information or run scenarios to see recommendations that change dynamically based on the consumer's inputs.

- Credit Karma, TransUnion, and CreditWise by Capital One each offer a personalized credit score simulator feature. Users authorize the companies to make “soft pulls” of their credit reports, which the companies use to generate hypothetical credit scores based on changes the user might be considering making to their credit profile. Examples of these changes include opening up a new credit card, paying down a balance, or missing a payment.
- LendingTree provides consumers with personalized product recommendations based on data from consumer-permissioned credit report “soft pulls” and consumer-entered information on financial security, saving habits, and financial goals. For example, consumers are able to rank their financial goals by importance and receive a list of corresponding product recommendations.²⁰

Figure 5: Screenshot of Lending Tree interactive Credit Analyzer tool

Prioritize your goals

DRAG AND DROP to sort by importance. Got some goals you don't want to focus on now? Place them below the "Not Important Now" line and we'll keep that in mind!



¹⁹ See <https://stories.wf.com/seeing-financial-future-ai/>.

²⁰ The same consumer-permissioned credit report information can be used to generate marketing mail that compares the product terms of a loan on a consumer's credit report to those of a loan from LendingTree. For example, in one campaign product terms (such as monthly mortgage payment, loan term, and current interest rate) are used to calculate the potential monthly savings that the recipient could realize by refinancing a mortgage. This is one of the few examples of dynamic disclosure based on product terms rather than consumer behavior or choice.

- Third-party comparison websites, such as Nerdwallet, WalletHub, and Creditcards.com sort recommendations for credit cards based on consumer-selected preferences, such as “rewards” or “building credit” and the consumer’s actual credit score or a self-selected estimate. Consumer Reports offers a Credit Card Adviser Comparison Tool that lets consumers input their average monthly spending to dynamically rank cards by the amount of cash back for that consumer over 1 and 3 years.
- Nerdwallet enables consumers considering a prepaid card to project their usage pattern (*e.g.*, how often the consumer would use and reload the prepaid card) and provides a rank ordering of available products with projected costs based upon the consumers’ contemplated use.
- Petal plans to offer its credit card customers a “slider” as part of its online application which will enable the consumer to choose the amount of a payment and observe the impact on the total cost the consumer would incur before the debt is repaid in full.

‘Delegated’ disclosure

Some apps provide tailored disclosures based on the input of consumer-permissioned data. In these examples, consumers are less selecting specific disclosures via specific inputs, and more delegating disclosure determinations to third party apps. In effect, they look to an app to help resolve what the consumer needs to know about a given aspect of his or her financial life. In some cases, apps even take actions directly on the consumer’s behalf and then report on those actions, rather than simply disclosing information upon which the consumer then takes the relevant action.

- Status Money allows consumers to “anonymously compare their finances with people like them,” somewhat like the energy bill example.²¹ However, Status Money goes a step further by using consumer financial data collected from accounts for which the consumer provided access credentials to proactively monitor those accounts for anything it feels the user might like to know, such as banking fees or higher-than-usual spending in a category. Status Money then alerts consumers of product alternatives available in the market where it might benefit them, such as when the user’s savings account is not offering competitive rates. In this example, no action is taken for the consumer and the consumer can dig into the data to better understand trends, but Status Money’s algorithms decide what information to highlight for the consumer.
- Virtual retirement financial manager Blooom assesses the consumer’s retirement accounts and suggests changes to the investment plan given individual investor preferences. For a fee, Blooom will take over the decision-making for consumers, using an algorithm to select

²¹ See <https://statusmoney.com/about>.

investments from available options in consumers' existing retirement plans, rebalance regularly, and alert customers of suspicious activity.²²

- Online-only investment managers like Betterment²³, Wealthfront²⁴, and Wealthsimple²⁵ let users input some information about financial goals and demographic information, and then build a customized portfolio on the consumer's behalf. Wealthfront advertises "Financial planning and investing with Wealthfront couldn't be easier. *We do it for you.*" These managers do not separately ask consumers for consent when buying and selling securities, but instead operate based on preferences the consumer initially put in place. As the consumer adjusts their preferences, the financial manager is charged with taking whatever actions are required to bring investments into alignment with the consumer's new settings.
- A number of personal financial management (PFM) companies like Acorns²⁶ and Digit²⁷ will analyze your income, spending patterns, and account balances to automate savings. For example, Acorns does this by rounding up the purchase price of the things you buy and investing the difference on your behalf.²⁸

Benefits and risks of dynamic disclosure

Consumer benefits

For consumers, the promise of dynamic disclosure is better-informed decision-making and enhanced consumer control over product choice and use. Done well, innovation in dynamic disclosure leverages digital delivery channels, data, and processing power to help make disclosures more useful to consumers in a number of respects.

Content relevance

New technology gives companies the ability to tailor the content of disclosures based on consumer data, delivering information that is more relevant to a consumer's financial situation. In some cases, consumers can receive information that they would otherwise need to derive manually.

²² See <https://www.bloom.com/>.

²³ See <https://www.betterment.com/>.

²⁴ See <https://www.wealthfront.com/>.

²⁵ See <https://www.wealthsimple.com/en-us/>.

²⁶ See <https://www.acorns.com/>.

²⁷ See <https://digit.co/>.

²⁸ See <https://www.acorns.com/>.

Relevance can also be enhanced by taking account of expressed consumer preference. As noted above, providers can send account alerts according to parameters that consumers themselves set. For example, one consumer may want a checking account low balance alert set at or below \$50, while another may want that alert threshold set at \$200. Other disclosures may be interactive, providing additional or different information to consumers who, for example, cursor over a key term, or who signal via dropdown menu their familiarity level with a specific product.

Enhanced delivery

Dynamic disclosure has the potential to leverage new technology to improve not only the content of what consumers receive but when and how they receive it. Smartphones in particular provide consumers a means by which to receive emails, push notifications, or text messages regardless of time or place. This new form of delivery can improve the timeliness of the information disclosed to consumers.²⁹ Some researchers argue that delivering disclosures in this way, like text message alerts when a consumer may soon incur a fee, provides a “salience shock” that achieves the goal of mandated disclosure, namely informed consumer choice, without necessitating more burdensome regulatory measures.³⁰ There is also the potential for disclosures to adapt to consumer behaviors in a way that was previously impossible—allowing artificial intelligence to determine the best way to disclose information to each individual consumer.

Reaction burden

Features common among dynamic disclosures—namely, relevant content and timely delivery—can also lower the costs associated with responsive action to disclosed information. For example, credit card CNP transaction email alerts, as discussed above, occur in close proximity to the time of the transaction, reducing the mental energy a consumer must expend to validate a transaction. They may also include in the email a one-click button to dispute the transaction, removing the friction of contacting customer service or navigating an online servicing platform. Dynamic disclosure offers the potential for many additional applications that lower the costs of receiving information and taking responsive action.

Provider benefits

For providers, dynamic disclosures can lead to more competitive product offerings. The practice of offering personalized alerts is becoming so ubiquitous that providers may feel they must develop a digital disclosure strategy to acquire and retain customers. In some cases, more competitive product offerings that utilize dynamic disclosure to engage consumers may yield

²⁹ The timeliness of disclosures is impacted not just by the device consumers use to receive such disclosures, but also on the ability of providers to quickly process data and produce the disclosures. Checking account balance alerts, for example, may be delivered up to a day after a balance is reached because some financial institutions are not able to calculate account balance intraday.

³⁰ Sarin, Natasha et al., *The Salience Theory of Consumer Financial Regulation* (2018).

indirect competitive benefits as well. In a 2018 earnings call, Chase executives pointed out the connection between digitally-active customers and increased card spending.³¹

In some cases, dynamic disclosure may offer opportunities to reduce expenses. As discussed above, some credit card issuers have deployed a range of alerts to try and engage consumers in fraud detection, presumably because that may help to reduce providers' fraud losses. Providers may also see dynamic electronic disclosures as a means of lowering origination and servicing costs. Earlier this year, Citi announced new capabilities for its mobile banking app, including in-app account opening, which we expect might lower the cost of account origination.³² Digitally-engaged consumers may also be less likely to close their account, lowering retention costs.

Potential risks

There are a number of potential risks associated with dynamic disclosure, both to consumers and providers. These include the following.³³

Privacy

Dynamic disclosure's leveraging of consumer data may create privacy concerns. While some consumers may embrace data-driven disclosure innovation, others may have a different response. Capital One's tipping alert, for example, received a mixed public reaction. Some consumers were grateful their bank was taking steps to look out for their interests, whether the alert correctly identified fraud or not. Others were annoyed or even angry at what they perceived to be excessive monitoring of their activity or a judgment of how much consumers should be tipping servers.³⁴

Security

Dynamic disclosure may also increase the volume of communications between provider and consumer, potentially complicating consumer efforts to use accounts securely. With banks sending tweets, emails, and text messages, consumers may not know whether the

³¹ See JP Morgan Chase, Q1 2018 Earnings Call Transcript, April 13, 2018.

³² See <https://www.businesswire.com/news/home/20180326005509/en/Citibank-Announces-National-Digital-Banking-Serve-Clients>.

³³ Like any form of disclosure, dynamic disclosures may have unanticipated consequences. One example of this is the effect of providing peer information on retirement savings decisions. Although these disclosures have generally been designed to incentivize additional savings, at least one study has found that disclosing the higher savings rates of peers actually *decreased* savings by low-saving employees in a 401(k) plan. See Beshears *et al.*, *The Effect of Providing Peer Information on Retirement Savings Decisions*, J. Finance (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4452131/>. But this aspect of dynamic disclosure is shared by disclosure generally. It is not clear that it is worsened by the dynamism of the disclosure.

³⁴ See <https://twitter.com/CapitalOne/status/711294790462263297>; see also <https://ficoforums.myfico.com/t5/Credit-Cards/Got-an-interesting-email-from-Capitol-One-this-morning/td-p/3563849> & <https://ficoforums.myfico.com/t5/Credit-Cards/Capi-alerted-me-on-my-quot-tipping-quot-lol/td-p/4361442>.

communication they receive is legitimate or is instead sophisticated phishing. There are now numerous examples of fraudsters trying to imitate dynamic disclosures in form and content.³⁵ In addition to scammers leveraging the higher volume of communications, scammers may also begin to personalize phishing attacks using stolen information, leveraging the responsiveness that personalized content and timeliness affords. Phishing can be just as dynamic as more authoritative forms of disclosure.

Salience of mandatory disclosure

It is also possible that non-mandatory disclosures, in part by relying on the effectiveness of dynamic disclosure, may crowd out the salience of some of the information deemed appropriate by Congress or implemented by regulators for mandatory disclosures. For example, mobile and online banking interfaces, text alerts, and push notifications may be deemed sufficient by consumers who utilize them, even as those disclosures lack some of the specific information that is included in the mandatory statement disclosure.³⁶ Of course, it is also possible that these non-mandatory disclosures, in part by tapping the potential of dynamic disclosure, help serve some of the goals of statement disclosure, but in ways that the mandatory disclosure does not yet exploit. For example, consumers using digital interfaces to service their credit card account may not review the late or minimum payment warnings in the mandatory statement disclosure—but they may see customized payment date alerts or similarly-dynamic information about paying a credit card balance using a linked checking account that may be as or more effective at raising timely payment incidence and overall payment rates.

Provider costs

Finally, dynamic disclosure imposes a range of new costs on providers. While providers may see good returns from that expenditure, not all providers will have the resources or scale to make such investments efficiently. As dynamic disclosure becomes more prevalent in the marketplace, it may tend to privilege those entities that have the resources, institutional sophistication, and technological capacity to produce, acquire, or analyze large amounts of consumer data. That may have implications for smaller providers.

³⁵ For example, scammers have been sending text alerts made to look like Wells Fargo's text alerts. See <https://www.fox4now.com/news/local-news/wells-fargo-fraud-alert-text-message-scam>.

³⁶ Previous Bureau research has shown that at least half the consumers who opt for electronic servicing disclosures over paper ones do not open their electronic statement in a given quarter. See 2015 Card Report, 133-134.

Market Intelligence

Market Information from RMR Market Offices

Spotlight: Bank Branch Trends

Office of Card, Payments, and Deposits Markets

Michael Thompson

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*



Introduction

Despite recent announcements that several large banks will be opening hundreds of branches, banks both large and small have substantially reduced their branch footprints during the last decade.^{1, 2, 3} The total number of branches in the U.S. has declined 9.7% from a peak of 99,550 branches in 2009 to 89,857 in 2017.⁴

A previous spotlight described recent changes in the service offerings of bank branches and consumer use of bank branches. This spotlight examines the downward trend in the number of branches that occurred concurrently with new delivery models as well as examines the growth of branch networks that occurred during the 1990s and early 2000s.

Data

The branches of FDIC insured banks are surveyed annually in the FDIC Summary of Deposits. This spotlight uses these data to track trends in the number of bank branches. Credit union branches are not included in this analysis and the trends of bank branches may not be reflective of those of credit unions.⁵ In addition, while a previous spotlight discussed various models of bank branches, this spotlight looks at all bank branches together.

¹ Matt Egan, *Wells Fargo is closing over 400 branches*, CNN Money (Jan. 13, 2017), available at <http://money.cnn.com/2017/01/13/investing/wells-fargo-branch-closures/index.html>.

² Tina Wadhwa, *America's biggest banks are closing hundreds of branches*, Business Insider (Oct. 23, 2016), available at <http://www.businessinsider.com/bank-branches-around-the-world-are-shrinking-in-favor-of-digital-models-2016-10>.

³ Rachel Louise Ensign and Coulter Jones, *How Bank of America Ditched 1,567 Branches Across the U.S.*, The Wall Street Journal (Sept. 17, 2017), available at <https://www.wsj.com/articles/how-bank-of-america-ditched-1-597-branches-across-the-u-s-1505646000>

⁴ The Summary of Deposits, an annual survey of branch office deposits as of June 30, is conducted by the FDIC for all FDIC-insured institutions. The Summary of Deposits does not include responses from credit unions.

⁵ The Summary of Deposits does not include responses from credit unions, and the NCUA does not publish similar data for credit unions. Consequently, credit union branch trends are not observed. Credit unions' branch locations are not likely to display the same trends as banks'. Several driving forces in bank branching, such as the repeal of interstate banking laws and the pre-mortgage crisis deposit crunch, did not directly impact credit unions. Credit unions compete with banks in lending and deposit taking and may have their activities shaped by competitive pressures. However, credit unions are typically smaller than banks and cater to narrower customer segments. Credit union branch growth is mostly likely impacted by the adoption of community charters, which allow credit unions to serve customers beyond a more narrowly-defined customer segment.

Overview of the market

As of 2017, there were 89,857 bank branches in the United States. With 5,797 banks reporting at least one branch in the Summary of Deposits data, the U.S. market averages 15.5 branches per bank. In 2017, 20.2% of banks only had one branch, and 65.3% had between 1-5 branches. Only 90 banks had more than 100 branches, and only 12 banks had more than 1,000 branches. Small banks, however, operate a significant portion of branches with 45% of branches belonging to banks with assets less than \$10 billion.⁶

Table 1: Branches per bank, 2017

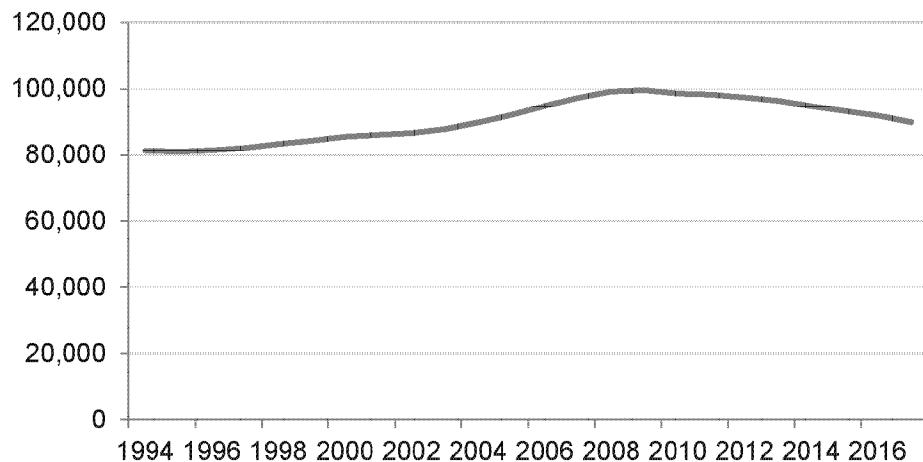
| Total Assets | Number of branches | Number of banks | Branches per bank |
|--------------|--------------------|-----------------|-------------------|
| Under \$1B | 22,199 | 5,046 | 4 |
| \$1B-\$10B | 18,664 | 630 | 30 |
| \$10B-\$100B | 13,246 | 93 | 142 |
| Over \$100B | 35,748 | 28 | 1,277 |

The current period of de-branching was preceded by an extended period of branch growth. From 1995 to 2009, the number of branches increased from 80,999 to 99,550 (see Figure 1). The increase in branches during the 1990s is partially attributable to the repeal of interstate banking laws. Historically, state laws prevented banks from operating branches in multiple states. Throughout the 1980s and early 1990s, individual states removed restrictions on interstate banking, and in 1994, the Riegle-Neal Interstate Banking and Branching Efficiency Act removed all remaining restrictions. This deregulation encouraged rapid bank consolidation and entry into new markets as banks sought to simplify their structure by consolidating multi-state and multi-

⁶ If this figure were expanded to include the branches of the nearly 6,000 federal credit unions, then it is likely that nearly half of all branches belong to financial institutions with less than \$10 billion in assets.

bank operations.⁷ From 1994 to 2000, there were on average 540 bank mergers per year.⁸ The strong economy and resulting loan demand encouraged banks to invest consolidation savings in new branches. During the period of branch expansion, the FDIC observed that institutions with larger branch networks had higher costs, but that improved efficiencies were reflected in higher overall profitability.⁹

Figure 1: Number of branches



Multiple factors also led banks to use branches as vehicles for deposit growth. Banks have traditionally viewed checking accounts as important core deposits and relationship lynchpins. With the advent of debit cards during the 1990s and early 2000s, banks began to view checking accounts, which are technically liabilities, more and more as revenue generating products. Checking accounts had long carried fees but debit card interchange and deposit service charges (such as ATM fees and overdraft fees) provided new opportunities for noninterest income as the number of debit card transactions grew. The surge in checking account service charges continued up to the Great Recession and drove banks to push for checking account growth.

In the 2000s, a boom in mortgage lending led banks to historic highs in loan-to-deposit ratios. In need of funding, many banks utilized branch openings to enter new markets and generate

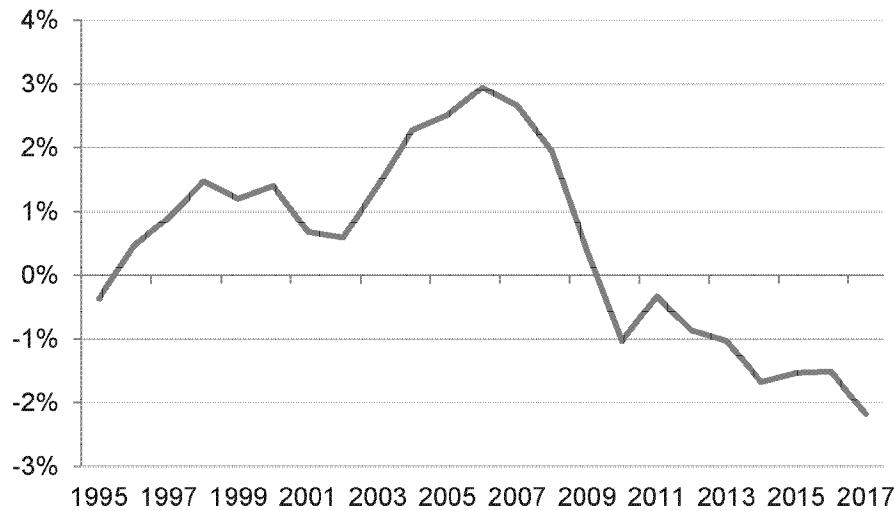
⁷ Ronald Spieker, *FYI: An Update on Emerging Issues in Banking*, FDIC (July 9, 2004), available at <https://www.fdic.gov/bank/analytical/fyi/2004/070904fyi.html>.

⁸ FDIC Historical Statistics on Banking, available at <https://www5.fdic.gov/hsob/HSOBRpt.asp>.

⁹ Spieker, *supra*.

deposit growth. This practice contributed to a surge in branch growth for a few years prior to the mortgage crisis (see Figure 2).

Figure 2: Percentage change in number of branches

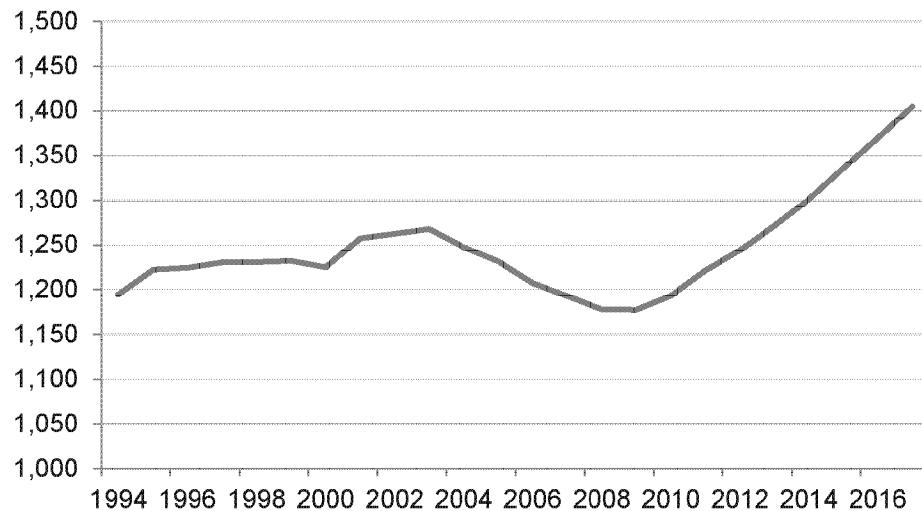


The period of branch expansion began to recede in 2007 as the mortgage boom and economy began to stall and as consumer use of checks continued to diminish in favor of electronic payments.¹⁰ In 2010, the number of branches decreased for the first time since 1995 and has continued to decrease for each subsequent year. The number of branches has been decreasing by more than 1% per year since 2013. The magnitude of the correction is in part a product of industry employing an aggressive branch strategy in the late 1990s/early 2000s, even as digital channels were becoming more prominent, and not foreseeing the 2007-2008 market crash.

¹⁰ The number of paid checks, as estimated by the Federal Reserve, declined from 41.9 billion in 2000 to 18.3 billion in 2012. See *The 2013 Federal Reserve Payments Study*, The Federal Reserve System (July 2014) at 46, available at <https://www.frbservices.org/assets/news/research/2013-fed-res-paymnt-study-summary-rpt.pdf>.

Households per bank branch

Figure 3: Households per branch¹¹



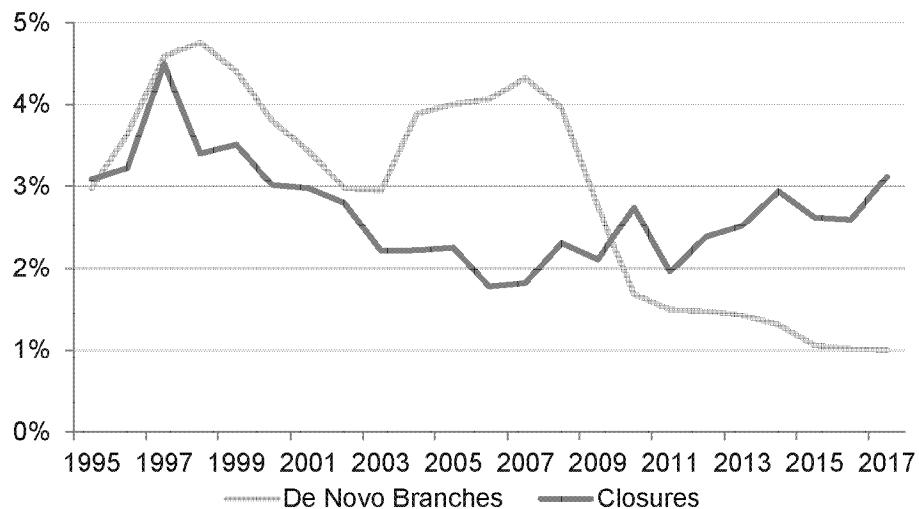
From 1994 through 2003, household formation slightly outpaced bank branch growth. Then, from 2003 to 2009, the number of bank branches increased significantly faster than household formation, and the average number of households per branch decreased 7% over that period. In the last decade, the declining number of bank branches and growing number of households has pushed the average number of households per branch up 19%.

Branch openings and closures

Trends in the creation of new, “de novo” branches and in the closure of existing branches determine the overall branch trend. Notably, branch closures have not been the driving cause of the recent decline in branches. Figure 3 shows the number of de novo branches and branch closures as a percent of total branches from the previous year. In years where de novo branches exceed closures, there is net branch growth.

¹¹Household data retrieved from Federal Reserve Economic Data.

Figure 4: Annual branch openings and closures as a percent of total branches¹²



Closures increased only slightly between 2009 and 2017. De novo branch openings, in contrast, dropped rapidly during the recession from 4% of branches in 2008 to 1.7% in 2010. By 2017, new branches opened that year represented 1% of branches overall at the beginning of the year. The overall decline in branch numbers, therefore, is primarily the result of a drop in the number of branch openings. The more marginal increase in the number of closures has been very much a secondary factor in terms of importance to the overall count.

While fluctuations in de novo branches appear to reflect economic and technological shifts, several factors discourage banks from closing branches, which remained relatively constant over the last twenty years. The Community Reinvestment Act (CRA) requires lenders to submit a branch closure application to their primary federal regulator, including with it a justification for the proposed closure(s). Closure of a branch can affect banks ratings during CRA examinations if the closure impacts lending, investment, and/or community services targeted toward low- and moderate-income individuals. In addition, closure of an acquired branch can have a significant one-time impact on earnings. As discussed in Spotlight on Bank Branches Today, banks generally acquire branches at a premium, causing banks to carry goodwill on their balance sheet which must be amortized over time. Banks write off all remaining goodwill after closure, which results in a large one-time expense.

¹² Thrifts and former thrifts are excluded from this figure due to missing data. Prior to becoming OCC supervised banks in 2011, thrifts reported some, but not all, of the fields contained in the Summary of Deposits.

Urban and rural counties

In 2017, across the U.S., there were 77,356 branches in urban areas and 12,501 branches in rural areas. Figure 5, Figure 6, and Figure 7 show the trends in urban and rural branches based on the Bureau's list of urban and rural counties.¹³

Figure 5: Number of urban and rural branches

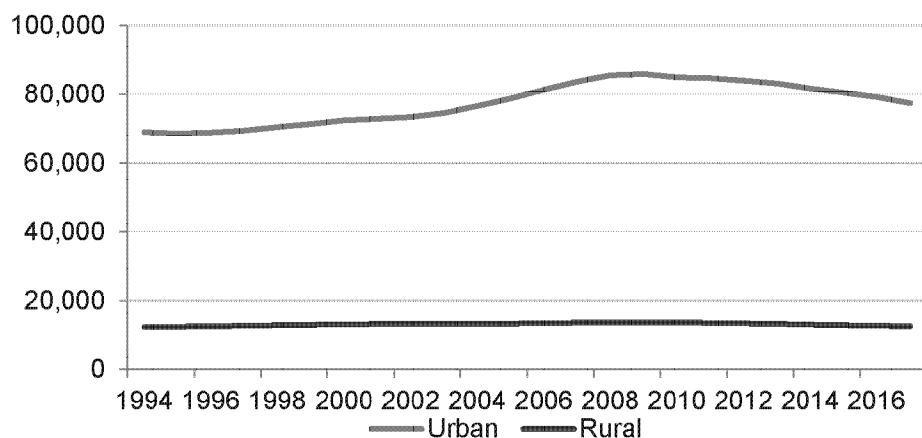
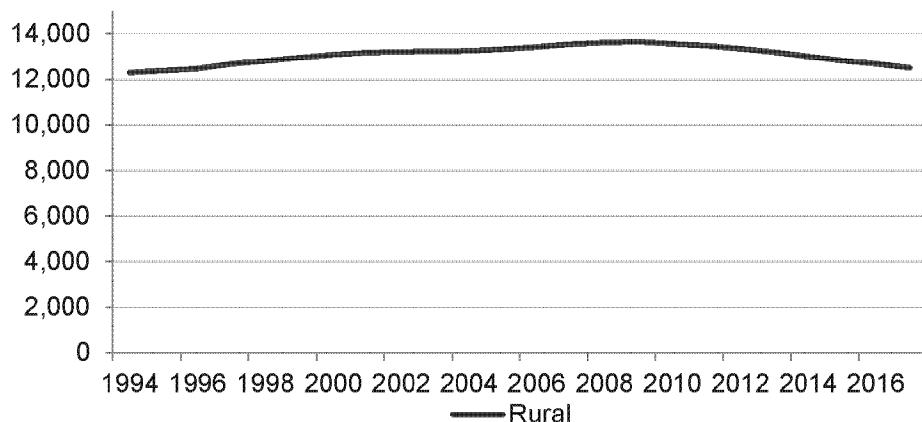


Figure 5 (detail): Number of rural branches



¹³ Annually the Bureau publishes lists of rural and underserved counties to serve entities that must comply with the Truth in Lending Act, available at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/rural-and-underserved-counties-list/>.

Since urban branches constitute the vast majority of branches, they track closely with the overall number of branches. Rural branches exhibit a slightly different trend. In the 1990s both rural and urban areas experienced similar branch growth. In the early 2000s, however, rural areas did not experience the same accelerated rate of branch expansion as observed in urban areas. Following the Great Recession, urban and rural branches declined at a similar rate, however, because rural areas did not experience the same rapid expansion, the number of rural branches has fallen to mid-1990s levels.

Figure 6: Percent change in number of branches

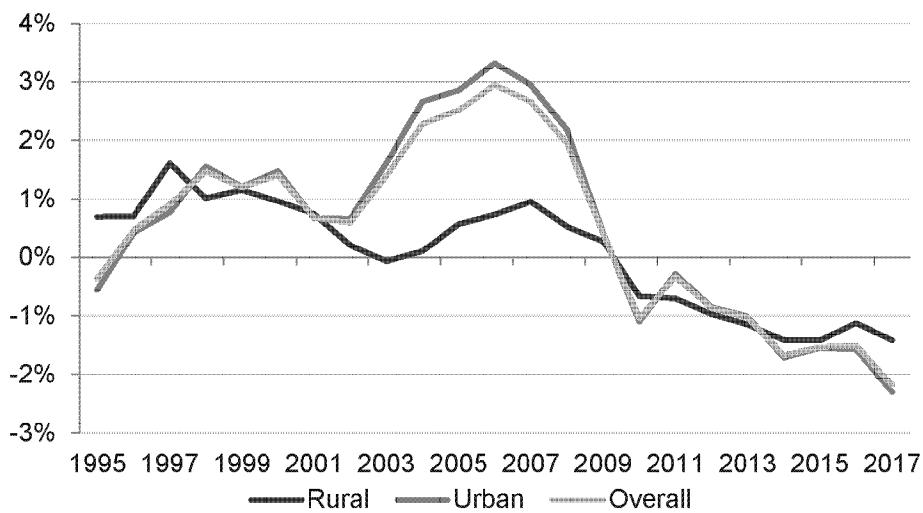
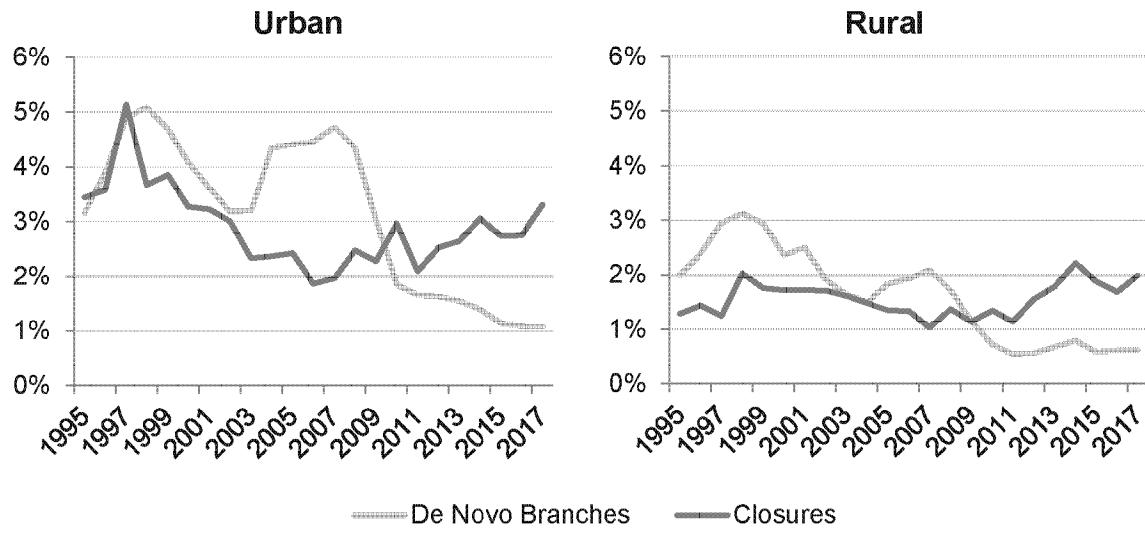


Figure 7 again shows the trends in de novo branch openings and closures, now segmented by urban and rural counties. While the rate of branch openings in urban areas approached its mid-90s peak from 2004 to 2007, there has been a relatively steady decrease in the number of new branches in rural areas. Closures in rural areas decreased slightly in the early 2000s before increasing in 2012. Urban closures also began to increase in 2012. Overall, rural areas have tended to have lower rates of both openings and closures; the result of which would be lower turnover of branches.

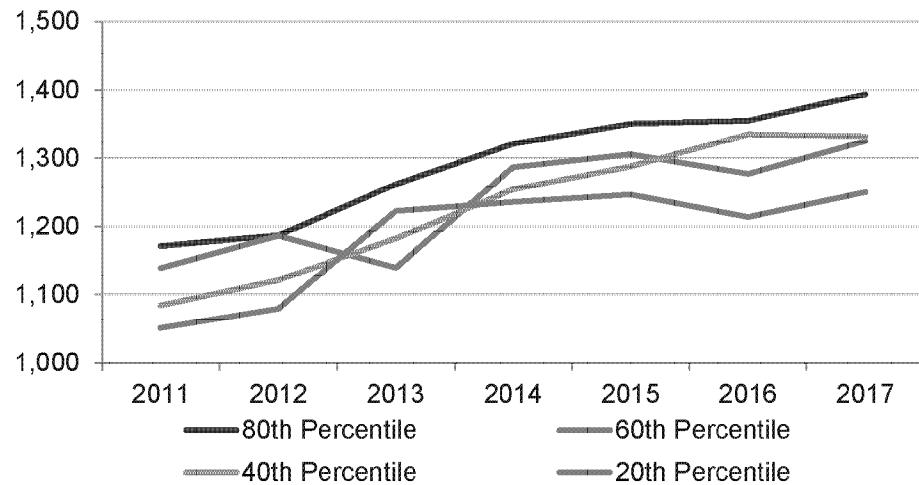
Figure 7: New and closed branches as percent of total branches, by urban and rural areas



County income level

The ongoing downward trend in the number of bank branches could most greatly affect areas of low-to-moderate income consumers that may already be underserved. A number of factors impact how effective bank branches are in serving their local communities. These factors include proximity to population centers; market size, concentration, and geography; drive time; proximity to commercial areas; competition; local adoption of digital channels; and in-branch wait times. As a rough measure of the change in service level, Figure 8 presents households per branch from 2011 to 2017. In addition, Figure 8 segments branches by median county household income levels. Overall, higher-income counties tend to have more households per branch, which is possibly due to the fact that urban areas often have higher median household incomes. For counties of all income levels, the decline in branches has increased the number of households per branch, all at similar rates.

Figure 8: Households per branch by county household income percentile



Conclusions

Moving forward, it is likely that closures will continue to outpace branch openings. Factors that may have discouraged branch openings—such as online and mobile banking, the development of remote deposit capture, and cost pressure—are likely to persist. In fact, remote servicing options are likely to keep expanding as banks compete with (or acquire) the service offerings of fintech firms. A continuation of current merger and acquisition activity may place additional downward pressure on the number of bank branches as large banks close branches that were not the primary target of an acquisition.

However, several factors that discourage de-branching are likely to persist. There is likely an upper bound on the number of branches that a bank is willing to sell off or close given the importance of branches for account opening, certain regulatory constraints, and revenue considerations. In addition, most banks use a retail delivery model in which a minimum number of branches are located in each market. Persistent loan growth may drive a need for funding and discourage banks from exiting markets and potentially even cause some banks to enter new markets. JPMorgan and Bank of America, for example, have each announced plans to open as many as several hundred branches in new markets.

The importance of access to a physical branch likely varies by population segment. It merits further consideration how local branch closures affect consumer access to financial services. In particular, it is worth further consideration the extent to which already underserved areas are affected by branch closure.

Market Intelligence

Market Information from RMR Market Offices

Spotlight:

Chatbots: Bringing AI to consumer banking

Office of Consumer Lending, Reporting, and Collections Markets | June 2019

Thomas Oscherwitz

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*



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INTRODUCTION

This Market Spotlight focuses on the emerging use of chatbots by financial institutions. It examines current and projected adoption of chatbots, describes the key vendors selling chatbot tools, and identifies potential consumer protection issues. The Spotlight also provides a summary of Bureau interviews with Bank of America, Wells Fargo, and Citibank on their respective chatbot strategies.

Chatbots (also known as *talkbots*, *chatterbots*, *Bot*, *IM bots*, *interactive agents*, or *Artificial Conversational Entities*) are computer programs that engage in conversations with human users via voice or text.¹ They represent a technological advance over menu-based phone trees, as they engage with consumers interactively like a “live” customer service representative would. Chatbots typically have several key capabilities: (1) they have a natural language processor to understand a consumer inquiry via voice or text, (2) they have an “intents engine” that maps the intent behind a consumer request to a certain response, (3) they can communicate responses to consumers in an ongoing, interactive conversation, and (4) they can hand-off a conversation to a human agent when the conversation goes beyond its capabilities. A more detailed description of the operational mechanics of chatbots are provided in Appendix 1.

Financial institutions see chatbots/digital assistants as a major communications platform like the phone or the Internet and expect this technology to significantly change how they engage with customers. Gartner predicts that by 2020 more than 85% of customer interactions with business will occur without a human agent.² Ovum, another research firm, predicts there will be almost as many voice-activated assistants on the planet as people by 2021.³

Chatbots, as this paper will show, are early in their product lifecycle. Currently, financial institutions are using chatbots to help customers with tasks that many self-directed consumers could do on their own by browsing a financial institution’s website. Over time, chatbots will implement transactions on a consumer’s behalf and, ultimately, give consumers financial advice. This paper, in the policy section, will surface some of the regulatory and supervisory issues that may emerge as the technology evolves.

Market adoption of chatbots;

The chatbot market is in its early stages. Most major banks introduced their first chatbot in the past two years. Banks have used bots primarily as informational tools to expedite consumer access to basic banking information. Several research and market trends have set the stage for this innovation:

¹ Alex Galert, CEO of BRAIN (Brn.AI) defines a commercial chatbot as “*a computer program which conducts a conversation in natural language via auditory or textual methods, understands the intent of the user, and sends a response based on business rules and data of the organization.*” Alex Galert, *Chatbot Report 2018: Global Trends and Analysis*, CHATBOTS MAGAZINE (March 17, 2018), <https://chatbotsmagazine.com/chatbot-report-2018-global-trends-and-analysis-4d8bbe4d924b>.

² Nick Ismail, *Artificial intelligence will enable banks to increase customer loyalty*, INFORMATION AGE (June 18, 2018), <https://www.information-age.com/artificial-intelligence-banks-customer-loyalty-123472341/>.

³ Judith Shulevitz, *Is Alexa dangerous?*, THE ATLANTIC (November 2018), available at <https://www.theatlantic.com/magazine/archive/2018/11/alexa-how-will-you-change-us/570844/>.