

# Taskforce Member Orientation – Day One

January 29, 2020



Consumer Financial  
Protection Bureau

# Taskforce Member Orientation

## TAB 1 – Agenda



Consumer Financial  
Protection Bureau

# TASKFORCE MEMBER ORIENTATION

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Wednesday – January 29, 2020

Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552  
Room B104

TIME	AGENDA	LOCATION	SPEAKER
8:45 a.m. – 9:55 a.m.	Onboarding Paperwork	1700 G Street NW Washington, D.C. Room B104	<i>Office of Human Capital</i>
9:55 a.m. – 10:00 a.m.	Break	1700 G Street NW Washington, D.C.	
10:00 a.m. - 11:00 a.m.	Welcome and Swearing in Ceremony	1700 G Street NW Washington, D.C. Room B104 – Common Area	<i>Kathleen L. Kraninger, Director Brian Johnson, Deputy Director Matt Cameron, Staff Director, Office of Advisory Board and Councils</i>
11:00 a.m. – 11:15 a.m.	Break and Professional Headshots	1700 G Street NW Washington, D.C. Common Area of Basement	<i>Taskforce Members Bryce Spivey, Multimedia Team Lead, Office of Technology and Innovation</i>

**Sensitive/Predecisional/Not for External Distribution**

11:15 a.m. –	<b>Communications Training</b>	1700 G Street NW Washington, D.C. Room B104	<i>Marisol Garibay, Assistant Director, Office of Communications</i>
11:30 a.m. –	<b>Badging</b>	1700 G Street NW Washington, D.C. Room B137	<i>Office of Human Capital Office of Security Programs</i>
12:00 p.m. -	<b>Lunch</b>		
1:00 p.m.			
1:00 p.m. –	<b>T&amp;I Equipment Disbursement</b>	1700 G Street NW Washington, D.C. Room B104	<i>Office of Technology and Innovation</i>
2:00 p.m.			
2:00 p.m. –	<b>Break</b>	1700 G Street NW Washington, D.C.	
2:10 p.m.			
2:10 p.m. –	<b>Bureau Training</b>	1700 G Street NW Washington, D.C. Room B104	<i>Amber Vail, Senior Ethics Counsel, General Law and Ethics Office</i>
4:15 p.m.	<ul style="list-style-type: none"><li>• <b>Ethics</b></li><li>• <b>Office of Civil Rights</b></li><li>• <b>Records Management</b></li><li>• <b>FOIA (Freedom of Information Act)</b></li><li>• <b>Privacy</b></li><li>• <b>Timekeeping (WebTA, etc)</b></li></ul>		<i>Jeannine Turenne, Senior Ethics Counsel, General Law and Ethics Office</i>
			<i>Emily Stephenson, Supervisory Attorney, Office of Equal Opportunity and Fairness</i>
			<i>Woody Anglade, ADR Program Manager</i>
			<i>Office of Equal Opportunity and Fairness</i>
			<i>Steven Coney, Supervisory Records Officer, Office of the Chief Data Officer</i>
			<i>Danielle Adams, FOIA Manager, Office of the Chief Data Officer</i>
			<i>Jennifer Chemel, Privacy Program Analyst, Office of the Chief Data Officer</i>
			<i>Office of Human Capital</i>
4:15 p.m.	<b>Orientation Concluded for First Day</b>	1700 G Street NW Washington, D.C. Room B104	

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# Taskforce Member Orientation

## TAB 2 – CFPB OVERVIEW



Consumer Financial  
Protection Bureau

# Kathy Kraninger, Director, Consumer Financial Protection Bureau



Kathy Kraninger became Director of the Consumer Financial Protection Bureau in December, 2018. From her early days as a Peace Corps volunteer, to her role establishing the Department of Homeland Security, to her policy work at the Office of Management and Budget (OMB) to the CFPB, Director Kraninger has dedicated her career to public service.

Director Kraninger came to the CFPB from the Office of Management and Budget, where as a Policy Associate Director she oversaw the budgets for executive branch agencies including the Departments of Commerce, Justice, Homeland Security (DHS), Housing and Urban Development, Transportation (DOT), and Treasury, in addition to 30 other government agencies.

Previously she worked in the U.S. Senate, where she was the Clerk for the Senate Appropriations Subcommittee on Homeland Security, which provides DHS with its \$40 billion discretionary budget. On Capitol Hill, she also worked for the House Appropriations Subcommittee on Homeland Security as well as the Senate Homeland Security and Governmental Affairs Committee.

Ms. Kraninger also served in executive branch posts with the Department of Transportation. There, after the terrorist attacks on September 11, 2001, she volunteered to join the leadership team that set up the newly created DHS.

Her work at DHS led to awards including the Secretary of Homeland Security's Award of Exceptional Service, the International Police and Public Safety 9/11 Medal, and the Meritorious Public Service Award from the United States Coast Guard.

Ms. Kraninger graduated magna cum laude from Marquette University and earned a law degree from Georgetown University Law Center. She served as a U.S. Peace Corps Volunteer in Ukraine.

# **Brian Johnson, Deputy Director, Consumer Financial Protection Bureau**



Brian Johnson is the Bureau's Deputy Director. Mr. Johnson first joined the Bureau in December 2017 as Senior Advisor to the Director and was named Principal Policy Director in April 2018. Mr. Johnson has served as Acting Deputy Director since July 2018.

Mr. Johnson joined the Bureau from the House Financial Services Committee where he spent over five years serving in various capacities including Senior Counsel, Chief Financial Institutions Counsel, and Policy Director. During his time on the Committee, Mr. Johnson led the policy and legislative work for the Financial Institutions and Consumer Credit Subcommittee on issues related to consumer protection and credit, mortgage origination, credit reporting, banking and data security. Prior to joining the Committee, Mr. Johnson worked for the Attorney General of Ohio and the White House Domestic Policy Council. He received his B.A. in economics, as well as his J.D., from the University of Virginia.



# Kraninger Marks First Year as Director of the Consumer Financial Protection Bureau

DEC 10, 2019

WASHINGTON, D.C. – Today, Consumer Financial Protection Bureau Director Kathleen L. Kraninger made the following statement regarding her Dec. 11 one year anniversary leading the Bureau:

"It is an honor and privilege to serve and protect American consumers," said Director Kraninger. "In this last year we've greatly enhanced consumer protection by harnessing the resources provided by Congress to be more effective and comprehensively utilized."

"I commend the Bureau employees who work tirelessly to achieve our mission. We will continue to use all of our tools to not only go after bad actors that break the law, but also to prevent harm in the first place by building a culture of compliance throughout the financial system. This culture of compliance can only be built by having smart and clear rules of the road as well as a robust supervisory examination process. I look forward to our continued work in the next four years on behalf of American consumers."

During her first year, Director Kraninger met with over 800 consumers, consumer groups, state and local government officials, military personnel, financial institutions, academics, non-profits, and former and current Bureau advisors, and traveled to 17 states.

In the first year of Director Kraninger's leadership, the Bureau's work has included:

## Providing Clear Rules of the Road Through Rulemaking

- Issued the first proposed rule to implement the requirements and prohibitions applicable to debt collectors under the Fair Debt Collection Practices Act (FDCPA) since it was passed in 1977;
- Released Notices of Proposed Rulemaking (NPRM) on Payday Lending to delay the compliance date and to rescind requirements that lenders make certain underwriting determinations before issuing payday, single-payment vehicle title, and longer-term balloon payment loans and issued a final rule to delay the compliance date;
- Created system for prepaid issuers to submit account agreements in advance of the April 1, 2019 effective date of the Bureau's Prepaid Rule;
- Issued Advance Notice of Proposed Rulemaking (ANPR) on Property Assessed Clean Energy Financing as part of implementing the Economic Growth, Regulatory Relief and Consumer Protection Act;
- Requested public comment on an assessment related to TILA-RESPA Integrated Disclosure Rule (TRID). The Bureau intends to address, among other things, the TRID Rule's effectiveness in meeting the purpose and objectives of Title X of the Dodd-Frank Act and rule;
- Issued an assessment of the effectiveness of the Ability-to-Repay and Qualified Mortgage Rule and of the RESPA Mortgage Servicing Rule;
- Issued a policy for conducting under Section 610 of the Regulatory Flexibility Act reviews of rules that are having a substantial impact on a significant number of small entities and completed the first review under the policy;
- Issued an interpretive rule on Screening and Training Requirements for Mortgage Loan Originators to provide clarity for financial institutions;
- Issued 14 research reports, including a report on the Consumer Credit Card Marketplace, a report on third party debt collections, and two reports accompanying the release of the 2018 Home Mortgage Disclosure Act (HMDA) data;
- Released an ANPR announcing the Bureau's plans to allow the GSE QM Patch to expire in January 2021, or after an extension to facilitate a smooth and orderly transition from the patch, and requesting comments about possible amendments to the definition of Qualified Mortgage in the ATR/QM Rule in light of the expiration of the patch;

- Published (jointly with the Federal Reserve Board) amendments to Regulation CC under the Expedited Funds Availability Act of 1987 (EFA) to implement a statutory requirement to adjust for inflation the amount of funds depository institutions must make available to customers;
- Published 24 compliance aides and tools to facilitate compliance with Bureau rules and handled over 2,400 requests for individual guidance;
- Published a revised No Action Letter (NAL) Policy;
- Issued the first NAL (under the revised NAL Policy) in response to an application from the U.S. Department of Housing and Urban Development (HUD) to HUD on behalf of more than 1,600 housing counseling agencies to facilitate lender funding for thousands of housing counselors; issued the first NAL Template for mortgage lenders to apply for similar NALs for the same purpose;
- Published a revised Policy to Encourage Trial Disclosure Programs (TDP) Policy, which permits companies to conduct in-market testing of innovative consumer disclosures designed to improve upon existing disclosures;
- Published a new Compliance Assistance Sandbox (CAS) Policy to enable testing of a financial product or service where there is regulatory uncertainty. After the Bureau evaluates the product or service for compliance with relevant law, an approved applicant that complies in good faith with the terms of the approval will have a "safe harbor" from liability for specified conduct during the testing period. Approvals under the CAS Policy will provide protection from liability under the Truth in Lending Act, the Electronic Fund Transfer Act, or the Equal Credit Opportunity Act;
- Launched the American Consumer Financial Innovation Network (ACFIN), a bipartisan network of federal and state regulators to facilitate innovation through coordination;
- Issued a rule to implement the HMDA-related provisions of the Economic Growth Regulatory Reform and Consumer Protection Act, and to extend for two years a temporary increase in the loan volume reporting threshold for open-end lines of credit; issued proposed rules to increase the permanent loan volume reporting thresholds for closed-end mortgage loans and open-end lines of lines of credit; issued an ANPR to assist in the development of proposed rules related to certain data points added or revised by the 2015 HMDA Rule; issued final policy guidance explaining how the Bureau intends to modify publicly disclosed HMDA data to protect consumer privacy; and, released the 2018 HMDA data applying the final policy guidance;
- Implemented measures to streamline and improve the Bureau's rulemaking process, such as providing materials in connection with rulemaking proposals

that are easier for the public to understand, increasing the use of Requests for Information and an ANPR to obtain public input before commencing a rulemaking, and posting all comments submitted in rulemakings to the public docket;

- Implemented enhancements to the Bureau's advisory committee charters, including: expanding the focus of the meetings to cover broad policy matters; increasing the frequency of in-person meetings from two times a year to three times a year for the Consumer Advisory Board (CAB), Consumer Bank Advisory Council (CBAC), and Credit Union Advisory Council (CUAC); elevating the Academic Research Council (ARC) to a Director-level advisory committee, and increasing meeting frequency; and, increasing term lengths from one to two years;
- Launched a symposia series to provide a public forum for the Bureau to hear a range of diverse views related to upcoming rulemaking and policy development; three sessions have been held, covering Abusiveness (June 25), Behavioral Law and Economics (September 19) and Section 1071 (November 6);
- Announced the establishment of a Taskforce on Federal Consumer Financial Law to examine ways to harmonize and modernize federal consumer financial laws. The taskforce may produce recommendations to improve and strengthen consumer financial laws and regulations; and
- Issued a Request for Information and an NPRM on the Remittance Rule; the NPRM, if finalized, would allow certain banks and credit unions to continue to provide estimates for certain fees and exchange rate information included on disclosures under certain conditions and would expand the safe harbor exemption for providers doing a relatively small number of remittances.

## Creating a Culture of Compliance

- Creating a culture of compliance by outlining clear rules of the road and actively supervising both banks and nonbanks for compliance;
- Institutions paid millions in restitution to over 247,000 consumers in connection with supervisory activities;
- In Fy2019 Supervision commenced 133 supervisory events at supervised entities, completed 147 supervisory events at supervised entities resulting in 433 matters requiring attention by these entities;
- Published three issues of Supervisory Highlights:

- Issue 18, covering supervisory findings in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances;
- Issue 19, covering supervisory findings in the areas of automobile loan origination, credit card account management, debt collection, furnishing, and mortgage origination; and
- Issue 20, a special edition, covering supervisory findings in the consumer reporting area.
- Implemented processes to make the scheduling, staffing, and execution of supervisory exams more efficient, and continued exploring opportunities to bring greater efficiency to supervision processes;
- Committed to the hiring of consumer compliance examiners and their professional development through such initiatives as micro-learning, compliance technology systems training, and virtual learning; and
- Instituted a post-commissioning specialization program that deepens examiner expertise in fair lending, mortgage origination, mortgage servicing, and coaching/training

## Enforcing the Law Against Bad Actors

- In FY2019, announced 22 public enforcement actions and settled six previously filed lawsuits, that resulted in orders requiring more than \$777 million in total consumer relief (more than \$600 million in consumer redress and more than \$174 million in other relief) and more than \$185 million in civil money penalties, before adjusting for suspended amounts;
- Took action against a company and an individual that offered financing for airline tickets to military servicemembers for violations of the Consumer Financial Protection Act (CFPA), Truth in Lending Act (TILA), its implementing Regulation Z, and Telemarketing Sales Rule (TSR), and against the company that serviced those loans for violations of the CFPA and Regulation V, which implements the Fair Credit Reporting Act (FCRA);
- Took action against a company that prepared background screening reports to assist employers in making employment decisions for violations of FCRA;
- In partnership with the Arkansas Attorney General and the South Carolina Department of Consumer Affairs, took several actions against individuals and companies who brokered contracts offering high-interest credit to veterans and other consumers for violating the CFPA;

- In partnership with the Minnesota Attorney General's Office, the North Carolina Department of Justice, and the Los Angeles City Attorney, filed an action to halt a student-loan debt-relief operation engaged in allegedly unlawful conduct in violation of the CFPB and the Telemarketing Sales Rule;
- Filed a lawsuit against debt-collection companies and their owner for violating the CFPB, FCRA and Fair Debt Collection Practices Act (FDCPA);
- Filed a lawsuit against a company and its chief executive officer, and its auditor, in connection with the offering of financial advisory and mortgage assistance relief services in violation of the CFPB and Regulation O;
- Took action against a debt-collection company for violations of the FDCPA and the CFPB;
- Took action against a company for violations of the Remittance Transfer Rule, in the Bureau's first enforcement action for violations of this rule;
- Took action against a national consumer reporting agency for its 2017 data breach, securing up to \$425 million in monetary relief to consumers, a \$100 million civil money penalty, and other relief in partnership with the Federal Trade Commission, 48 states, and the District of Columbia and Puerto Rico;
- In partnership with 44 states and the District of Columbia, took action against a company for providing substantial assistance to a for-profit college chain in making predatory loans to students;
- Took action against one of the 10 largest HMDA reporters for violating HMDA and Regulation C;
- Took action against a mortgage servicer for violating the CFPB, Real Estate Settlement Procedures Act (RESPA), Regulation X, TILA, and Regulation Z;
- Filed a lawsuit against a debt collection firm for violating the CFPB and the FDCPA;
- Filed a lawsuit against a credit repair company and several related entities alleging that they violated the CFPB and the Telemarketing Sales Rule;
- Took action against a student loan servicing company that engaged in unfair practices that violated the CFPB;
- Took action against a payday lender that violated the CFPB, the Gramm-Leach-Bliley Act, Regulation P, the Truth in Lending Act, and Regulation Z;
- Took action against an online lender that extends unsecured payday and installment loans for violating the CFPB;

- Took action against a retail company offering store credit card accounts for violating the CFPA, TILA, and Regulation Z in partnership with the NY Attorney General;
- Took action against a federally chartered savings association for violating the CFPA, the Electronic Fund Transfer Act, and Regulation E;
- Delivered proposed legislation to Congress to enhance protections for servicemembers; and
- Announced changes to policies regarding Civil Investigative Demands (CIDs) to ensure they provide more information about the potentially wrongful conduct under investigation.

## Educating and Empowering Consumers to Make Better Informed Financial Decisions

- Launched the Start Small, Save Up initiative to encourage consumers to build emergency savings and increase opportunities for more consumers to save;
- Assisted 75 Volunteers Income Tax Assistance (VITA) programs. The 2019 Tax Time Savings Cohort program assisted with the preparation of 1.8 million tax returns, with 4.5 percent of taxpayers saving a portion of their refund. This compares to just under 1 percent of taxpayers who saved a portion of their tax returns across all VITA sites nationwide;
- Released annual report on the Bureau's tax time savings initiative. This year's report, Tax Time: An opportunity to Start Small and Save Up discusses the results of the CFPB's tax time savings initiative for the 2019 tax season and shares best practices;
- Published four reports to share promising and prudent practices to help child savings programs increase opportunities for more families with low-income and low-wealth to save for their children's post-secondary education;
- Published two Your Money, Your Goals booklets on strategies to increase savings and ways to build and manage credit;
- Launched the CFPB Savings Boot Camp, a multi-week email course that provides the foundation consumers need to start saving;
- Announced enhancements to the Bureau's Consumer Response Database, including adding user-friendly tools that provide more context for the data;

- Handled approximately 30,000 complaints per month in 2019 with a 98 percent timely response rate on complaints the Bureau sent to companies;
- The Office of Consumer Response received its 2 millionth consumer complaint in October 2019;
- Distributed more than 6 million financial education publications and provided answers to common questions on money topics to more than 5.5 million web users of AskCFPB and other on-line educational tools;
- Offered training to assist librarians at more than 2,700 libraries registered to receive information that can help make their libraries a "go-to" financial education resource in the community;
- Facilitated the training of more than 4,000 frontline staff in social services organizations working directly with lower-income consumers, providing information and action steps in money management that can be shared with the people they serve through the Your Money, Your Goals program;
- Launched ready-to-use classroom activities for middle/high school teachers;
- Published 78 consumer facing blogs to help consumers gain knowledge and better understand a wide spectrum of financial subjects; mortgage closing scams, debt collection (including tips for resolution); a list of specialty credit reporting companies, and new protections for servicemembers on newly established credit freeze protections (joint with Federal Trade Commission);
- Continued scholarship and research on how financial education can contribute to financial well-being. The Bureau's definition and scale for measuring financial well-being and its research identifying likely personal drivers of financial well-being provide essential tools and knowledge for financial education;
- As part of our commitment to understanding and fostering financial well-being, the Bureau released a state-by-state report on financial well-being using the data collected in a 2018 national survey by the FINRA Investor Education Foundation. The state-by-state information provides more depth of information to help consumers enhance their financial well-being;
- Facilitated five convenings of groups to establish Elder Fraud Prevention and Response Networks supporting nearly 1.6 million older Americans;
- Distributed more than 2 million educational materials to help consumers and caregivers make informed financial decisions, and to better identify and prevent elder financial exploitation;
- Published elder financial exploitation reports, Issues and Trends Based on Suspicious Activity Reports (from financial institutions);

- Began refreshing content and creating new educational materials for use by students and those who help them;
- Created and are beta testing Financing Your Future, a new web tool to help students evaluate financial aid offers;
- Published annual Private Education Loan Ombudsman report covering two years of data including approximately 20,600 complaints related to private or federal student loans;
- Collaborated with the Department of Education toward reestablishing a Memorandum of Understanding on student loan complaints;
- Expanded the financial education tool Misadventures in Money Management to active-duty servicemembers;
- Published annual reports related to servicemember, veteran, and military family consumer complaints, a report on the financial well-being of veterans, and a report on mortgage issues specifically related to servicemember and veterans;
- Provided 200,000 financial education brochures to military consumers;
- Educated 17,500 military consumers on financial products and services;
- Handled 35,133 complaints from military consumers;
- Produced a report on mortgage issues specifically related to servicemembers and veterans; and
- Provided \$1.1 million in monetary relief to servicemembers, veterans and military family consumers through the complaint process.

## Enhanced Inter-Agency Coordination

- Effective April 1, 2019 CFPB Director Kraninger became the Chairman of the Federal Financial Institutions Examination Council (FFIEC).
  - Under Chairman Kraninger’s leadership, the FFIEC issued several important announcements: the 2019 list of distressed or underserved nonmetropolitan middle-income geographies for Community Reinvestment Act (CRA) consideration; a reminder of the benefits of using a standardized approach to assess and improved cybersecurity preparedness; HMDA data from 5,683 U.S. financial institutions; and, a revised Business Continuity Management booklet stressing the value of resilience to avoid operational disruptions.

- Announced jointly with the Federal Reserve Board dollar thresholds in Regulation Z (TILA) and Regulation M (Consumer Leasing) for determining exempt consumer credit and lease transactions for 2020;
- Jointly with the Federal Reserve Board and the Office of the Comptroller of the Currency, the Bureau announced an increase in the threshold for exempting loans from special appraisal requirements for higher-priced mortgage loans for 2020;
- Jointly with the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the National Credit Union Administration, the Bureau issued a statement on the use of alternative data in credit underwriting, underscoring the potential for expanding access to credit and enabling consumers to obtain additional products and more favorable pricing and terms; and
- Jointly held with the Federal Trade Commission a workshop on accuracy in consumer reporting to examine issues affecting the accuracy of traditional credit reports as well as employment and tenant background screening reports.

## Promoting a More Inclusive, Effective and Efficient Organization

- Established a Workforce Effectiveness Committee to increase employee engagement and to ensure the organization takes a holistic, consistent approach when considering initiatives that impact staff;
- Created a Customer Experience Office to focuses on improving our internal staff experience through enhanced operational services enabling the workforce to be more effective and efficient in meeting the Bureau's mission;
- Promoted diversity and inclusion by updating the Bureau's Diversity and Inclusion Strategic Plan. Increased the focus on strong engagement with employees and utilizing an integrated approach to education, training, and engagement programs that incorporates diversity and inclusion concepts into the learning curriculum and work environment. Employee resources groups, cultural education programs, and diversity and inclusion training are key components of this effort;
- Promoted the Bureau's focus on data and information governance and management by creating a new Office of the Chief Data Officer, combining it with related functions such as Records, FOIA and Privacy, and elevating it to report directly to the Chief Operating Officer; the Southeast Regional Office will feature

a regional learning and development center for Bureau examiners and federal and state partners;

- Opened a regional office in Atlanta, Georgia so that the Bureau's Southeast Region can collaborate more effectively with other partner financial regulators who also have their regional office in Atlanta; and
- Launched the consolidation of all Washington, DC-based staff from two office buildings into one to increase the effectiveness of the organization and to significantly improve the collaboration across all teams and divisions. Moves are underway and planned to be completed in January 2020.

###

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by regularly identifying and addressing outdated, unnecessary, or unduly burdensome regulations, by making rules more effective, by consistently enforcing federal consumer financial law, and by empowering consumers to take more control over their economic lives. For more information, visit [consumerfinance.gov](http://consumerfinance.gov).

**Topics:** • BUREAU MILESTONES

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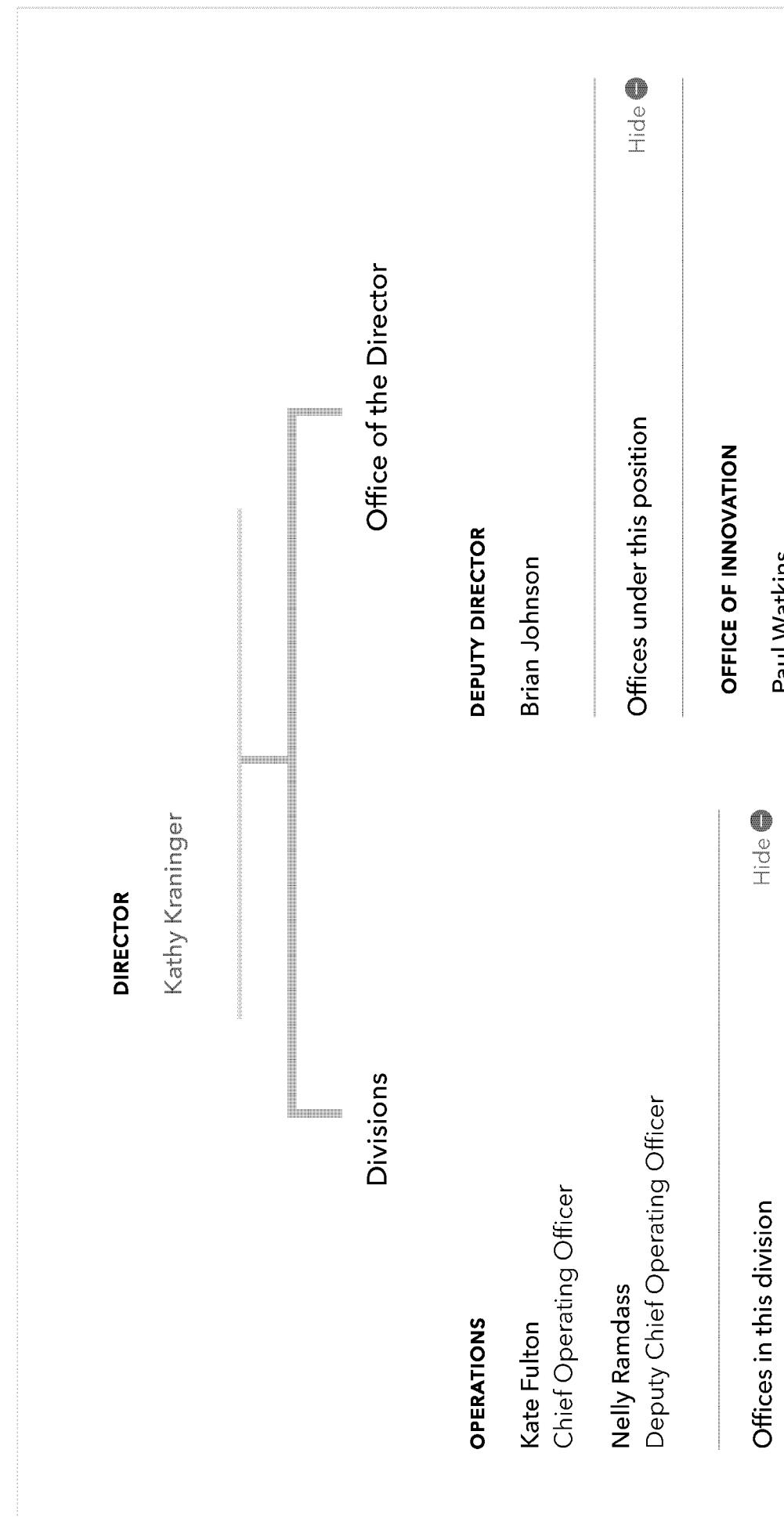
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# Bureau Structure

Last updated: Aug. 26, 2019



**ADMINISTRATIVE OPERATIONS**

Martin Michalosky  
Chief Administrative Officer

**HUMAN CAPITAL**

Jeffrey Sumberg  
Chief Human Capital Officer

**OFFICE OF STRATEGY**

David Uejio  
Chief Strategy Officer

**CHIEF OF STAFF**

Kirsten Sutton

**OFFICE OF THE CHIEF DATA OFFICER**

Ren Essene  
Chief Data Officer

Hide 

**OFFICE OF THE CHIEF FINANCIAL OFFICER**

Elizabeth Reilly  
Chief Financial Officer

**DEPUTY CHIEF OF STAFF**

Karla Carnemark

**LEGISLATIVE AFFAIRS**

Vacant  
Assistant Director

**PROCUREMENT**

Josh Galicki  
Chief Procurement Officer \*

**OFFICE OF EQUAL OPPORTUNITY & FAIRNESS**

Althea Kirelis  
Associate Director

**TECHNOLOGY & INNOVATION**

Katherine Sickbert  
Chief Information Officer \*

More information about these offices

<https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/>

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## Offices under this position

### CONSUMER EDUCATION & ENGAGEMENT

Andrew Duke  
Policy Associate Director \*

Gail Hillebrand  
Associate Director

Offices in this division

### COMMUNITY AFFAIRS

Daniel Dodd-Ramirez  
Assistant Director

### CONSUMER ENGAGEMENT

Gene Koo  
Assistant Director

### CONSUMER RESPONSE

Christopher Johnson  
Assistant Director

### FINANCIAL EDUCATION

Janneke Ratcliffe  
Associate Director

### OFFICE OF CIVIL RIGHTS

Melissa Brand  
Assistant Director \*\*

### FAIR LENDING & EQUAL OPPORTUNITY

Patrice Ficklin  
Assistant Director

Hide 

### OFFICE OF MINORITY & WOMEN INCLUSION (OMWI)\*\*

Lora McCray  
Assistant Director

### SENIOR ADVISOR AND COUNSELOR

Yasaman Sutton

### ADMINISTRATIVE LAW JUDGE \*\*\*

Christine Kirby

### OMBUDSMAN \*\*\*

**Wendy Kamenshine****OLDER AMERICANS**

**Stacy Canan**  
Assistant Director

**SERVICEMEMBER AFFAIRS**

**James Rice**  
Assistant Director

**PRIVATE EDUCATION LOAN OMBUDSMAN \*\*\***

**Robert Cameron**

**Chart Legend**

More information about these offices

- \* Position currently filled on an acting basis
- \*\* Position has direct reporting responsibilities to the director
- \*\*\* Position is not part of the Bureau director's office
- \*\*\*\* Position has direct reporting responsibilities to the Policy Associate Director for External Affairs

**SUPERVISION, ENFORCEMENT & FAIR LENDING**

**Vacant**  
Policy Associate Director

**David Bleicken**  
Associate Director \*

Offices in this division

**ENFORCEMENT**

**Cara Petersen**  
Assistant Director \*

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## SUPERVISION EXAMINATIONS

**Paul Sanford**  
Assistant Director

### SUPERVISION POLICY

**Peggy Twohig**  
Assistant Director

More information about these offices

## RESEARCH, MARKETS & REGULATIONS

**Tom Pahl**  
Policy Associate Director

**David Silberman**  
Associate Director

Offices in this division

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## CARD, PAYMENT & DEPOSIT MARKETS

**William Wade-Gery**  
Assistant Director

## CONSUMER LENDING, REPORTING & COLLECTION MARKETS

**John McNamara**  
Assistant Director

#### **MORTGAGE MARKETS**

**Mark McArdle**  
Assistant Director

#### **REGULATIONS**

**Lisa Cole**  
Assistant Director \*

#### **RESEARCH**

**Jason Brown**  
Assistant Director

#### **SMALL BUSINESS LENDING MARKETS**

**Grady Hedgespeth**  
Assistant Director

More information about these offices

#### **EXTERNAL AFFAIRS**

**Andrew Duke**  
Policy Associate Director

**Zixta Martinez**  
Associate Director

Offices in this division

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#### **ADVISORY BOARDS AND COUNCILS**

**Matt Cameron**  
Staff Director

#### **COMMUNICATIONS \*\*\*\***

**Marisol Garibay**  
Chief Communications Officer \*

#### **FINANCIAL INSTITUTIONS & BUSINESS LIAISON**

**Jennifer Stockett**  
Assistant Director \*

#### **INTERGOVERNMENTAL AFFAIRS**

**Cheryl Parker Rose**  
Assistant Director

#### **PUBLIC ENGAGEMENT & COMMUNITY LIAISON**

**Keo Chea**  
Assistant Director

More information about these offices

## LEGAL

**Mary McLeod**  
General Counsel

Offices in this division

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## GENERAL LAW & ETHICS

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BUREAU OF CONSUMER FINANCIAL PROTECTION | DECEMBER 2018

# Call for Evidence Initiative

Summary Report



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# 1. Supervision and Enforcement

## Introduction

The Bureau of Consumer Financial Protection, in January 2018, commenced a ‘Call for Evidence’ to ensure that the Bureau is fulfilling its proper and appropriate functions to best protect consumers. Over twelve weeks, the Bureau published in the *Federal Register* a series of Requests for Information (RFIs) seeking comment on enforcement, supervision, rulemaking, market monitoring, complaint handling, and education activities. These RFIs provided an opportunity for the public to submit feedback and suggest ways to improve outcomes for both consumers and covered entities.

"In this New Year, and under new leadership, it is natural for the Bureau to critically examine its policies and practices to ensure they align with the Bureau's statutory mandate. Moving forward, the Bureau will consistently seek out constructive feedback and welcome ideas for improvement," said Acting Director Mick Mulvaney at the time. He continued, "Much can be done to facilitate greater consumer choice and efficient markets, while vigorously enforcing consumer financial law in a way that guarantees due process. I look forward to receiving public comments in response to this call for evidence and encourage all interested parties to participate."

## Background and Purpose

This chapter represents the culmination of this initiative and presents a summary overview of the comments received on the first four RFIs issued in the Call for Evidence that cover the work of the Division of Supervision, Enforcement, and Fair Lending (SEFL), including the Bureau's issuance of Civil Investigative Demands, use of Administrative Adjudication, and Enforcement and Supervision practices and procedures.

## Methodology and Definitions

In January 2018, the Deputy Chief of Staff convened a Call for Evidence Working Group, consisting of the Deputy Associate Directors and select staff from RMR, SEFL, EA, CEE, Legal, and Consumer Response. The Working Group prepared a list of proposed RFI topics and

proposed publication sequence that were approved by then-Principal Policy Director Brian Johnson. Division leadership assigned staff from each division to carry out the principal drafting of the RFIs, which were subsequently reviewed and approved by division leadership and Brian Johnson.

The RFIs were released weekly, typically on Wednesdays, with concurrent submission to the *Federal Register* and posting to ConsumerFinance.gov. The RFIs were generally published in the *Federal Register* the following Mondays and were originally open for comment for 60 calendar days from the date of publication. Several trade groups requested additional time to complete their comment letters and the deadlines for the first three RFIs were extended for additional 30 days; subsequent RFIs were open for comment for 90 days from the date of publication in the *Federal Register*. Comments were primarily received via direct submission at Regulations.gov or via email to [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). A few additional comments were received via U.S. Post, hand delivery, or courier service.

Altogether, over 88,000 comments were received across the twelve dockets, although the vast majority of these comments were from a series of coordinated campaigns in which individuals submitted identical or substantially similar form letters. Form letters notwithstanding, the Bureau received substantial and broad input on all RFIs, with comments received from national trade groups, consumer advocacy groups, academics, state and federal agencies, state attorneys general, individual entities, and individual consumers, among others.

All comment submissions were uploaded to Relativity—a docket management system used by Regulations on certain rulemaking actions and Enforcement for litigation files—to facilitate review and tagging of the comment letters. Two tagging schemes were used: one universal to all the RFIs in the Call for Evidence and a second, unique to each RFI that counted the number of respondents addressing specific topics in their comment letters. The universal tags were used to identify (1) the type of commenter submitting the letter (e.g., trade group, consumer group, etc.); (2) whether the comment was ‘substantive’ (i.e., did it address any of the questions posed in the RFI); and (3) whether the comment was responsive to multiple RFIs or a different RFI and should therefore be copied or moved for review by the appropriate team. The tags specific to the content of each RFI were developed by the ‘owning’ division and team of each docket.

At the division level, each docket was assigned to a team of one to four subject matter experts who reviewed all the comments received on the docket, tagged the comments according to the

universal and RFI-specific tagging schemes, and identified “representative sentiments” in the substantive comment letters.

The Director’s Office requested that comment summary reports for this initiative provide “representative sentiments” for a limited number of topic areas that were determined to be central to the RFI. The term “representative sentiments” is used here to encapsulate that the quotes provided in this report are representative of the range and extent of views, ideas, positions, claims, and experiences received by the Bureau on each docket. That is, the sentiments are representative insofar as every effort was made to capture and fully present the diversity of perspectives and voices that provided input and feedback to the Bureau. Although the representative sentiments are presented by commenter type, the quotes are *not* intended to be representative of the views of that particular commenter type. That is, although only one or two quotes may be provided for a particular commenter type, we do not intend to suggest that those views are shared by all members who fall within the group.

Finally, members of the Working Group or assigned subject matter experts compiled and consolidated the tagging data from Relativity and the representative sentiments to prepare this report, and subsequent reports, in accordance with guidance received from the Director’s Office with respect to the number of topic areas, the length of quotes, and overall presentation of the data.

If you have any questions regarding this report, please do not hesitate to contact:

- Kate Fulton, Deputy Chief of Staff;
- Mark Samburg, Counsel to the SEFL Associate Director; or
- Tyler Ross, Director’s Financial Analyst.

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## 1.1 Civil Investigative Demands

### Background

In the course of its investigatory activities, and as authorized by 12 U.S.C. 5563 and 12 CFR part 1080.6, the Bureau issues Civil Investigative Demands (CIDs) to entities and persons whom the Bureau has reason to believe may have information relevant to a violation of the laws the Bureau enforces. These demands require recipients to provide the Bureau with information in varying forms: most frequently some combination of written answers to interrogatories, written reports, documents, tangible things, and testimony. Recipients are required to produce the requested information to the Bureau, which uses such information to further investigations of potential violations of Federal consumer financial laws.

To assess the effectiveness of its existing CID processes, the Bureau issued a request for information that sought comment on how best to achieve meaningful burden reduction or other improvement to the CID process while continuing to achieve the Bureau’s statutory and regulatory objectives.

The Bureau sought feedback on all aspects of its Civil Investigative Demands including, but not limited to, the topic areas listed below.

### Comment Summary

**Total Comments:** 8,023

**Substantive comments responsive to this RFI:** 76

**Substantive comments responsive to other RFIs:** 14

Comments received from:						
	Individual Entities				Government (e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, non- consumer advocacy groups, faith- based organizations, etc.)
Individual Consumers	Depository Institutions	Non-Depository Institutions	Trade Groups	Consumer Advocacy Groups		
	7,953	2	1	31	15	7
						14

## RFI Topic Areas

	Topic	Description
1	Process for Initiating Investigations and Issuing CIDs	(1) The Bureau's processes for initiating investigations, including 12 CFR 1080.4's delegation of authority to initiate investigations to the Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement.  (2) The Bureau's processes for the issuance of CIDs, including the non-delegable authority of the Director, Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement to issue CIDs.
2	Improving CID Understanding	Specific steps that the Bureau could take to improve CID recipients' understanding of investigations, whether through the notification of purpose included in each CID or through other avenues, including facilitating a better understanding of the specific types of information sought by the CID.
3	Scope	The nature and scope of requests included in Bureau CIDs, including whether topics, questions, or requests for written reports effectively achieve the Bureau's statutory and regulatory objectives, while minimizing burdens, consistent with applicable law, and the extent to which the meet and confer process helps achieve these objectives.

	<b>Topic</b>	<b>Description</b>
4	Timeframes	The timeframes associated with each step of the Bureau's CID process, including return dates, and the specific timeframes for meeting and conferring, and petitioning to modify or set aside a CID.
5	Meet and Confer Processes	The Bureau's processes concerning meeting and conferring with recipients of CIDs, including, for example, negotiations regarding modifications and the delegation of authority to the Assistant Director of the Office of Enforcement and Deputy Assistant Directors of the Office of Enforcement to negotiate and approve the terms of satisfactory compliance with civil investigative demands and extending the time for compliance.
6	Petitions to Modify or Set Aside	The Bureau's processes concerning CID recipients' petitions to modify or set aside Bureau CIDs.
7	Taking of Testimony and Other Miscellaneous Comments	(1) The Bureau's taking of testimony from an entity, including whether 12 CFR 1080.6(a)(4)(ii), and/or the Bureau's processes should be modified to make expressly clear that the standards applicable to Federal Rule of Civil Procedure 30(b)(6) also apply to the Bureau's taking of testimony from an entity.  (2) General comments that do not address specific requests in the RFI.

## Representative Sentiments

1. The Bureau's processes for initiating investigations, including 12 CFR 1080.4's delegation of authority to initiate investigations to the Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement. And the Bureau's processes for the issuance of CIDs, including the non-delegable authority of the Director, Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement to issue CIDs.

Commenter	Representative Sentiments
Type	
	<p>“CFPB's process for initiating investigations would benefit from more narrow tailoring with respect to the information sought from a recipient...[and] greater transparency, particularly with respect to the standards used for initiating the investigation process. We would urge the CFPB to...only initiate an investigation if it has at least a reasonable suspicion that a violation of law has occurred.” – Network Branded Prepaid Card Association (NBPCA)</p>
Trade groups	<p>“Enforcement investigations should only be opened and CIDs...issued when the Bureau has reason to believe conduct has violated a clear legal standard. [We oppose] the Bureau's practice of “regulation by enforcement.” ... [T]he decision to open an investigation and issue a CID should be vested with the Director and the Bureau should adopt clear policies asserting that investigations will only be opened where the suspected conduct, if it occurred, violated clearly articulated legal rules.” – U.S. Chamber of Commerce Center for Capital Markets Competitiveness (CCMC)</p>
	<p>“When the Bureau has supervisory authority over the CID subject, the...Bureau [should] focus its enforcement activities on issues discovered through the course of its supervisory examinations after the Bureau has...allowed the institution to respond, and determined no alternative resolution is possible. The Associations recommend increased transparency regarding the basis for escalation to...[Enforcement] through standardized publicly available protocols for nature and content of communication to the institution [and]...providing more extensive information to the institution regarding why a CID has been issued after transfer to Enforcement. ... The Bureau [should] enhance transparency regarding internal coordination between the Bureau's various divisions, require more formal approval from...[Legal] prior to initiating an investigation, and enhance external coordination with non-Bureau government agencies involved in overlapping investigations before issuance of a CID.” – Financial Services Roundtable (FSR), et al.<sup>1</sup></p>
	<p>“We again recommend that the CFPB should only initiate CIDs if it has at least a reasonable suspicion that a violation of law has occurred. NBPCA members have indicated that, currently, the CFPB's CIDs appear to be initiated based on mere hunches. In addition, our members</p>

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<sup>1</sup> Letter submitted jointly by the Financial Services Roundtable, the Consumer Bankers Association, and the Consumer Mortgage Coalition.

believe the CID initiation process would be enhanced by the CFPB taking steps at the outset of the CID process to account for the burden of responding by the target company.” – NBPCA

“Simply being a third-party recipient of a CID requires a community bank to adhere to a strict set of procedures that are not intended for smaller financial services providers and could create significant compliance costs. As such, ICBA recommends that the Bureau first seek voluntary cooperation before issuing a CID to a third-party recipient that might have relevant information...[and] amend its regulations to require the usage of already available resources and reports before issuing a CID in attempts to gather information.” – Independent Community Bankers of America Association (ICBA)

“[T]he Bureau routinely should explore other ways of obtaining information before issuing a CID [including relying] upon Supervision to initiate requests for information from supervised entities. ... Where Enforcement requires materials beyond those already collected by Supervision, it should begin its efforts with requests for information rather than CIDs. ... ABA believes that, before issuing a CID, the Bureau should go through an internal process that is commensurate with the burden a CID may impose. The current process for issuing CIDs allows a Deputy Assistant Director in Enforcement to authorize a CID. ... The Federal Trade Commission’s (FTC) CID process offers a much more robust model for the issuance of CIDs. ... A similarly robust process at the Bureau would address many of the concerns noted and promote consistency and accountability.” – American Bankers Association (ABA)

“The CDIA suggests that the CFPB require that CIDs receive authorization from the Bureau Director or, at least, the Assistant Director for Enforcement. Making CIDs more standardized and centralized is essential to ensuring that the Bureau acts consistently in the way it imposes burdens on providers of financial goods and services. Such a change would also bring the Bureau closer into line with the FTC. ... In the longer term, the Bureau could draft detailed, public guidance on when CIDs should be issued, and how they should be tailored.” – Consumer Data Industry Association (CDIA)

Government agencies

“The BCP [Bureau of Consumer Protection] Director [of the FTC] is responsible for implementing the Commission’s enforcement agenda. The BCP Director meets regularly with the Chairman and the other Commissioners to obtain views about investigations and possible investigations. ... On a day-to-day basis, the BCP Director is responsible for ensuring that other BCP managers make opening and closing decisions in conformity with the Commission’s enforcement priorities and objectives [through] regular discussions about specific divisional or regional office work, including matters currently under investigation and those as to which an investigation is

contemplated. Further, other managers check with the BCP Director before opening, continuing, or closing an investigation. ... Such oversight, combined with the delegations discussed above, has worked very well over the years. The Bureau may wish to consider applying a similar approach to its opening and closing of investigations.” – Federal Trade Commission (FTC)

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“[R]equiring higher level approvals prior to initiating investigations could prevent enforcement staff from responding to new and unexpected harmful practices. ... Requiring senior management approval also risks slowing down the process for commencing investigations. ... [T]he decision to open enforcement investigations should remain at a managerial level below political staff...to prevent conflicts of interest, partisanship, and the appearance of impropriety. ... [T]he signatories recommend...allow[ing] the Deputy Assistant Directors...to open investigations without requiring [additional] approval. ... Such a change would be consistent with the existing regulations which explicitly provide for this delegation of authority.” – Americans for Financial Reform (AFR), et al.<sup>2</sup>

Consumer advocacy groups

“Requiring approval by the Director or other political appointees would risk politicizing the investigative process. The Director already has the authority to end an investigation and to set priorities for the Bureau’s work. But requiring approval before new investigations are launched or pursued could bring an element of politics into the process and could be influenced by companies that might have the Director’s ear. Not only the public, but also senior political staff at agencies benefit from having investigation decisions in the hands of staffers who are relatively immune to potential political repercussions of investigating the largest financial institutions in the world.” – National Consumer Law Center (NCLC), et al.<sup>3</sup>

“[T]he CFPB should not require a higher level of senior management approval prior to issuing CIDs. ... Slowing down investigations by requiring career staff to obtain buy-in from more senior leaders would lead to slower investigations, fewer investigations, less deterrence of illegal activity and more harm to the American public [and]...could harm the subjects of investigations themselves. ... Slowing down the investigation process by requiring more red-tape and hurdles in issuing CIDs could force investigation subjects to disclose investigations [in their securities disclosures] more frequently and for longer periods of time.” – AFR, et al.

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<sup>2</sup> Letter submitted jointly by Americans for Financial Reform, the Center for Responsible Lending, the Consumer Federation of America, the National Consumer Law Center (on behalf of its low-income clients), and the U.S. Public Interest Research Group.

<sup>3</sup> The full list of signatories to this letter can be found in the Additional Notes section.

"The Bureau must retain broad and flexible authority to investigate potential violations of the law and consumer harm. The ability to initiate investigations and to promulgate investigative demands must remain in the hands of senior professional staff and not be subject to political calculations. Bureau staff must retain the authority to initiate CIDs quickly and expect quick responses, without front-office bottlenecks or protracted appeal processes." – Consumer Action

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2. Specific steps that the Bureau could take to improve CID recipients' understanding of investigations, whether through the notification of purpose included in each CID or through other avenues, including facilitating a better understanding of the specific types of information sought by the CID.

Commenter Type	Representative Sentiments
	<p>"None of the CIDs served upon NCBA members articulated the nature of the conduct under investigation. ... By providing such a broad notification of purpose, members report they were forced to accumulate and gather large amounts of documents and information that may or may not have been relevant to the investigation." – National Creditor's Bar Association (NCBA)</p>
Trade groups	<p>"By engaging early to learn about institutions' structure, CIDs issued after such discussions will be more narrowly tailored and effective. ... [S]tatements of basis and purpose should be required to (a) identify the institutional product lines under review; (b) continue to specify applicable enumerated statutes; and (c) articulate the specific conduct under investigation. ... [T]he Bureau could improve CID recipients' understanding of investigations and necessity to acquire legal counsel by improving the templates for the "notification of purpose" to require specificity when (a) investigations are based on violations of the Consumer Financial Protection Act's prohibitions against unfair, deceptive, or abusive acts and practices; (b) when substantially-assisting the violations of another covered person is at issue; and (c) when the Bureau is investigating as to whether an individual director or officer may be personally liable for violations" – Credit Union National Association (CUNA)</p>
	<p>"Unfortunately, CIDS [sic] are often issued with overly broad notifications. ... A more helpful and narrowly defined notification of purpose...would include information about the CFPB's intended target, the specific section(s) of the FCRA [Fair Credit Reporting Act] implicated in the</p>

notification, and an explanation of how the section(s) in question were violated. For these reasons, as well as the length of the FCRA, we urge the CFPB to specify the statutory sections that have been violated in their notification of purpose [and to identify] the particular, alleged wrongful conduct, or the person or activity, that is subject to review, along with a direct citation to the specific provision of the law allegedly violated.” – National Association of Professional Background Screeners

“The CID should make clear on the face of the CID if the recipient is not a target of an investigation. … The deficiencies in the CID Notification of Purpose could be ameliorated by further explanation, early in the process, from Enforcement Attorneys regarding the Bureau’s concerns and priorities. … A CID recipient that understands the concerns underlying a Bureau CID is in a better position to address those concerns promptly, both on the merits and in responding to the CID. Such proactive efforts may include a settlement proposal, or an effort to identify and remediate any ongoing consumer harm even before the CID response is complete. … Too often, good faith modification requests are viewed as challenges to the Bureau’s authority.” – ABA

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“The Bureau’s policies already require a clear declaration of purpose, including the alleged violation. Initial requests may be and are often narrowed following the course of communication between the Bureau and a firm. … The Bureau’s manual regarding CIDs directs staff to “consider the burden the CID will impose on the recipient. A CID should be narrowly tailored to solicit the information necessary for the investigation.” Providing additional information could lead abusive firms to conceal or destroy evidence. Further, as some CIDs go to third parties, even the subject firm may not wish for the Bureau to expand on this information for fear of potential reputational harm.” – Public Citizen

Consumer advocacy groups

“CFPB leadership should bear in mind that many investigation subjects are hostile to CFPB investigations because the subjects are engaged in violations of the law. … Making Bureau investigators provide even more information than existing policies already require might inadvertently divulge information that bad actors could use to obstruct the investigation…[and], some investigation subjects may prefer that the Bureau not provide more detailed disclosures regarding the purpose of the CID. … [T]he Bureau must often serve CIDs on third parties [and r]evealing to the third party the nature and purpose of the CID could expose the investigation subject to inadvertent reputational harm prior to an adjudication of liability.” – AFR, et al.

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3. The nature and scope of requests included in Bureau CIDs, including whether topics, questions, or requests for written reports effectively achieve the Bureau's statutory and regulatory objectives, while minimizing burdens, consistent with applicable law, and the extent to which the meet and confer process helps achieve these objectives.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Consumer advocacy groups	<p>"The CFPB's existing procedures adequately achieve the Bureau's objectives while minimizing burdens on CID recipients. ... [T]he CFPB's existing meet and confer procedures are sensible and effective. ... [The] process strikes a reasonable balance in helping recipients respond to CIDs without burdening CFPB enforcement staff with procedures, disclosures, meetings, or delays that might slow down prosecution of the public interest. ... The CFPB must not amend its procedures to allow contact or discussions that run the risk of interfering with the law enforcement purpose and mission." – AFR, et al.</p>
Trade groups	<p>"[B]road initial demands are often narrowed or specified through the meet and confer process. But broad initial requests are important in order to cover the range of evidence that might reveal a violation of the law." – NCLC, et al.</p>

further data and information pertaining to the conduct to better understand what transpired, and identify possible remedies.” – CCMC

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Government agencies “Notwithstanding these incentives not to issue overly broad CIDs, BCP staff often must draft CIDs in the absence of any knowledge about the CID recipient’s systems for maintaining information, the identities of relevant custodians, the recipient’s ability to review and produce responsive documents in the time period demanded, or, at base, the types of substantive information the recipient maintains. Because of this lack of information, some CIDs can be facially broad.” – FTC

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4. The timeframes associated with each step of the Bureau’s CID process, including return dates, and the specific timeframes for meeting and conferring, and petitioning to modify or set aside a CID.

Commenter	Representative Sentiments
Type	
	“Several NCBA member law firms reports that a 30-day time frame to respond to the Bureau’s requests was extremely short, given the vast nature of the requests. ... Some members report that in certain instances the Bureau did agreed [sic] to rolling productions or production in phases. Members report that the time frame for the meet-and-confer was reasonable...” – NCBA
	“A secondary concern is the very short time frames allowed to respondents to be in contact with CFPB Office of Enforcement staff handling the CIDs. For businesses not already represented by counsel familiar with CFPB CID or investigational processes, finding a lawyer prepared to assist them was also a formidable challenge. Thirdly, the time frames in which responsive documentary materials were to be provided often did not allow sufficient time for the respondents’ lawyers to review the documentation to be certain that no privileged information was included.” – National Pawnbrokers Association
Trade groups	“This ten day period is routinely too short for the CID to reach the right person(s) and for them to ascertain the whereabouts and accessibility of information responsive to the CID. ... Many ABA members have had the experience of being rushed to produce materials that relate to products or practices that have been discontinued, or for which there is no plausible claim of ongoing

consumer harm. Others report that tight CID deadlines are followed by long delays before there is any sign that the staff has reviewed the requested materials. ... Much of the issue could be resolved by a more liberal approach to extensions in individual cases. However, a more permanent reform would be for the Bureau to extend the deadlines set forth in its regulations.

– ABA

“[AFSA] requests that the Bureau extend the time between when the CID is received and when the “meet and confer” takes place [to 30 days, and]...enforcement staff should have the authority to extend the “meet and confer” deadline. ... Currently, it is only ten days. In that ten days, the financial institution: usually finds and hires counsel, must raise all potential objections to enforcement of the CID, and attempt to obtain modifications from the Bureau.” – American Financial Services Association (AFSA)

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Consumer advocacy groups

“The existing rules and procedures sensibly set an expectation of brisk compliance and grant professional staff the discretion to extend times for responding as necessary. ... Enforcement staff need the flexibility and discretion to exercise their professional judgment on how to balance the best interests of both the public as well as CID recipients. ... Delaying one CID may lead to delays in a whole sequence of dependent CIDs. ... These questions of timing, order, and logistics are best left to the CFPB professional staff’s discretion and judgment and are not likely to be assisted with amendments to existing rules or policies.” – AFR, et al.

“It is critical that the Bureau be able to act quickly when it has reason to believe that the law has been violated. ... A tremendous amount of consumer harm can happen in short periods of time. ... For similar reasons...the presumptive timeframes for the CID process are appropriate and should not be extended. Professional staff already have the discretion to grant extensions when warranted. ... Delaying an initial CID needed for preliminary information to identify witnesses or issues, for example, can lead to delays on a whole series of CIDs.” – NCLC, et al.

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5. The Bureau's processes concerning meeting and conferring with recipients of CIDs, including, for example, negotiations regarding modifications and the delegation of authority to the Assistant Director of the Office of Enforcement and Deputy Assistant Directors of the Office of Enforcement to negotiate and approve the terms of satisfactory compliance with civil investigative demands and extending the time for compliance.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Consumer advocacy groups	<p>"Under current...rules and procedures, investigation subjects already have ample opportunity to request modifications to the substance and process of CIDs for good cause. ... Providing additional levels of appeal, further opportunities for negotiation, and other avenues for favors or other special treatment, may in many circumstances actually end up working against CID recipients' interests by generating delay and higher costs." – AFR, et al.</p>
	<p>"[W]e suggest that the timeframe for initially meeting and conferring with the CFPB in response to a CID should be a minimum of 14 business days...automatically extended for an additional period of 14business [sic] days upon the recipient's request. Finally, CFPB line-attorneys should have the ability to extend the time frame for meeting and conferring with the CFPB up to additional 15-days [sic] ... without the need for management approval. ... We believe that small businesses, in particular, should be afforded every feasible accommodation in light of the demands of operating a small business and compliance with federal CIDs, including any issued by the CFPB." – NBPCA</p>
Trade groups	<p>"Current Bureau rules mandate that the CID recipient meet and confer with the Bureau's litigation team within 10 days of the agency serving the CID. With such short timelines, the response to demands result in a "fire drill," constricting the time by which a respondent can receive the demand letter, deliberate with its Board, and eventually respond. Because the 10-day requirement to meet and confer is not statutorily mandated, ICBA recommends that the Bureau revise the requirement. Given recent changes by the [FTC], ICBA advocates for a response time of 30 days." – ICBA</p>
	<p>"For routine third-party CIDs, Bureau regulations do allow for a waiver of the meet and confer requirement. ICBA appreciates this concession as it will mitigate the cost and burden of providing the Bureau with information. However, rather than making certain waivers an</p>

exception dependent on Bureau approval, ICBA recommends meet and confers not be required, at all, for third-party recipients. Unless the respondent requests the meeting, there should be no mandatory meet and confer for third-party recipients. This would also mean that a respondent would not have to wait until a meet and confer to file a petition to set aside the CID.” – ICBA

“[R]equests or extensions of deadlines can take time because Bureau staff is required to go through a hierarchy of approvals from the Assistant Director and the Deputy Assistant Director of Enforcement. Better coordination and a delegation of authority, similar to what is done at the FTC, would streamline this process.” – NCBA

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6. The Bureau’s processes concerning CID recipients’ petitions to modify or set aside Bureau CIDs.

Commenter Type	Representative Sentiments
Trade groups	<p>“[A] petition to modify or set aside a CID should be an administrative proceeding that is informal in nature or possibly facilitated by a federal mediator. ... [I]t seems fruitless for a recipient to seek relief from the same persons who initiated the investigation.” – NCBA</p> <p>“The Bureau modeled Section 1080.6(e) after the [FTC’s] similar rule at 16 C.F.R. §2.10. But differences in FTC and Bureau internal process and structure prevent Bureau Petitions to Modify from operating like FTC petitions. Ordinarily, FTC staff issue informal letter requests and do not send demands through a compulsory process unless parties refuse to provide the information voluntarily. Moreover, before the FTC can issue a subpoena or CID, the Commission must first issue a resolution to send a CID. When a CID recipient files a “petition to limit or quash,” a single Commissioner may decide the matter, but the petitioner may appeal the ruling to the full bipartisan Commission. None of these features appear in CFPB structure, policies, or procedures.” – CUNA</p> <p>“Given the relationship among the Petitioner and Office of Enforcement (as adversarial parties), and the Director (as neutral adjudicator), ex parte communication with the Director should not be permitted. Indeed, the Bureau’s Rules of Adjudication already prohibit ex parte communications. The current practice reduces transparency and prevents the CID recipient from having a full understanding of how the Office of Enforcement has cast the investigation, the CID, and the</p>

petition. The current practice gives the Office of Enforcement the opportunity to respond to a petitioner's arguments but does not present the petitioner with the same rights, creating an unfair decision-making process that also can harm the agency's credibility over the long-term.”  
– Electronic Transactions Association

The benefits of having the motion process internal as opposed to litigation can be significant if the Bureau maintains the confidentiality of the petition process. By making the process public, it is questionable which forum provides more benefit.” – National Independent Automobile Dealers Association

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Non-profits “The CFPB has used its CID authority in an appropriately measured way. And as with the DOJ and FTC authority, there are processes available to entities who receive a CID, to work with the CFPB to further tailor a request more precisely to the relevant and useful information in its possession, custody, or control, or to petition the court to narrow the scope of a CID or to disallow it in its entirety. We believe these are sufficient procedural safeguards against inappropriate use.” – Consumers Union

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Government agencies “Federal courts ensure that the Bureau does not overstep its bounds in exercising its civil investigative demand authority. First, the recipient of a demand from the Bureau may petition a district court to set it aside. In addition, the Bureau’s demands are not self-enforcing: should a recipient not comply with the demand, the Bureau must turn to a district court for enforcement.”  
– State of California, Office of the Attorney General

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Consumer advocacy groups “[T]he processes for challenging CIDs already provide sufficient protections to companies. Encouraging more litigation before the Bureau has even concluded an investigation could only harm the public. The rules on the transparency of CID petitions, which follow longstanding FTC rules, also serve the public and discourage delay tactics and special treatment.” – NCLC, et al.

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“Petitions...should continue to be available to the public. ... The CFPB’s approach in this regard is based on the longstanding practices of the FTC which also publishes petitions and the commission’s response. Publication of petitions and the Bureau’s response is necessary because it provides general transparency, allows future CID recipients to determine whether filing a petition is advisable, and how to effectively petition when it is appropriate to do so. The public has a right to know when the recipient of a federal CID is disputing the authority of the Bureau to investigate alleged violations of federal law. ... Under the current rules, petitioners can request confidentiality with the CFPB and ultimately seek relief in court to protect confidentiality.

... Additionally, if the CFPB were to extend confidentiality to CID petitions, it would encourage CID recipients to engage in dilatory and wasteful challenges.” – AFR, et al.

7. The Bureau’s taking of testimony from an entity, including whether 12 CFR 1080.6(a)(4)(ii), and/or the Bureau’s processes should be modified to make expressly clear that the standards applicable to Federal Rule of Civil Procedure 30(b)(6) also apply to the Bureau’s taking of testimony from an entity. And general comments that do not address specific requests in the RFI.

Commenter Type	Representative Sentiments
	<p>“In our experience, the Bureau’s process for taking the testimony of an entity through the designation of hearing topics followed by the entity’s designation of individuals who will testify on behalf of the entity has followed the process outlined in 12 C.F.R. § 1080.6 and has been handled in a manner that is consistent with Federal Rule of Civil Procedure 30(b)(6).” – Hudson Cook LLP</p>
Law firms	<p>“In our experience, most CFPB investigators conducting investigational hearings have conducted those hearings in a reasonable manner. Many permit counsel to, with permission, assist with the investigational hearing by offering helpful suggestions when the witness appears not to understand the question. Most also routinely offer witnesses the opportunity to clarify prior testimony. However, in some cases, aggressive investigators have led witnesses to give inaccurate testimony by asking unclear or unfair questions. ... [A]ggresive questioning is nothing new to the world of litigation. In litigation, however, the opposing party can object and defend itself from unclear or unfair questions.” – Ballard Spahr LLP</p>
Trade groups	<p>“The receipt of testimony should be limited to those scenarios where interrogatory responses, document production, and written reports do not satisfy the CID’s inquiry. [T]he NBPCA’s members urge the CFPB to adopt the procedure for depositions provided under the Federal Rules of Civil Procedure, including Rule 30(b)(6). Further, our members urge that any formal question and answer session where witnesses provide sworn testimony as part of the CID process should allow witnesses (and their counsel) to avail themselves of all appropriate objections to preserve a record valid for admission into civil judiciary proceedings. Finally, we</p>

ask the CFPB to adopt procedures allowing recipients to receive a copy of the transcript for any hearing..." – NBPCA

"[B]oth Dodd-Frank and the Bureau's regulations allow witnesses to be accompanied by their attorney. It makes no sense for an attorney to be present to represent a client if they cannot protect their client's interests by noting legitimate objections on the record where appropriate." – Housing Policy Council of the Financial Services Roundtable

"[T]he Associations recommend adopting the Federal Rules absent good cause. The Associations also recommend that the Bureau: (i) identify matters for oral testimony with particularity; (ii) limit testimony to topics identified in the CID; (iii) ensure that corporate testimony is narrowly tailored to appropriate corporate witnesses who can speak to specific topics; (iv) limit hearings to one seven-hour day; and (v) in order to streamline testimony and allow effective representation, permit counsel to object more fully." – FSR, et al.

"The Bureau should not hinder free speech, and recipients should continue to be allowed to disclose CIDs if they wish to do so. The confidentiality of investigations exists to support the rights of investigated parties to not be unjustly tarnished by the mere existence of a government investigation. However, those parties should remain free to disclose the existence of CIDs as they deem appropriate, and the Bureau should formally abandon its 2016 proposal to deny them this right." – CCMC

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Individual consumers

"Civil investigative demands are used when looking into suspected abuse of customers by financial companies. I am writing today to urge the CFPB to continue using them as is — without modifications to the demands — so it can continue its mission of protecting consumers like me from financial wrongdoing. ... Under the previous director, the CFPB won \$12 billion dollars in relief from abusive firms for more than 29 million victims. ... CFPB is a common sense protection for vulnerable consumers who are far too often taken advantage of by unethical companies. Please do not leave people to fight an unequal battle with no one on their side." – Individual Consumer, Docket #: CFPB-2018-0001-0116

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Consumer advocacy groups

"CFPB investigations and ensuing enforcement actions have had spectacular results, benefitting tens of millions of consumers across the country. The bureau must refrain from making any changes that would hamper its ability to fulfill its statutory mission to protect consumers in the financial marketplace, including its ability to initiate and carry out investigations of potential violations of consumer financial protection laws." – National Association of Consumer Advocates

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"The CFPB thoughtfully structured the CID process through a public rulemaking and notice-and-comment period. In addition, businesses have multiple avenues to seek relief or challenge the validity of civil investigative demands that they receive. The process includes opportunities for appeal of CID requests at the agency, and businesses also can turn to courts to seek to set aside or limit investigations. CFPB investigations do not need additional hurdles that would prevent the agency from taking action in a timely manner to protect consumers from illegal and predatory financial conduct." – National Association of Consumer Advocates

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Government agencies

"While the statutory grant of civil investigative authority did not require separate rulemaking, on July 28, 2011, the Bureau issued an Interim Final Rule for the Rules Relating to Investigations. ... The Interim Final Rule proved non-controversial. ... On June 29, 2012, the Bureau published its final rules relating to investigations, which, like the Interim Final Rule, relied heavily on the well-established procedures of the FTC. These rules remain in effect, and as set forth below, are an excellent example of the type of civil investigative procedures that have long benefited law enforcement and, by extension, the American public." – Office of the Attorney General, California Dept. of Justice

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Academia

"The statutory authority and regulations for Bureau CID issuance are modeled on FTC powers. Decades of experience by the FTC and state attorneys general with substantially similar CID authority support broad discretion and flexibility in CID use for effective public enforcement of UDAP laws. Courts have consistently so held." – Group of Legal Academics (Prentiss Cox, et al.)<sup>4</sup>

## Additional Notes

1. The following organizations were signatories to the comment submitted by the National Consumer Law Center (CFPB-2018-0001-0071):

*Alabama Appleseed Center for Law & Justice  
Allied Progress  
Americans for Financial Reform*

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<sup>4</sup> Letter submitted jointly by 43 legal academics. The complete list can be found in the Additional Notes section.

*Arizona Community Action Association*  
*Arizona Public Interest Research Group (Arizona PIRG)*  
*Arkansans Against Abusive Payday Lending*  
*Atlanta Legal Aid Society, Inc.*  
*California Reinvestment Coalition*  
*CASH Campaign of Maryland*  
*Center for Economic Integrity*  
*Center for Progressive Reform*  
*Center for Responsible Lending*  
*Connecticut Fair Housing Center*  
*Connecticut Legal Services, Inc.*  
*Consumer Action Consumer Advocacy and Protection Society (CAPS) (CA)*  
*Consumer Federation of America*  
*Consumers Union*  
*Demos Florida Alliance for Consumer Protection*  
*Georgia Watch*  
*Greater Boston Legal Services (on behalf of its low-income clients)*  
*Heartland Alliance for Human Needs & Human Rights (IL)*  
*Interfaith Center on Corporate Responsibility*  
*Jacksonville Area Legal Aid, Inc. (FL)*  
*Kentucky Equal Justice Center*  
*Legal Aid Society of Southwest Ohio, LLC*  
*Legal Aid Society of the District of Columbia*  
*Maryland Consumer Rights Coalition*  
*Montana Organizing Project*  
*NAACP*  
*National Association of Consumer Advocates*  
*National Center for Law and Economic Justice*  
*National Community Reinvestment Coalition (NCRC)*  
*National Consumer Law Center (on behalf of its low income clients)*  
*New Jersey Citizen Action*  
*North Carolina Justice Center*  
*People's Action Institute*  
*Prosperity Now*  
*Public Citizen*

*Public Justice Center (Baltimore, MD)*  
*Public Law Center (Santa Ana, CA)*  
*Reinvestment Partners (NC)*  
*SC Appleseed Legal Justice Center*  
*Southern Poverty Law Center*  
*Tennessee Citizen Action*  
*Texas Appleseed*  
*U.S. PIRG*  
*UnidosUS (formerly NCLR)*  
*Virginia Citizens Consumer Council*  
*Virginia Organizing*  
*Virginia Poverty Law Center*  
*VOICE - OKC (OK)*  
*West Virginia Center on Budget and Policy*  
*Woodstock Institute*

2. The following individuals were signatories to the letter submitted by Prentiss Cox on behalf of a group of legal academics (CFPB-2018-0001-0102):

*Prentiss Cox*  
*Christopher L. Peterson*  
*Richard Alderman*  
*William Black*  
*Susan Block-Lieb*  
*Lauren Dreshman*  
*Kate Elengold*  
*Kathleen Engel*  
*Jeffrey Gentes*  
*Robert Fellmeth*  
*Linda Fisher*  
*Anne Fleming*  
*Pamela Foohey*  
*Judith Fox*  
*Michael Greenfield*  
*Dalie Jimenez*  
*Kathleen Keest*

*Daniela Kraiem*  
*Lea Krivinskas Shepard*  
*Adam Levitin*  
*Angela Littwin*  
*Cathy Mansfield*  
*Nathalie Martin*  
*Patricia McCoy*  
*Christopher Odinet*  
*Gary Pieples*  
*David Reiss*  
*Jacob Rugh*  
*Ann Shalleck*  
*Alexandra Sickler*  
*Norman I. Silber*  
*Neil Sobol*  
*Gregory Squires*  
*Mark E. Steiner*  
*Mark Totten*  
*Rebecca Tushnet*  
*William Vukovich*  
*Alan White*  
*Amy Widman*  
*Arthur Wilmarth*

3. Additional comments were received on the following topics and for which representative sentiments are available upon request:

- The Bureau’s processes for handling the inadvertent production of privileged information
- The rights afforded to witnesses by 12 CFR 180.9, including limitations on the role of counsel
- The Bureau’s requirements for responses to CIDs, including certification requirements and document submission standards

## 1.2 Administrative Adjudication

### Background

The Consumer Financial Protection Act of 2010 (Act) required the Bureau to prescribe rules establishing such procedures as may be necessary to carry out hearings and adjudications conducted pursuant to 12 U.S.C. 5563. 12 U.S.C. 5563(e). On July 28, 2011, the Bureau published an interim final rule seeking comment and prescribing rules establishing such hearings and procedures, with the exception of rules relating to the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Act. 76 FR 45338 (July 28, 2011). The Bureau responded to comments received and published a final rule on June 29, 2012. 77 FR 39058 (June 29, 2012). This rule was codified at 12 CFR part 1081, Subparts A – D. The Bureau published an interim final rule seeking comment and prescribing rules on TCDOs on September 26, 2013. 78 FR 59163 (Sept. 26, 2013). The Bureau received a single comment on this rule. Following consideration of the comment, the Bureau adopted the interim final rule without change on June 18, 2014. 79 FR 34622 (June 18, 2014). This rule was codified at 12 CFR part 1081, Subpart E. Collectively, the rules codified at 12 CFR part 1081 are titled “Rules of Practice for Adjudication Proceedings” (Rules).

The Rules pertain to the general conduct of administrative adjudication proceedings, the initiation of such proceedings and prehearing rules, hearings, decisions and appeals, and temporary cease-and-desist proceedings. To date, there have been eight administrative adjudication proceedings under the Rules that were not immediately resolved by the issuance of a consent order pursuant to 12 CFR 1081.200(d). Six of these proceedings were settled during the course of the adjudication, one proceeding is pending, and one proceeding has resulted in a final decision.

The Bureau issued a request for information that seeks comment on how the Bureau can improve its administrative adjudication processes, including its “Rules of Practice for Adjudication Proceedings” codified at 12 CFR part 1081, Subpart E (Rules).

The Bureau sought feedback on all aspects of its administrative adjudication process, including but not limited to the topic areas listed below.

## Comment Summary

**Total Comments:** 33

**Substantive comments responsive to this RFI:** 18

**Substantive comments responsive to other RFIs:** 6

Comments received from:						
Individual Entities						
Individual Consumers	Depository Institutions	Non-Depository Institutions	Trade Groups	Consumer Advocacy Groups	Government (e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, non-consumer advocacy groups, faith-based organizations, etc.)
11	0	0	11	1	2	6

## RFI Topic Areas

	Topic	Description
1	Federal Court Instead of Adjudication	Whether, as a matter of policy, the Bureau should pursue contested matters only in Federal court rather than through the administrative adjudication process.
2	Expediitiousness of Adjudication Processes	Whether the policy for administrative adjudication proceedings to be conducted expeditiously should be amended or changed, including: the requirement that respondents file an answer to a notice of charges within 14 days; the requirement that the hearing office strongly disfavor motions for extensions of time; the requirement that the hearing officer decide any motion for summary judgement

Topic	Description
	within 30 days; and, implementation of the requirement that that hearings take place within 30 to 60 days of the notice of charges.
3 Subpoenas	Comments on whether 12 CFR 1081.208's requirements for issuing subpoenas, and whether counsel for a party should be entitled to issue subpoenas without leave of the hearing officer.
4 Expert Witnesses	Comments on whether 12 CFR 1081.210(b)'s limitation on the number of expert witnesses any party may call at a hearing, absent "extraordinary circumstances" should be amended or changed.
5 Motions for Summary Disposition	Comments on whether 12 CFR 1081.212(e)'s instruction that extensions of the length limitation for motions for summary disposition are disfavored should be changed.
6 Discovery and Document Availability	(1) Comments on whether the Rules' lack of authorization for parties to conduct certain discovery, including deposing fact witnesses or serving interrogatories should be amended or changed.  (2) Comments on whether 12 CFR 1081.206's requirements that the Bureau make documents available for copying or inspection, including whether the Bureau should produce those documents in electronic form to respondents in the first instance, at the Bureau's expense.
7 Positive and Negative Aspects of Bureau Processes and Suggestions for Improvement	(1) Specific discussion of the positive and negative aspects of the Bureau's administrative adjudication processes.  (2) Specific suggestions regarding any potential updates or modifications to the Bureau's administrative adjudication processes.

## Representative Sentiments

1. Whether, as a matter of policy, the Bureau should pursue contested matters only in Federal court rather than through the administrative adjudication process.

Commenter	Representative Sentiments
Type	
Non-profits	“Until the CFPB has reformed its adjudication procedures to make them fairer and less burdensome, the CFPB should adopt a policy of pursuing contested matters only in the Federal courts. Once such reforms are adopted, the CFPB should then return to the practice of pursuing appropriate matters through its adjudicative processes.” – Consumers’ Research
Consumer advocacy groups	“[T]he discretion to enforce the law through adjudication ensures the CFPB has an efficient means by which to address ever-changing schemes that harm consumers. ... Industry generally should be accustomed to the administrative forum, as it is a common avenue for enforcement by federal regulators. ... These rules address many of the same fundamental aspects of the Federal Rules of Civil Procedure. However, the Rules of Practice also fulfill a statutory goal of the CFPA, by allowing for an expeditious resolution of the matters through the administrative forum.” – Center for Responsible Lending (CRL), et al. <sup>5</sup>  “We recommend the Bureau increase the number of contested enforcement actions handled through adjudications. If anything, the Bureau has erred on the side of overprotecting the rights [of] investigation subjects by turning to federal litigation even in situations where the overwhelming evidence supports a violation of law.” – CRL, et al.  “Enforcement through the CFPB’s adjudication process will help foster consistent development of the CFPB’s legal authorities by avoiding inconsistent or contradictory outcomes that might arise in different federal district courts.” – CRL, et al.
Law firms	“To instill confidence in Bureau enforcement actions, they should be adjudicated by a neutral tribunal—a federal court. The Bureau has utilized this avenue in almost all of its contested enforcement cases to date, with the notable exception of PHH. The Bureau should adopt a

<sup>5</sup> Letter submitted jointly by Allied Progress, Americans for Financial Reform, Center for Responsible Lending, Consumer Federation of America, National Association of Consumer Advocates, NAACP, New Yorkers for Responsible Lending, U.S. PIRG, and the Woodstock Institute.

policy of continuing to use federal courts as the exclusive venue for such actions.” – Ballard Spahr LLP

2. Whether the policy for administrative adjudication proceedings to be conducted expeditiously should be amended or changed, including: the requirement that respondents file an answer to a notice of charges within 14 days; the requirement that the hearing office strongly disfavor motions for extensions of time; the requirement that the hearing officer decide any motion for summary judgement within 30 days; and, implementation of the requirement that hearings take place within 30 to 60 days of the notice of charges.

Commenter Type	Representative Sentiments
Consumer advocacy groups	<p>“There is little evidence to support altering §1081.201(a), which is consistent with the FTC’s rules and only modestly shorter than federal court.” – CRL, et al.</p>
	<p>“Section 1081.115(b) provides a similar set of guidelines for granting extensions of time as under the FTC’s and SEC’s rules. It is notable that to date, no request for an extension has been denied by a hearing officer in an adjudication proceeding. Thus, the concerns expressed by industry commenters to the Interim Final Rule, that the rule may impose unrealistic deadlines, have not yet borne out.” – CRL, et al.</p>
	<p>“The Bureau should review the timetable for administrative actions to ensure that it is genuinely fair to respondents and supportive of the interests of having all of the relevant facts and information available in the adjudication.” – ABA</p>
Trade groups	<p>“In particular, we urge the Bureau to follow the example of the SEC and adopt a timeline for a final decision that is measured from the completion of dispositive motions rather than the filing of charges. The SEC found that such a change - which need not change the outer limit for the entire proceeding - would increase the flexibility of the administrative proceeding timeline to accommodate deposition discovery and additional time for prehearing preparation, promoting fairness for all.” – ABA</p>
	<p>“[T]he Bureau [should] look to the Federal Rules of Civil Procedure (‘FRCP’) and the Federal Rules of Evidence (‘FRE’) as benchmarks for specific timelines, breadth of relevant discovery, and other procedural standards. FSR and CBA believe that alignment between the Bureau’s rules on administrative adjudications with the FRCP and FRE would allow respondents to have</p>

more clarity regarding the manner in which these proceedings are organized, as most respondents have familiarity with these two standards, and also would provide respondents with more of an ability to appropriately respond to potential charges.” – Joint letter from the Financial Services Roundtable and the Consumer Bankers Association (FSR and CBA)

“Indeed, we recommend that the Bureau look to the prudential banking regulators in general for guidance in balancing expediency with fairness. For example, the procedural rules of prudential banking regulators typically provide respondents with 20 days to file an answer. Notable, even with this additional response time, those regulators often receive requests for extensions of time, which they generally grant.” – FSR and CBA

“FSR and CBA emphasize that the Bureau’s policy of disfavoring requests for extensions does not stem from any statutory language. Indeed, the language that the Bureau appears to use as the basis for its expedited timeline permits the Bureau to amend the timeline for the initiation of the proceedings “at the request of any party so served” by a notice of charges. As such, FSR and CBA urge the Bureau to amend the Rule to eliminate the language requiring the ‘Director or the hearing officer [to] adhere to a policy of strongly disfavoring granting such motions, except in circumstances where the moving party makes a strong showing that the denial of the motion would substantially prejudice its case.’” – FSR and CBA

3. Comments on whether 12 CFR 1081.208’s requirements for issuing subpoenas, and whether counsel for a party should be entitled to issue subpoenas without leave of the hearing officer.

Commenter Type	Representative Sentiments
Consumer advocacy groups	“The CFPB declined to [permit parties to issue subpoenas] because a hearing officer can help ensure that subpoenas are not ‘unreasonable, oppressive, excessive in scope, or unduly burdensome.’” – CRL, et al.
Trade groups	“Respondents should be provided with the ability to issue and enforce subpoenas for documents and testimony, and to serve third parties with interrogatories as necessary. These changes will help ensure that a respondent has an adequate opportunity to marshal evidence in support of its defense.” – Mortgage Bankers Association (MBA)

“Allowing counsel to issue subpoenas without prior authorization will streamline the discovery process. If the hearing officer is required to authorize the issuance of subpoenas, the rules should be amended to include a presumption in favor of issuance.” – Ballard Spahr LLP

Law firms	“We recommend that § 1081.208 be brought into conformance with Federal Rule of Civil Procedure 45 and 16 C.F.R. § 3.34 by authorizing counsel to issue subpoenas to third-parties for both records and testimony, subject to the ability of any such third-party to seek relief from the hearing officer if necessary. Allowing counsel to issue subpoenas without prior authorization will streamline the discovery process.” – Ballard Spahr LLP
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4. Comments on whether 12 CFR 1081.210(b)’s limitation on the number of expert witnesses any party may call at a hearing, absent “extraordinary circumstances” should be amended or changed.

Commenter Type	Representative Sentiments
Academia	“[I]t is well established that the administrative hearings at the SEC afford defendant appropriate due process, including limits on the number of expert witnesses that may be called. Expert witnesses are sometimes valuable, but can increase the complexity and costs of proceedings for all parties, their use should accordingly be measured.” – Group of Legal Academics (David Zaring, et al.) <sup>6</sup>
Consumer advocacy groups	“This inquiry [into the limitation of expert witnesses] again invites abandonment of a rule that has not yet been tested. … To date, no adjudication proceeding has involved a motion for leave to call an additional expert witness above the five experts parties are already permitted to call. If any conclusion can be drawn from the history of the adjudication proceedings thus far, the rule seems appropriate and does not unduly burden litigants.” – CRL, et al.
Trade groups	“Allow the hearing officer to permit a party to call an appropriate number of expert witnesses at a hearing, irrespective of whether “extraordinary circumstances” exist within the meaning of 12 C.F.R. § 1081.210(b)[.]” – CCMC

<sup>6</sup> Letter submitted jointly by 24 legal academics. The complete list can be found in the Additional Notes section.

5. Comments on whether 12 CFR 1081.212(e)'s instruction that extensions of the length limitation for motions for summary disposition are disfavored should be changed.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Non-profits	“The 35-page limit for motions to dismiss or for summary judgment is reasonable in many cases, but requests to exceed this limit or the 10-page limit in subsection (f) should be at the discretion of the hearing officer, rather than being disfavored.” – Consumers’ Research
Consumer advocacy groups	“This question seeks comment on a provision that is similar to the SEC’s rule and more tolerating of extension than the FTC’s rule. … While shorter page-limits than some local court rules allow, these limits seem to provide an adequate length for parties to present their arguments for and against motions.” – CRL, et al.
Trade groups	“First, the Bureau should adopt rules that give ALJs more flexibility to manage deadlines, page limits, and other restrictions as appropriate during an administrative adjudication.” – CCMC

6. Comments on whether the Rules' lack of authorization for parties to conduct certain discovery, including deposing fact witnesses or serving interrogatories should be amended or changed. And comments on whether 12 CFR 1081.206's requirements that the Bureau make documents available for copying or inspection, including whether the Bureau should produce those documents in electronic form to respondents in the first instance, at the Bureau's expense.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Non-profits	“This subsection [12 CFR 1081.206] should be modified to require the CFPB to supply parties with electronic copies of documents it holds that are relevant to a case at its own expense, whenever it is feasible to do so at reasonable expense. This facilitates defense preparation and reduces the already considerable burden of CFPB proceedings on defendants.” – Consumers’ Research

“[T]he preamble to the 2012 Final Rule addressed this concern in direct response to a commenter:

Consumer advocacy groups

The Bureau adopted the language regarding photocopying from the SEC Rule, but as indicated in the preamble to § 1081.206, the Bureau anticipates providing electronic copies of documents to respondents in most cases.

The CFPB’s Enforcement Manual reiterates that providing document in electronic form is to be the norm. … While formally codifying this in the text of § 1081.206 may make this policy more clear to future litigants, the CFPB would be well-advised to take into account the concerns noted in the 2012 Final Rule before taking such a step.” – CRL, et al.

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“In particular, the Bureau has decided that requests by respondents to take pretrial depositions are ‘not justified by their likely cost in time, expense, collateral disputes and scheduling complexities.’ This is the same Bureau that may bring civil contempt charges against any witness who decides that a Bureau demand for that testimony is not justified by its likely cost in time and expense. Instead of defending this lopsided approach to pre-hearing discovery, the Bureau should follow the lead of the SEC, which recently amended its Rules of Practice [to] allow respondents to conduct depositions.” – ABA

Trade groups

“Though the Office of Enforcement is required to make various documents available to a respondent for inspection and copying, pursuant to Section 1081.206(d), the Office is only required to make such information available to the respondent seven days after service of the notice of charges. … This means that during half of the time that the respondent has to draft an answer, the respondent may not have access to material evidence relied on by the Bureau…and in order to review that evidence, a respondent must go to the Bureau, in person, and copy the Bureau’s files. FSR and CBA recommend that the Rules be amended to reflect the importance of the timely receipt of these materials.” – FSR and CBA

“In light of the availability and efficiency of technological solutions for information sharing and discovery, we urge the Bureau to adopt, as a default, an electronic method of document production. This would also be more efficient and cost-effective. Moreover, adoption of a default electronic document production method could help speed up the process by which the Bureau is able to make documents available to a respondent, particularly in light of the short timeline for filing an answer.” – FSR and CBA

Law firms

“Allowing depositions and written discovery, as the SEC and FTC do, will render the administrative adjudication process more meaningful and efficient for all parties involved, including the Bureau.” – Ballard Spahr LLP

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“Witness statements obtained by the Bureau are currently subject to § 1081.207, with production required upon motion and only after a witness testifies at a hearing. However, these statements should be produced as a matter of course along with the investigative documents and records subject to 12 C.F.R. § 1081.206.” – Ballard Spahr LLP

“The Bureau has unlimited access to third-party discovery through CIDs. In addition, 12 C.F.R. § 1081.117 effectively authorizes the Bureau to conduct third-party discovery in any fashion as part of an adjudicative proceeding. By contrast, except for a witness who is unavailable to attend a hearing, a respondent may only subpoena witnesses for hearings, not depositions. 12 C.F.R. § 1081.209. This is yet another unfair restriction on a respondent’s access to discovery. The process should be amended to conform to the federal court practice of allowing parties equal access to third-party discovery, including issuance and enforcement of deposition and document subpoenas. See Fed. R. Civ. P. 30, 45.” – Ballard Spahr LLP

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Academia “The production rule ensures that defendants have access to all materials the Bureau relied on in its investigation. This renders the traditional discovery process unnecessary, and therefore the subpoena power much less useful. The hearing officer’s input on a subpoena request ensures that frivolous requests do not delay the process, and presents very minimal due process concerns because the party already has access to all the same information that the Bureau possesses.” – Comments of Legal Academics (David Zaring, et al.)

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7. Specific discussion of the positive and negative aspects of the Bureau’s administrative adjudication processes. And specific suggestions regarding any potential updates or modifications to the Bureau’s administrative adjudication processes.

Commenter Type	Representative Sentiments
Non-profits	“All the evidence suggests, in sum, that defendants receive abundant process in formal administrative proceedings, and that they do as well in those proceedings as they do in federal court.” – Comments of Legal Academics (David Zaring, et al.)
	“Administrative proceedings benefit both the Bureau and other agencies when it comes to recording settlements and processing uncontested enforcement actions. In these cases, administrative proceedings can serve as an alternative for vindicating agency policy with the

	<p>expense and complications of going to federal court.” – Comments of Legal Academics (David Zaring, et al.)</p>
Consumer advocacy groups	<p>“Congress gave the CFPB the authority and discretion to enforce consumer financial protections laws through two different means -- filing an action in U.S. district court or initiating an adjudication proceeding before an Administrative Law Judge. The flexibility in selecting from these different forums is essential to CFPB's effectiveness in fulfilling its mission to protect consumers.” – CRL, et al.</p>
	<p>“Administrative adjudication is a well-established and widely-used regulatory tool. These proceedings can provide a swifter, lower-cost mechanism for resolving disputes than civil litigation. Moreover, when appropriately trained and educated about the process and agency, administrative law judges (“ALJs”) can bring substantial expertise to bear, leading to consistency across comparable matters. Consequently, both the agency and a regulated entity may prefer to adjudicate certain matters in this forum—and particularly routine or ministerial matters that involve limited legal or factual disputes.” – CCMC</p>
	<p>“However, adjudication processes built for efficiency may not be the best process to use when the case has substantive legal issues or conflicting law. By the time an agency brings an enforcement action, it has already assembled a factual record based on its investigation. If this record contains numerous contested facts, the defense may not have the time or the procedural tools necessary to assemble its own facts or otherwise defend against the agency’s accusations. Since the same agency hearing the case is the one who initially brought the case, it is imperative to establish concrete guardrails to ensure a fair hearing.” – CCMC</p>
Trade groups	<p>“NAFCU recommends that the Bureau seek to align applicable statutes of limitations with those periods adopted by federal courts to avoid inconsistency and unfairness in adjudication proceedings.” – National Association of Federally-Insured Credit Unions (NAFCU)</p>
	<p>“In practice, when the Bureau’s enforcement office initiates an administrative proceeding, the office erects an information “wall” between the adjudication’s enforcement activities and the Bureau’s front office. But there is no rule requiring the wall. Enacting a rule to prevent employee ex parte contacts would enhance the impartiality of the administrative adjudication. Therefore, the Rule should be amended to bar all ex parte communications with the Director, regardless of whether the ex parte communication is with a CFPB employee or not.” – CUNA</p>
	<p>“The Bureau should closely review those changes [by the SEC], as the SEC revised several of the rules that the Bureau had emulated.” – ABA</p>

Law firms

“[T]he Bureau’s rules for administrative adjudication create a...playing field...designed to be unfair to the respondent, and to afford maximum advantage to the Bureau’s enforcement staff. For example, the existing rules for the adjudication process serve to place an enforcement target under maximum and unnecessary time pressure—after the Bureau’s enforcement staff has had unlimited time to conduct an investigation. The limited discovery mechanisms available to respondents make it difficult...for targets to obtain information needed for a defense...despite the unlimited access that the Bureau’s enforcement staff has to factual information through the Bureau’s CID powers—again, highlighting the dramatic unfairness designed into the current administrative adjudication process.” – Ballard Spahr LLP

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## Additional Notes

1. Additional comments were received on the following topics and for which representative sentiments are available upon request:
  - The rights and interests of third parties
  - 12 CFR 1081.200(b)’s requirements for the contents of the Bureau’s notices of charges
  - 12 CFR 1081.208’s requirements for issuing subpoenas and whether counsel for a party should be entitled to issue subpoenas without leave of the hearing officer
  - 12 CFR 1081.209(g)(3)’s provision that failure to object to a question at a deposition should, with some exception, not be deemed a waiver of the objection
  - 12 CFR 1081.210(c)’s requirements for expert reports, including whether that paragraph should expressly incorporate the requirements of the Federal Rules of Civil Procedure relating to the required disclosures of expert witnesses
  - 12 CFR 1081.303(b)’s rules pertaining to admissible evidence in administrative adjudications; including:
    - Whether, in general, the Bureau should expressly adopt the Federal Rules of Evidence; and

- Whether, if the Bureau does not expressly adopt the Federal Rules of Evidence, the acceptance of prior testimony hearsay evidence pursuant to 12 CFR 1081.303(b)(3) should comply with the requirements of Federal Rule of Evidence 804(b)(1)
  - Whether respondents should be afforded the opportunity to stay the decision of the Director pending appeal by filing a supersedeas bond, consistent with Federal Rule of Civil Procedure 62(d)
  - Whether the Bureau should adopt standards governing when it will bring an administrative proceeding rather than proceed in federal court
2. The following individuals were signatories to the letter submitted by David Zaring on behalf of a group of legal academics (CFPB-2018-0002-0024):

*David Zaring  
Jayme Wiebold  
William Black  
Prentiss Cox  
Kathleen Engel  
Robert Fellmeth  
Jeffrey Gentes  
Robert Hockett  
Dalié Jiménez  
Kathryn Judge  
Adam Levitin  
Jeffrey Lubbers  
Cathy Lesser Mansfield  
Nathalie Martin  
Patricia McCoy  
Gary Pieples  
David Reiss  
Jacob Russell  
Amy J. Schmitz  
Alexandra Sickler  
John Spanogle  
Lauren Willis*

*Arthur Wilmarth*

*Eric Wright*

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## 1.3 Enforcement Processes

### Background

In the course of its enforcement work, and as authorized by 12 U.S.C. 5561-5565 and further governed by 12 CFR parts 1080 and 1081, the Bureau may investigate whether any person is or has been engaged in any conduct that is a violation of Federal consumer financial law. These investigations may include requiring witnesses to give oral testimony. The Bureau is also authorized to commence legal proceedings for alleged violations of federal consumer financial law in either an administrative forum or federal district court. Regardless of forum, in these proceedings the Bureau may seek appropriate legal and equitable relief as permitted by law, including appropriate civil money penalties.

The Bureau issued a request for information that sought comment on how best to achieve meaningful burden reduction or other improvement to the processes used by the Bureau to enforce Federal consumer financial law while continuing to meet the Bureau's statutory objectives and ensuring a fair and transparent process for parties subject to enforcement authority.

The Bureau sought feedback on all aspects of its enforcement processes, including, but not limited to, the topic areas listed below.

### Comment Summary

**Total Comments:** 436

**Substantive comments responsive to this RFI:** 61

**Substantive comments responsive to other RFIs:** 2

Comments received from:						
<b>Individual Consumers</b>	Individual Entities			Consumer Advocacy Groups	Government (e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, non-consumer advocacy groups, faith-based organizations, etc.)
	Depository Institutions	Non-Depository Institutions	Trade Groups			
360	3	4	17	5	5	9

## RFI Topic Areas

	<b>Topic</b>	<b>Description</b>
1	Communication	Communication between the Bureau and the subjects of investigations, including the timing and frequency of those communications, and information provided by the Bureau on the status of its investigation.
2	Length of Investigations	The length of Bureau investigations.
3	NORA Process	The Bureau's Notice and Opportunity to Respond and Advice (NORA) process, including: Bulletin 2011-04; whether invocation of the NORA process should be mandatory, rather than discretionary; and, the information contained in the letters.
4	In-person presentation	Whether the Bureau should afford subjects of potential enforcement actions the right to make an in-person presentation to Bureau personnel prior to the Bureau determining whether it should initiate legal proceedings.
5	Civil Money Penalties	The calculation of civil money penalties, consistent with the penalty amounts and mitigating factors set out in 12 U.S.C. 5565(c), including whether the Bureau should adopt a civil money penalty matrix, and, if it does adopt such a matrix, what that matrix should include.

Topic	Description
6 Consent Orders	The standard provisions in Bureau consent orders, including conduct, compliance, monetary relief, and administrative provisions.
7 Coordination with Federal and State Partners	The manner and extent to which the Bureau can and should coordinate its enforcement activity with other Federal and/or State agencies that may have overlapping jurisdiction.

## Representative Sentiments

1. Communication between the Bureau and the subjects of investigations, including the timing and frequency of those communications, and information provided by the Bureau on the status of its investigation.

Commenter Type	Representative Sentiments
Trade groups	<p>“[T]he Bureau’s Enforcement Staff often refuses to share that information with the subject of an investigation. ... The Notice of Purpose on a CID routinely invokes all federal consumer financial protection laws rather than focusing on discrete provisions of laws and regulations that the Bureau believes may have been violated. Enforcement Staff also often provide similarly broad responses to requests for additional information regarding the Bureau’s concerns, and routinely refuse to meet and discuss substantive issues while the CID response is pending.” – ABA</p> <p>“Suggestions for improvement include requiring greater diligence on the Bureau’s part to ensure an investigation is warranted, explaining the purpose of the investigation, providing a clear and reasonable outline of expectations and schedule at the beginning of the process, adopting better two-way communications practices, and developing greater understanding of consideration for business operations.” – ACA International</p>

“When an investigation is complete, a closing letter should be sent. ... If there has been no contact for 12-24 months after that, it should be assumed that the investigation is closed.”

– AFSA

“[The Bureau should a]dopt a policy that any party that has made a submission as part of the NORA process should be provided reasonable advance notice, such as three business days, that an enforcement action such as a lawsuit or administrative complaint is forthcoming.”

– CCMC

“ICBA encourages the Bureau to communicate the status of the investigation to the subject every three months. ICBA further recommends that when there is no communication between the subject and the Bureau for six months, the subject should be able to presume that the investigation is closed.” – ICBA

“The Bureau should be required to hold periodic status meetings with institutions under investigation at the outset of the investigation and not less than once a quarter until the investigation's closure, and should include both the line Enforcement attorneys and their supervising ALD. During these meetings, the Bureau should be required to inform the institution of the evolving nature, scope, and purpose of its investigation, unless there is good cause to withhold this information.” – FSR, et al.<sup>7</sup>

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Consumer advocacy groups

“Specifically, we support the current policies regarding the timing and frequency of communications between CFPB staff and subjects of investigations. ... We support the CFPB’s flexible policy of communicating with firms that are the subject of investigation. CFPB investigations may involve complicated issues that can take months to identify and clarify.”

– Public Citizen

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Non-profits

“Whenever possible, subjects of CFPB investigations should be informed of the initiation of the investigation at earliest time reasonably feasible. If a subject of an investigation is not so informed, the reasons for not informing the subject should be included in the written record of that investigation; such reasons should be reviewed by the CFPB General Counsel for legal sufficiency and may be rejected by the General Counsel, in which event the subject must be informed of the investigation. The CFPB should apprise the subjects of its investigations of any

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<sup>7</sup> Letter submitted jointly by the Financial Services Roundtable, Consumer Bankers Association, and the Consumer Mortgage Coalition.

significant changes in the status of the investigation and should communicate with them at least once every 90 days as to the status of the investigation, even if no significant changes have occurred. The CFPB should also make every effort to inform the subjects of an investigation of the likely time period in which the investigation may be expected to be completed; and the Bureau should promptly inform subjects if they are no longer a subject of an investigation.” – Consumers’ Research

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Academia “Bureau career professional staff should retain substantial flexibility and discretion in their communications with investigation subjects. Consumer financial services investigations, litigation, settlement negotiations, and consent order monitoring all require highly context dependent communication. … Not every investigation subject should be entitled to detailed information on the unfolding nature of a complex investigation at a time and manner of their choosing.” – Comments of Legal Academics (Christopher Peterson, et al.)<sup>8</sup>

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Individual consumers “Investigating Bureau personnel should be prohibited to inform the subjects of the existence, extent or status of all investigations including potential enforcement actions.” – Individual Consumer, Docket #: CFPB-2018-0003-0155.

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Individual entities “During the investigation, the enforcement staff should communicate with the investigation subject about the status of the investigation at least every six months. If the company does not hear from the staff for a year or more, the company should be allowed to presume the investigation closed and to lift any document hold in place.” – Think Finance

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<sup>8</sup> Letter submitted jointly by 42 legal academics. The complete list can be found in the Additional Notes section.

2. The length of Bureau investigations.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
	<p>"Some ACA members reported that their investigations lasted only one to two months, but others expressed concern about the extended duration of the processes they experience, further objecting to the lack of any defined timeline for resolution of the matter. Respondents felt that the process should have taken far less time, money, and effort." – ACA International</p>
	<p>"[T]he Bureau should implement milestones to prevent cases from lingering on. For example, there should be periodic, scheduled reviews (e.g. every 4 months). At that time, the Bureau should send a memo to the subject of the investigation with the status of the case, even if no action is taken. If no action has been taken for a certain amount of time, such as a year, the case should be considered closed." – AFSA</p>
Trade groups	<p>"ICBA strongly urges that enforcement actions conclude within two years of the Bureau opening an investigation." – ICBA</p> <p>[T]he Bureau [should] impose and disclose a series of deadlines upon itself to complete various stages of investigations. Such a schedule could be flexible and still a substantial improvement over the open-ended process now in place." – CDIA</p>
	<p>"Before an investigation begins, one can safely assume the Bureau has a decent sense of the alleged violation and what it will take to correct it. There is no need to take years to conduct a formal investigation to verify the facts behind those allegations. Yet, in practice, the Bureau too often takes an inordinate, unreasonable amount of time to conduct investigations in part because the Bureau seems to be looking for more than just the alleged violation" – National Independent Automobile Dealers Association</p>
Consumer advocacy groups	<p>"Enforcement investigations should proceed as promptly as possible in order to provide a remedy to harmed consumers and deter illegal activity. However, investigations should not be closed, hindered, or second-guessed merely because an investigation, in the natural course of events, takes more time than expected. The duration of an investigation should not be used as</p>

a lever to close the investigation because subjects themselves have significant control over how long an investigation will take.” – Consumer Federation of American (CFA), et al. (I)<sup>9</sup>

Non-profits	“We suggest that when an investigation is initiated, there should be a good faith estimate made of its likely duration. If that estimate is about to be exceeded, the CFPB should institute a review procedure to document why the investigation has taken longer than originally anticipated. All investigations should be reviewed as to their progress at least once a year.” – Consumers’ Research
Individual entities	“The proper place for a tolling agreement is the point at which the Bureau has completed its investigation and is ready to file a lawsuit, and a tolling agreement would allow the parties to engage in a meaningful attempt at resolution pre-complaint. Instead, in the Company’s experience, the Bureau has used tolling agreements to indefinitely extend the length of investigations and avoid statutes of limitation mandated by federal law.” – Think Finance

3. The Bureau’s Notice and Opportunity to Respond and Advice (NORA) process, including: Bulletin 2011-04; whether invocation of the NORA process should be mandatory, rather than discretionary; and, the information contained in the letters.

Commenter Type	Representative Sentiments
Individual entities	“The NORA process should be mandatory and provide parties an adequate opportunity to engage with enforcement staff.” – Navy Federal Credit Union
Trade groups	“The NORA process is a credit to the Bureau, and an example of how an agency voluntarily can create processes that provide due process to entities facing enforcement actions.” – ABA

<sup>9</sup> Two letters were submitted by the Consumer Federation of America. One was on behalf of the Consumer Federation of America and Other National Consumer Rights Organizations (CFPB-2018-003-0401), noted above as “CFA, et al. (I)”

“ACA members stressed the importance of making sure the NORA process is fairly implemented and genuinely responsive, with objective consideration of points and defenses presented by subjects of potential enforcement actions.” – ACA International

“[T]here should be a formal presumption in favor of providing a Notice and Opportunity to Respond.” – ABA

“The default NORA response time of 14 days is too short.” – ABA

“[T]he Bureau should provide that NORA discovery will be routine. NORA discovery should generally involve making available for both inspection and copying the full investigative file, less privileged portions (consistent with the standard for document turnover in administrative proceedings, see e.g., Rule 230 of the SEC’s Rules of Practice).” – AFSA

“[T]he Bureau’s NORA policy instructs the subject that “the primary focus of the written statement should be legal and policy matters.” Indeed, the Bureau discourages factual arguments by requiring that any factual assertions be made under oath. This relative disinterest in factual arguments makes little sense, particularly when the Bureau is dealing with a complicated subject matter. In any event, it would be better for the subject and the Bureau alike to identify, and seek to resolve, differences regarding factual issues through the NORA process.” – CDIA

“CBA strongly urges that: the NORA be made in writing; the oath requirement be removed; and the subject’s response time be increased from 14 calendar days to 45 business days.” – ICBA

“The Bureau’s Notice should provide a detailed account of the factual and legal claims that the Staff expects to allege.” – ABA

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Consumer advocacy groups	“The Bureau’s NORA process should continue to be discretionary. … The Bureau needs the flexibility to forgo the NORA process where there is a risk that the investigation subject may respond to a NORA notice by hiding assets, concealing evidence, or avoiding service of process. … Since every defendant in a CFPB enforcement action is already entitled to detailed notice of the claims against them (i.e. the notice of charges documents in administrative
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adjudications and complaints in federal court) it is a waste of time and resources to force the enforcement office's professional staff to create a 'pre-complaint.'" – CFA, et al. (I)<sup>10</sup>

"The Bureau should not modify its procedures in a way that could give lawbreakers tools to thwart the Bureau's work on behalf of the public. ... Bureau policies should not be revised to create further decision-making hurdles that decrease the likelihood of enforcement actions or create administrative bottle-necks in pursuing justice." – CFA, et al. (II)<sup>11</sup>

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Non-profits

"The CFPB should continue to model its process on the SEC's Wells process. The SEC model has a long history and balances the needs of an investigating agency with the rights of the prospective defendants. The Release asks whether the NORA process should be mandatory, and the answer is no. Making the process mandatory would hamstring the Bureau when, for example, exigent circumstances may make immediate action necessary. The NORA process is only the first step in the enforcement process, and even if it is never initiated, the subjects of investigation still have ample due process and the ability to respond to and defend against any formal allegations of wrongdoing. The SEC's rules also make its process discretionary."

– Better Markets

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<sup>10</sup> Two letters were submitted by the Consumer Federation of America. One was on behalf of the Consumer Federation of America and Other National Consumer Rights Organizations (CFPB-2018-003-0401), noted above as "CFA, et al. (I)"

<sup>11</sup> The second letter submitted by the Consumer Federation of America was on behalf of the Consumer Federation of America and thirty-four consumer, community, civil rights, and legal services groups, noted above as "CFA, et al. (II)". The complete list of signatories is included below in the Additional Notes section.

4. Whether the Bureau should afford subjects of potential enforcement actions the right to make an in-person presentation to Bureau personnel prior to the Bureau determining whether it should initiate legal proceedings.

Commenter	Representative Sentiments
Type	
Individual entities	“To allow an adequate opportunity for institutions to present their case to the Bureau—and to ensure that the Bureau has the benefit of those arguments before reaching an enforcement decision—the Bureau should also permit parties to have a substantive in-person meeting with senior Enforcement personnel to discuss the case prior to the Bureau reaching a final enforcement decision.” – Navy Federal Credit Union
Individual consumers	“The only reason to afford subjects of potential enforcement actions the right to in-person presentation is to invite corruption of the Bureau processes.” – Individual Consumer, Docket #: CFPB-2018-0003-0155.
Trade groups	“The Bureau should adopt policies to ensure that relevant Staff—including at least the relevant Deputy Assistant Director for Enforcement—attend and fully participate.” – ABA
Academia	“The Bureau should not establish a right for financial services companies to make an in-person presentation to bureau personnel prior to the Bureau determining whether it should initiate legal proceedings.” – Group of Legal Academics (Christopher Peterson, et al.)
Law firms	“Before deciding to initiate legal proceedings, the Bureau should give the entity an opportunity to make an in-person presentation to The Bureau’s senior leadership. In our experience, when such meetings have been permitted, they frequently move the parties toward settlement and can result in claims being reconsidered or abandoned.” – Hudson Cook, LLP
Consumer advocacy groups	“The Bureau must refrain from adding burdens, such as new meeting requirements, to the already thorough and comprehensive enforcement process. As much as it is feasible, enforcement proceedings must be clear and transparent and regarded as a mechanism that is ultimately accountable to the public. It must refrain from granting industry players more

opportunities to delay or to avoid investigations and other essential components of enforcement proceedings.” – National Association of Consumer Advocates

Non-profits

“[T]he Bureau should not be required to afford subjects of potential enforcement the right to make in-person presentations to Bureau personnel before the agency decides to initiate formal proceedings. While it certainly is within the discretion of the enforcement bureau to speak with the subject of an investigation, it should not be mandatory. Enforcement attorneys are best positioned to determine when an in-person meeting is necessary and appropriate to help the Bureau pursue enforcement matters quickly and fairly. Additionally, adding a mandatory in-person meeting might slow down the enforcement process in exigent circumstances where time is of the essence.” – Better Markets

5. The calculation of civil money penalties, consistent with the penalty amounts and mitigating factors set out in 12 U.S.C. 5565(c), including whether the Bureau should adopt a civil money penalty matrix, and, if it does adopt such a matrix, what that matrix should include.

Commenter Type	Representative Sentiments
	<p>“In the instance that civil money penalties are imposed on a financial institution, the Bureau should calculate these penalties based on a civil money penalty matrix that it establishes and proposes for notice and comment.” – CUNA</p>
	<p>“Support was unclear [among ACA members] for a civil money penalty matrix, but those who favored it urged that it include transparent and objective elements.” – ACA International</p>
Trade groups	<p>“The Bureau should reserve civil penalties for cases involving knowing violations. ... If a company is working to remediate a violation and has self-reported it to the Bureau, there may be no need for the Bureau to impose additional punishment.” – CCMC</p>
	<p>“To properly incentivize cooperation in any enforcement-oriented framework, the nature of the credit provide must be made clear, concrete and public. ... By explicitly incorporating an entity's self-reporting, cooperation, and remedial efforts into its CMP calculations and being more transparent in terms of credit received, the Bureau can better ensure that institutions are</p>

consistently and appropriately recognized for providing important assistance." – The Clearing House (TCH)

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"Rather than developing its own CMP [matrix], the CFPB should work with the Federal Financial Institutions Examination Council to develop a uniform, interagency matrix. In the interim, the CFPB should borrow one from another reputable Federal institution, such as the Comptroller of the Currency's Policies and Procedures Manual (PPM 5000-7)." – Consumers' Research

"12 USC 5565(c)(3)(A) provides that one of the mitigating factors considered in imposing civil penalties should be the size of the financial resources and good faith of the person charged. Unless the violations are extremely heinous, this factor should be given great weight, as excessive penalties can often bankrupt the target business." – Consumers' Research

Non-profits

"There should be a process instituted for smaller entities to petition for a reduction of penalties if they are more than a certain percentage of their annual revenue or if they can demonstrate that the penalties have a significant likelihood of bankrupting them. The CFPB should establish a guideline, such as if the penalties exceed 5% of revenues, to automatically qualify a defendant to seek such relief." – Consumers' Research

"If the Bureau decides to implement a civil money penalty matrix, it should include a broad range of factors that encourage compliance, deter recidivism, and set an example for other members of the industry. The matrix should impose meaningful costs of non-compliance while being flexible enough to allow the Bureau to penalize companies appropriately in rare instances where the matrix does not include an unusual aggravating factor." – Better Markets

"For example, the statute (and most matrices) takes into account the size of the institution and the institution's ability to pay. While this should be a factor to consider, the Bureau should continue its policy of focusing more on a firm's ability to become compliant with the law and CFPB regulations and less on its ability to pay a fine. At some point, if a company is unable to comply with the law, then it should no longer have the privilege of being in business. The Bureau should continue to pursue appropriate fines—large enough to reflect the gravity of the offense and to deter misconduct--against entities both large and small." – Better Markets

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Consumer advocacy groups

"A case-by-case application of factors adopted by Congress is superior to a CMP matrix. ... If the Bureau does decide to adopt a matrix, it should be crafted to direct staff to seek the statutory daily maximum CMP. ... A potential CMP matrix should clarify that it is only guidance

that does not reduce the CMP process to a mathematical equation or serve as a substitute for sound judgment of enforcement staff. ... If the Bureau adopts a matrix, then like the OCC, it should reserve the right to depart from the matrix when necessary to achieve a result in line with Bureau objectives.” – CFA, et al. (I)

“We are concerned that a civil money penalty matrix could artificially tie the hands of Bureau staff and diminish their ability to negotiate settlements on behalf of American consumers. Although other federal banking regulators have adopted a penalty matrix, prudential regulators also failed to engage in sufficient enforcement efforts to prevent the financial crisis.” – CFA, et al. (II)

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“I would like the CFPB to take a more aggressive approach to enforcement and penalties for the financial and privacy misdeeds of corporations. The rationale for many penalties in individual criminal and civil cases is that the larger penalties offer a disincentive for the affected individuals (and others) to commit the offending behavior. Currently, the penalties offered to corporations offer no such disincentive, as shown by the continued egregious behaviors (see Wells Fargo, Equifax, etc.).” – Individual Consumer, Docket #: CFPB-2018-0003-0021.

“I think any civil penalties that are levied against a company or an individual that defrauds Americans ought to exceed the amount of money they made off of the fraud.” – Individual Consumer, Docket #: CFPB-2018-0003-0060.

Individual consumers  
“The CFPB needs to do MORE, not less, to protect the public! Fine the banks to the maximum allowed!” – Individual Consumer, Docket #: CFPB-2018-0003-0048.

“The CFPB should be imposing massive fines on banks and lenders that well exceed the fraudulent activities; the value of the fraud plus 50% would probably be sufficient to discourage future unethical or illegal behaviors. Do your job, CFPB, bring real fines and sentences to banks and entities involved in fraudulent and illegal activities.” – Individual Consumer, Docket #: CFPB-2018-0003-0065.

“This is the most important federal agency created in my lifetime (and I was born in 1966 so I've seen quite a few too many created) and it is extremely important that it continues to do its job and enforce the laws related to commercial lending institutions. It needs to defend individual consumers against larger institutions. It needs the ability to levy fines proportional to both the malfeasance and the size of the offending corporation. Fines need to be expressed as

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a percentage of revenue- not just in dollars.” – Individual Consumer, Docket #: CFPB-2018-0003-0066.

“The CFPB should quadruple down on the consequences it imposes on \*individual people\* responsible for financial crimes committed against consumers.” – Individual Consumer, Docket #: CFPB-2018-0003-0079.

“The only thing the CFPB should change is that it should go after more financial giants and levy larger fees against banks who prey on the poor and the vulnerable. Payday lenders, private student loan servicers, and debt collectors are wringing the young and the poor for everything they earn, and it needs to stop.” – Individual Consumer, Docket #: CFPB-2018-0003-0090.

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6. The standard provisions in Bureau consent orders, including conduct, compliance, monetary relief, and administrative provisions.

Commenter Type	Representative Sentiments
Consumer advocacy groups	<p>“When companies agree to compensate consumers for the harm that they have caused, the consent order should clearly state that all funds illegally taken must be returned to consumers. It is not enough to order the perpetrator to determine the appropriate recompense for their victims.” – Consumers Union</p>
Academia	<p>“In our experience, the provisions included in Bureau consent orders prior to 2018 were substantially similar to provisions typically found in orders of other regulators, including the OCC and the FTC. Much of the Bureau’s standard orders appear to be derived from FTC consent orders. These provisions are time-tested and relatively uncontroversial. We do not believe it is advisable to modify them at this time.” – Group of Legal Academics (Christopher Peterson, et al.)</p>
Trade groups	<p>“The Bureau’s Consent Orders typically include boilerplate provisions that the Bureau refuses to consider changing. This one-size-fits all approach should be replaced by a willingness to consider tailoring these provisions to meet the needs of a particular settlement.” – ABA</p>

“[T]he Bureau did not make clear the standard requirements it includes in consent orders, but rather imposed provisions that varied considerably from one case to the next.” – ACA International

“There should be consistency, fairness, and transparency in settlements/consent orders, penalties, and damages.” – AFSA

“[T]he Bureau generally requires a compliance plan to be included as part of the consent order. The plan must be reviewed by the Bureau and subject to “non-objection.” However, the Bureau does not agree that if the supervised entity follows the plan that it will not be held responsible for a violation of the consent order requirements. The company should have more predictability and certainty that taking particular action which the agency approves will not result in additional fines or penalties.” – AFSA

“Consent orders should be written to tightly follow clear violations, not insinuate that lawful activity is suspect.” – Real Estate Services Providers Council

“Enforcement Counsel should have flexibility to negotiate all provisions in a consent order, including provisions that have long been considered standard and non-negotiable. Historically, the Bureau has included consent order provisions that impose obligations on some parties that may not make sense or be consistent with how the subject’s business operates. Moreover, the ability to negotiate provisions in consent orders provides all parties with more settlement flexibility.” – Electronic Transactions Association

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7. The manner and extent to which the Bureau can and should coordinate its enforcement activity with other Federal and/or State agencies that may have overlapping jurisdiction.

Commenter Type	Representative Sentiments
Trade groups	<p>“The Bureau should better coordinate its investigations with those of other federal and state agencies.” – ABA</p> <p>“The Bureau could play a valuable role in seeking to coordinate its efforts with those of other state and federal regulators, so as to provide coherence to the government’s demands. Similarly, once the investigations are complete and a resolution is within reach, the Bureau</p>

should seek to avoid the kind of regulatory piling on that imposes total costs that are neither proportionate nor fair.” – CDIA

“We strongly recommend the Bureau defer and refrain from federal enforcement action against settlement agents without understanding first the existence of state authorities and application thereof to enforce consumer protection laws, on any specific targeted issue, in and among the various states.” – American Escrow Association

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“The Bureau should promulgate specific rules governing the coordination process. Those rules should ensure that the Bureau: (1) gives notice and an opportunity to all state agencies with relevant jurisdiction whenever new regulations, laws, policies, or enforcement actions are being considered; (2) defers to the existing laws, policies, or enforcement actions of state agencies as a default rule; and (3) where the 50 states’ laws, policies or actions conflict with each other, take action that has the effect of preserving as many states’ independent judgments as possible.” – Arizona Attorney General’s Office

Government  
agencies

“It is vital that the Bureau coordinate its enforcement activities with state regulators with which the Bureau has overlapping jurisdiction. ... The Bureau should: (1) To the greatest possible extent, promote efficient information sharing between the CFPB and state regulators; (2) Consult with relevant state regulators throughout the course of a corrective action(s), enforcement proceedings or remediation efforts; and (3) coordinate actionable matters with state regulators when feasible. ... We encourage the CFPB [in revising its procedures] to do so in a manner that recognizes that state regulators, through their licensing and supervisory authority, serve as the primary regulators of non-depository financial services providers.”  
– Conference of State Bank Supervisors (CSBS)

“The Bureau should work with, not against co-sovereigns including tribal governments especially with respect to enforcement activities. ... When the Bureau is concerned about practices in a particular industry, such as online lending, it should reach out to the co-regulator within whose jurisdiction the activity takes place—whether that co-regulator is a tribe or a state.” – Otoe Missouria Tribe of Indians

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Non-profits

“The CFPB should coordinate its enforcement activities with other Federal agencies that have overlapping jurisdiction. Such coordination saves both Federal resources and the resources of possible defendants. One violation or set of violations should be reviewed and adjudicated by one, and only one, agency. Coordination processes between federal agencies are often difficult, complex and inconclusive. Pending establishment of such effective coordination

processes, an initial way to address this problem would be for the CFPB to adopt a policy of not initiating a procedure against a defendant if another Federal agency has already initiated a procedure over identical or similar violations, except in extraordinary circumstances.” – Consumers’ Research

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Consumer advocacy groups

“CFPB staff also should have considerable discretion in determining when coordinating enforcement efforts with other state and federal agencies is appropriate. In some cases, coordinating enforcement actions can lead to broader, more effective relief for consumers and clear conclusions for companies. In others, the costs and complexity of coordinated enforcement can slow down relief and create lowest-common-denominator cases that leave many borrowers insufficiently compensated.” – Appleseed

“Our organizations believe the Bureau has successfully collaborated with other federal, state, and in one case, tribal enforcement powers. ... Because the Bureau is responsible for a variety of potential cases, the Bureau should remain flexible on the type of coordination required in any given matter. ... Our organizations believe that the Bureau has an important role in providing criminal referrals where its enforcement investigations uncover evidence of crimes. We believe the Bureau should have an active and robust program making criminal referrals whenever possible.” – CFA, et al. (I)

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## Additional Notes

1. Additional comments were received on the following topics and for which representative sentiments are available upon request:

- General comments on the Bureau’s enforcement actions;
- “Regulation by enforcement”;
- Innovation; and,
- Safe harbors.

2. The following individuals were signatories to the letter submitted by Christopher Peterson on behalf of a group of legal academics (CFPB-2018-0003-0400):

*Christopher Peterson*  
*Richard Alderman*  
*Susan Block-Lieb*  
*Mark Budnitz*  
*Daniel Carpenter*  
*Prentiss Cox*  
*Brenda Cude*  
*Susan L. DeJarnatt*  
*Rashmi Dyal-Chand*  
*Kathleen Engel*  
*Pamela Foohey*  
*Judith Fox*  
*Richard Frankel*  
*Jeffrey Gentes*  
*Eric Gouvin*  
*Celeste Hammond*  
*Robert Hockett*  
*Melissa Jacoby*  
*Dalié Jiménez*  
*Kathryn Judge*  
*Wayne Lewis*  
*Jeffrey Lubbers*  
*Cathy Lesser Mansfield*  
*Patricia McCoy*  
*James Nehf*  
*Christopher Odinet*  
*Gary Pieples*  
*Dee Pridgen*  
*David Reiss*  
*Florence Roisman*  
*Lisa Servon*  
*Marcella Silverman*  
*Neil Sobol*

*Jeff Sovern  
Gregory Squires  
Debra Stark  
Mark Totten  
William Vukovich  
Amy Widman  
Lauren Willis  
Arthur Wilmarth  
Eric Wright*

3. The following organizations were signatories to the comment submitted by the Consumer Federation of America on behalf of thirty-four consumer, community, civil rights, and legal services groups (CFPB-2018-0003-0402):

*Delaware Community Reinvestment Action Council, Inc.  
Demos  
Georgia Watch  
Heartland Alliance for Human Needs & Human Rights  
Interfaith Center on Corporate Responsibility  
Coalition of Consumer, Community, Civil Rights, and Legal Services Groups  
Jacksonville Area Legal Aid, Inc.  
Kentucky Equal Justice Center  
Maryland Consumer Rights Coalition  
Montana Organizing Project  
National Association of Consumer Advocates  
National Consumers League  
National Fair Housing Alliance  
New Jersey Citizen Action  
The North Dakota Economic Security and Prosperity Alliance  
Public Citizen  
Public Good Law Center  
Reinvestment Partners  
South Carolina Appleseed Legal Justice Center  
South Carolina Christian Action Council  
Tennessee Citizen Action  
Texas Appleseed*

*Tzedek DC  
U.S. PIRG  
Woodstock Institute*

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## 1.4 Supervision Processes

### Background

The Bureau has supervisory authority over insured depository institutions and credit unions with total assets over \$10 billion, and their affiliates, as well as non-depository financial institutions, regardless of size, in certain specific markets including mortgage companies (originators, brokers, servicers, and offerors of loan modifications or foreclosure relief services), payday lenders and private education lenders. The Bureau also has supervisory authority over non-depository larger participants of other markets as the Bureau defines by rules. To date, this includes larger participants in the consumer reporting, debt collection, student loan servicing, international money transfer, and automobile finance markets. Additionally, the Bureau has authority over service providers of the above-referenced supervised entities, and service providers to a substantial number of depository institutions and credit unions with total assets of \$10 billion or less. More detail regarding the Bureau’s supervisory authority can be found principally at 12 U.S.C. 5514–5516 and 12 CFR parts 1090 and 1091.

The Bureau issued a request for information that sought public comment on how best to achieve meaningful burden reduction or other improvement to the processes used by the Bureau to supervise for compliance with Federal consumer financial law while continuing to meet the Bureau’s statutory and regulatory objectives and ensuring a fair and transparent process for supervised entities.

The Bureau sought feedback on all aspects of its supervision program, including, but not limited to, the topic areas listed below.

### Comment Summary

**Total Comments:** 55,049

**Substantive comments responsive to this RFI:** 33

**Substantive comments responsive to other RFIs:** 2

Comments received from:						
	Individual Entities				Government (e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, non-consumer advocacy groups, faith-based organizations, etc.)
Individual Consumers	Depository Institutions	Non-Depository Institutions	Trade Groups	Consumer Advocacy Groups		
55,007	2	6	19	7	1	7

## RFI Topic Areas

	Topic	Description
1	Timing, Frequency, Scope, and Length of Exams	Comments on supervisory examinations including the timing, frequency, scope, and length of examinations
2	Examination Manual and On-Site Exam Work	Comments on the Examination Manual and regarding on-site examination work.
3	PARR Process	Comments on the potential action and request for response (PARR) letter and process
4	MRAs	Comments on Matters Requiring Attention (MRAs)
5	Appeals	Comments on the process for appealing supervisory findings
6	Supervisory Highlights	Comments on Supervisory Highlights
7	State and Federal Coordination Efforts	Comments regarding State and Federal Coordination Efforts

## Representative Sentiments

- Comments on supervisory examinations including the timing, frequency, scope, and length of examinations.

Commenter	Representative Sentiments
Type	
	<p>“After discussing the strategy with the institution, the Bureau should provide reasonable notice (at least six months) of upcoming examinations and other supervisory activities so that banks can prepare, adjust staff schedules, and allocate resources.” – ABA</p>
	<p>“To minimize the burden, ICBA recommends that the Bureau establish a minimum time frame between each onsite exam, such as no more often than every 18 months.” – ICBA</p>
	<p>“First, the Bureau generally should allow companies to experience a reasonable, six-month period of normal operations between examinations. Examinations take extensive time and resources away from a company’s normal operations and impose substantial costs.” – CCMC</p>
	<p>“On a related note, AFSA suggests a minimum period of at least six months between examination results and the next examination.” – AFSA</p>
Trade groups	<p>“The timing, frequency and scope of supervisory examinations all provide opportunities for the Bureau to recognize and reduce the costs of its supervisory efforts. The inefficiency of those efforts begins with examinations that are too frequent and too lengthy, and so subject CDIA members to a never-ending examination cycle. Too many company employees too often feel torn between the responsibilities of their day-to-day work and the responsibility of responding to exam-related requests.” – CDIA</p>
	<p>“Increased pre-examination communication and open dialogue between the Bureau and the institution about the scope of the examination can ensure that the institution has adequate resources in place to assist with and complete the examination, and also to ensure that the examination’s scope is appropriately calibrated given the size of the institution and the products offered.” – CBA</p>
	<p>“Comments from ACA members indicated that...the length of time designated for the onsite exam [was reasonable].” – ACA International</p>

“Currently the number of examiners and amount of time spent on each examination seems excessive in some cases. For example, in certain examinations, the Bureau assigns between eight and 12 examiners to examine a particular area at an institution, and the examination itself can take between eight and 12 weeks.” – TCH

“The time between the completion of the on-site examination and issuance of the final report can be a major factor in examination length, and it is reportedly longer than that of the prudential regulators.” – ABA

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“The scope of Bureau exams are always fluid and tend to expand as the exam progresses. ... Topics outside of the initial scope should be taken into consideration during the Bureau’s planning of future exams.” – Anonymous (examined institution)

Individual entities	“Therefore, we recommend that the Enhanced Supervision Framework include specific requirements in each of the following areas: ... Standards for length of examination (measured from exam commencement to issuance of report), to ensure that allocated personnel can complete the examination within a defined period and the examination report issues timely, so that the financial institution can begin to address any findings.” – Discover Financial Services
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## 2. Comments on the Examination Manual and regarding on-site examination work.

Commenter Type	Representative Sentiments
	“The MBA believes that the Exam Manual is an effective and accessible resource that provides helpful summaries of statutes, regulations, and specific examination procedures. MBA members rely heavily on the Exam Manual to facilitate their own compliance. The BCFP should continue to maintain the Exam Manual in its current form.” – MBA
Trade groups	“Given the length and breadth of the Bureau’s Examination Manual, changes to its contents should be accompanied with a redline document to provide supervised institutions with the ability to see exactly how particular policies have changed.” – NAFCU

“The public availability of the Bureau’s Supervision and Examination Manual adds substantially to the Bureau transparency that Acting Director Mulvaney has long advocated. Such

transparency about the Bureau’s supervisory expectations gives CDIA members the opportunity to examine themselves to ensure that issues are identified and addressed- even if the Bureau’s exam team is nowhere near.” – CDIA

“We recommend that the Bureau invest additional resources in its examination staff to improve their expertise and reduce turn-over. The training, experience, and expertise of examiners vary, though overall it has improved in recent years. Given the importance of knowledgeable and experienced examiners for inspiring confidence in the Bureau’s competence, effectiveness, and fairness, the Bureau should ensure that Bureau examiners have the necessary training, experience, and resources, including access to legal staff in the supervisory and regulatory divisions, to perform effectively and competently.” – ABA

“Examiners should fully review documents and evaluate data prior to arriving for the onsite portion of the exam.” – AFSA

“First, the exam team should be calibrated appropriately and the examiners ready. Examination teams should be staffed with an appropriate proportion of experienced personnel in comparison to new examiners (both in terms of examinations in general and the specific financial institution). Examiners should fully review documents and evaluation data prior to arriving for the onsite portion of the exam.” – AFSA

“Several of our members have reported that the CFPB’s examination of their businesses resulted in unnecessary costs and declines in productivity during the examination period. Specifically, these members noticed a pattern during CFPB examinations in which CFPB examiners receive what amounts to on-the-job training at the member’s expense. For instance, members have reported that they have been required to divert personnel and other resources to support a CFPB examination, and that from their perspective a better trained examiner would not have needed as much, or any, assistance, or could have accomplished the relevant task more efficiently.” – Money Services Business Association

“One source of delay in onsite work is when examiners request documents or information that is duplicative of proper requests communicated in the IR. Further the sheer volume of onsite requests often makes it difficult to respond adequately to each request within the demanding timeframes set forth by examiners.” – CDIA

“The Examination Manual should continue to be published on the CFPB’s website to promote transparency and assist the public in understanding how the Bureau oversees supervised entities.” – Consumers’ Research

Non-profits “To best achieve meaningful burden reduction or other improvements to its supervisory processes, we believe that the Bureau should: Continue to recognize and promote the value of the Bureau’s Supervision and Examination Manual (‘Exam Manual’). The Exam Manual is a useful resource for examination procedures, interagency guidance, and overall best practices.”  
– CSBS

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Consumer advocacy groups “The CFPB’s supervision program should not be weakened. Supervision is critical for the Bureau’s mission. It is very different than enforcement. It is also often a faster, less resource intensive, and more flexible tool.” – NCLC  
“Supervision is critical in order for the CFPB to fulfill its mission. It’s a complementary tool to the Bureau’s enforcement program, and has the advantages of often being faster, less resource-intensive, and more flexible.” – Appleseed

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### 3. Comments on the Potential Action and Request for Response (PARR) letter and process.

Commenter Type	Representative Sentiments
	<p>“Institutions should be able to meet with the attorneys involved with drafting the PARR letters and supervisory reports to have the opportunity to clarify any confusion on the legal interpretations or factual conclusions.” – CCMC</p>
Trade groups	<p>“Furthermore, banks should have more time to respond to PARR letters. The default PARR letter response time is only 14 days, an unrealistic timeframe to respond to a long list of demands that require time to evaluate, circulate with various experts, gather, review and sort materials and data, develop responses, and obtain internal approvals.” – ABA</p>
	<p>“The Bureau should consider providing institutions 30 to 45 days to respond, particularly where multiple issues are identified in the letter. To assemble a PARR response, an institution must research the facts at issue, research the law, draft the letter – often with the help of outside</p>

counsel – validate the facts in the letter, and obtain approval from varying levels of management and, perhaps, the board of directors. An institution facing a potential investigation should be given the time it needs to adequately respond to such serious charges.” – MBA

“Finally, to make the PARR letter process more open and transparent, the Bureau should provide anonymized data on the PARR process. The data could identify those issues being addressed via PARR letters and would demonstrate that the PARR letter process has a genuine effect on the Bureau’s ultimate decision-making.” – AFSA

“Typically, PARR letters lack written detail on the legal or factual basis for the concerns, leaving institutions to speculate with respect to the details of the alleged violations. This lack of information makes it more difficult for the institution to provide a fulsome, targeted, informed response to the Bureau. This is unfair to the institution and inefficient for the Bureau. The Bureau should fully explain the factual basis for its concerns, and in the event the Bureau requires additional information and detail from the institution to understand the issue, it should request that information before issuing the PARR letter. With regard to the legal basis for an identified issue, the Bureau should provide its analysis, with citation to specific, relevant legal standards, concerning the basis for the alleged violation.” – FSR, et al.<sup>12</sup>

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#### 4. Comments on Matters Requiring Attention (MRAs).

Commenter Type	Representative Sentiments
Trade groups	“The Bureau should exercise discretion carefully in determining which issues should form the basis for an MRA. MRAs are most appropriately used when the Bureau is presented with a clear, systematic violation or institutional behavior that is causing consumer harm.” – FSR, et al.

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<sup>12</sup> Letter submitted jointly by the Financial Services Roundtable, Consumer Bankers Association, and the Consumer Mortgage Coalition.

“Importantly, self-identified technical issues that an institution brings to the attention of the Bureau that the institution has made significant progress in remediation should not form the basis of an MRA.” – TCH

“The articulated standard for MRAs should mirror the legal authority by which they are issued – that is, any definition should make clear that MRAs must be limited to the remediation of (i) significant violations of Federal consumer financial law or (ii) actual consumer harm. This definition should also make equally clear that MRAs should not be used as a means to communicate (and demand conformance with) supervisory preferences or best practices, or to enforce non-binding guidance or ‘supervisory expectations.’” – TCH

“None of the above is to suggest that examiners should limit their examinations and reviews only to those issues that rise to the level of harming consumers or significant violations of law. Examiners can, of course, add significant value in areas that do not meet those standards.”  
– TCH

“The definition should also make equally clear that MRAs should not be used as a means to communicate (and demand conformance with) supervisory preferences or best practices, or enforce non-binding guidance or ‘supervisory expectations’ which has become increasingly common in today’s regulatory environment.” – Manufactured Housing Institute

“[T]hough banks have reported recent improvements, banks have experienced significant delays waiting for the Bureau to close an MRA once the matter has been resolved.” – ABA

“First, MRAs should be reserved for significant, serious matters that pose actual consumer harm. However, banks report that, too often, Bureau MRAs are written for minor matters, isolated events, and technical violations.” – ABA

“Further, we ask the Bureau to formalize a process for notifying the company when an MRA has been closed between exam cycles.” – CCMC

“Finally, we recommend that the Bureau establish a process for closing MRAs, which are often left open by the Bureau long after they have been resolved by the institution. It would be helpful if the Bureau timely resolved MRAs so that institutions could stop reporting on progress related to such MRAs and devote resources back to the business.” – AFSA

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Non-profits

“An MRA communication often requires a detailed written response to complex issues concerning violations of consumer law and/or compliance management weaknesses and always includes a due date for completion. The CFPB should allow adequate time for any

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required written responses. The time allowed should be a minimum of 30 days, with a provision for additional time for responses to unusually long or complex MRAs.” – Consumers’ Research

5. Comments on the process for appealing supervisory findings.

Commenter Type	Representative Sentiments
	<p>“ICBA recommends the Ombudsman play more of a role in guiding supervised entities through the appeals process.” – ICBA</p> <p>“Second, the Bureau’s appeals committee members should be independent from those in the supervision function. Currently, the process excludes from the appeals committee Bureau managers who participated in the supervisory matter, but it includes those who are involved in the supervisory function, who may not be independent.” – ABA</p> <p>“In order to provide institutions with additional guidance concerning the appeals process, the Bureau should publish anonymized results of appeals.” – FSR, et al.</p>
Trade groups	<p>“The BCFP should create and maintain a redacted record of successful appeals of issues raised in examinations, categorized by industry segments, such as mortgage lending and/or servicing, and make the list publicly available on its website. In this manner, the BCFP should not raise similar issues that were successfully appealed by one examinee in other examinations of similarly situated examinees.” – National Reverse Mortgage Lenders Association (NRMLA)</p> <p>“The Bureau’s current supervisory appeals process policy states that the filing of an appeal will not prevent the agency from pursuing an enforcement action. NAFCU believes that the appeals process may be underutilized as a result of this significant caveat, which does not relieve the supervised entity of future enforcement risks.” – NAFCU</p>
Law firms	<p>“In addition, the CFPB should make public the facts of a supervisory appeal, and the detailed reasoning of the decision maker, all without disclosing the identity of the Small Dollar Lender or any confidential or sensitive information about the Small Dollar Lenders.” – Duane Morris</p>

## 6. Comments on Supervisory Highlights.

Commenter Type	Representative Sentiments
	<p>"The Bureau's publication of Supervisory Highlights has provided helpful guidance to industry. Banks find the quarterly publications helpful for understanding compliance and supervisory expectations and for educating bank staff and encouraging compliance internally. Understanding where other financial institutions may be struggling and the Bureau's concern and priorities help banks to focus on compliance efforts and resources." – ABA</p>
Trade groups	<p>"Supervisory Highlights is useful for sharing examination findings and experiences, and for promoting transparency with respect to examinations. Institutions rely on Supervisory Highlights to make changes to their operations and compliance practices; therefore the Bureau should provide as much information about examination findings as possible while preserving confidentiality. To that end, Supervisory Highlights should present anonymized cases with detailed legal analysis and provide greater insight into the Bureau's supervisory processes." – FSR, et al.</p>
	<p>"While Supervisory Highlights is an appreciated publication, however, it is important that it does not become a backdoor method for the Bureau to institute policy. Supervisory Highlights should not be the source of 'guidance' or 'interpretations' that effectively constitute new regulatory obligations." – FSR, et al.</p>
	<p>"Supervisory highlights are helpful, but do not take the place of clear regulatory guidance and interim guidance issued by bulletins, and other guidance. The BCFP should provide more detail in its Supervisory Highlights, especially the underlying facts and the specific provisions of law violation, and specifically how the law was violated." – NRMLA</p>
Consumer advocacy groups	<p>"We have conducted a review of all five years' worth of Supervisory Highlights reports, which reveals some striking trends. It appears that in several markets, supervised companies have gone from struggling to set up compliance systems (or totally ignoring the need for them) to being more proactive about correcting non-compliance practices and conducting internal evaluations." – NCLC</p>

	<p>“Supervisory Highlights are extraordinarily useful when published. The Company has historically used them to set policy, alter practices, and implement monitoring.” – Anonymous (publicly traded company)</p>
Individual entities	<p>“Supervisory Highlights are extraordinarily useful when published. The Company has historically used them to set policy, alter practices, and implement monitoring. The Company desires that the CFPB issue some of the promised Supervisory Highlights that have not yet been provided.” – Anonymous (publicly traded company)</p>
	<p>“However, while the Supervisory Highlights can be a tool to support and inform institutions’ compliance efforts, the Bureau should not use the publication to establish new compliance requirements or regulatory expectations.” – Discover Financial Services</p>

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## 7. Comments regarding State and Federal Coordination Efforts.

Commenter Type	Representative Sentiments
Consumer advocacy groups and non-profits	<p>“The CFPB’s supervision activities should not and cannot be delegated to prudential or state regulators. The Dodd-Frank Act is clear that the Bureau has <u>exclusive</u> authority to supervise banks with over \$10 billion in assets for consumer protection compliance and is <u>required</u> to supervise certain nonbanks for the same.” – NCLC</p> <p>“Permit state regulators to demonstrate the statutory basis for jurisdiction on an industry or sector basis rather than an entity-by-entity basis for the purposes of information sharing with the Bureau.” – CSBS</p> <p>“Thus, any efforts to delegate or cede the CFPB’s supervision activities to prudential or state regulators would contravene the Dodd-Frank act itself. Furthermore, such delegation would be a very bad idea. Before the CFPB existed, the prudential regulators did a weak job at</p>

supervision for compliance with consumer financial laws, due in part to perceived conflict between protecting consumers and bank safety and soundness...” – NCLC, et al.<sup>13</sup>

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“We encourage the Bureau to assert its ‘exclusive’ authority to examine banks for consumer compliance consistent with Congressional intent that the Bureau be the lead consumer financial regulator and enforcement agency.” – TCH

“Another important component of improving supervisory efficiency, effectiveness, and consistency is better coordination between the Bureau and prudential regulators with regard to exam scheduling, data requests, sharing of reports, and development of consumer compliance ratings and compliance management system (CMS) evaluations. By avoiding duplication and instead coordinating examinations, valuable synergies may be achieved, enabling the Bureau to allocate more resources to nonbank supervision for the benefit of consumers, fair competition, and economic growth.” – ABA

Trade groups  
“Banks express frustration that the Bureau and prudential regulators do not coordinate data requests.” – ABA

“Coordinate information requests with prudential and state regulators: As noted below, when done well, coordination with other regulators can help reduce the burden of document production. However, where information requests are not standard, or are overlapping but not perfectly aligned, an institution must manage multiple requests at the same time and ensure it is properly providing the requested information to two different parties. Where the Bureau is conducting an examination with another regulator, it is important that information requests—both initial and follow-up—are coordinated and phrased in the same manner.” – MBA

“CUNA supports a change by the Bureau to transfer primary examination and enforcement authority of all FICU’s for compliance with consumer protection laws and regulations to the NCUA and/or the appropriate state regulator.” – CUNA

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<sup>13</sup> Comment submitted jointly by the National Consumer Law Center on behalf of 43 consumer, community, legal services, and advocacy groups. The complete list can be found in the Additional Notes section.

“Accordingly, all sales, marketing, policy fulfillment, servicing and other activities in support of consumer insurance products are ‘the business of insurance’ regulated by the States and not subject to Bureau jurisdiction.” – Consumer Credit Industry Association

“We also urge the CFPB to adopt a policy or rule under which it will not take enforcement action against smaller IMBs unless one of their state regulators or a federal regulator provides a referral for the CFPB to investigate and take action.” – Group of independent mortgage bankers<sup>14</sup>

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Law firms “Unfortunately, the CFPB also declined to take advantage of the benefit of years of experience state supervisor could have shared with the CFPB by conducting either joint examinations or the CFPB accompanying state supervisors on examinations and observing what the issues were and how state supervisors resolve those issues. Many state supervisors were disappointed that there was no meaningful coordination.” – Duane Morris

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## Additional Notes

1. The following institutions were signatories to the letter submitted by 52 independent mortgage bankers (CFPB-2018-0004-0017):

*1st Mortgage, Williamsville NY  
Absolute Home Mortgage Corp., Fairfield, NJ  
AKT American Capital, El Segundo CA  
Allied Mortgage Group, Bala Cynwyd, PA  
American Equity Mortgage, Inc., Cranberry Township PA  
American Mortgage Service Co, Cincinnati OH  
Atlantic Bay Mortgage, Virginia Beach VA  
Bridgeview Mortgage Corp., Franklin Square NY  
Century Lending Company, Louisville KY  
Cherry Creek Mortgage, Greenwood Village CO  
Churchill Mortgage Corporation, Brentwood, TN*

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<sup>14</sup> Comment submitted jointly by 52 independent mortgage bankers. The complete list can be found in the Additional Notes section.

*Earnest, San Francisco, CA*  
*Equity Resources, Newark, OH*  
*Evesham Mortgage, LLC, Marlton, NJ*  
*Financial Dimensions Inc., West Mifflin, PA*  
*Financial Freedom Mortgage LLC, Marlton, NJ*  
*First Alliance Home Mortgage, Cranford, NJ*  
*First Heritage Mortgage, LLC, Fairfax, VA*  
*Georgetown Mortgage, Georgetown, TX*  
*Golden Empire Mortgage, Bakersfield, CA*  
*Hallmark Home Mortgage, Fort Wayne, IN*  
*Homestar Financial Corp., Gainesville, GA*  
*Hometrust Mortgage Company, Houston, TX*  
*Holland Mortgage Advisors, Pittsburgh, PA*  
*Jersey Mortgage Co., Cranford, NJ*  
*Keystone Financial Services, Pittsburgh, PA*  
*K. Hovnanian American Mortgage LLC, Red Bank NJ*  
*Lake Mortgage Co., Merrillville, IN*  
*Lenderworks, Fairfax, VA*  
*LLG Loans, Troy, MI*  
*Mid America Mortgage, Inc., Addison, TX*  
*Mission Mortgage of Texas, Austin, TX*  
*MLB Residential Lending LLC, Springfield, NJ*  
*Mortgage Investors Group, Knoxville, TN*  
*Mortgages Unlimited, Maple Grove, MN*  
*Mountain West Financial, Redlands, CA*  
*NJ Lenders Corp., Little Falls, NJ*  
*Paramount Mortgage Co., St. Louis, MO*  
*Platinum Home Mortgage, Rolling Meadows, IL*  
*Priority Financial Network, Calabasas, CA*  
*Republic State Mortgage Co., Houston, TX*  
*Residential Wholesale Mortgage, San Diego, CA*  
*South Pacific Financial Corp., Irvine, CA*  
*Stockton Mortgage Corporation, Frankfort, KY*  
*Success Mortgage Partners Inc., Plymouth, MI*  
*Summit Mortgage Corp., Plymouth, MN*

*Tidewater Home Funding, Chesapeake, VA*  
*Town Square Mortgage and Investments Inc., Plano, TX*  
*Trident Mortgage Co., Devon, PA*  
*Universal Lending Corporation., Denver, CO*  
*VanDyk Mortgage, Grand Rapids, MI*  
*Victorian Finance LLC, Pittsburgh, PA*

2. The following organizations were signatories to the comment submitted by the National Consumer Law Center on behalf of 43 consumer, community, legal services, and advocacy groups (CFPB-2018-0004-0037):

*National Consumer Law Center (on behalf of its low-income clients)*  
*Allied Progress*  
*Americans for Financial Reform*  
*Center for Responsible Lending*  
*Consumer Action*  
*Consumer Federation of America*  
*Interfaith Center on Corporate Responsibility*  
*Main Street Alliance*  
*National Association of Consumer Advocates*  
*National Center for Law and Economic Justice*  
*Public Citizen*  
*The Institute for College Access & Success*  
*U.S. PIRG*  
*Center for Economic Integrity (AZ)*  
*Arizona PIRG (AZ)*  
*Arkansans Against Abusive Payday Lending (AR)*  
*California Reinvestment Coalition (CA)*  
*East Bay Community Law Center (CA)*  
*Elder Law & Advocacy (CA)*  
*Public Counsel (CA)*  
*Connecticut Legal Services, Inc. (CT)*  
*Delaware Community Reinvestment Action Council, Inc. (DE)*  
*Tzedek DC (DC)*  
*Florida Alliance for Consumer Protection (FL)*  
*Jacksonville Area Legal Aid, Inc (FL)*

*Atlanta Legal Aid Society, Inc. (GA)*  
*Woodstock Institute (IL)*  
*Heartland Alliance for Human Needs & Human Rights (IL)*  
*Legal Aid Foundation of Metropolitan Chicago (IL)*  
*Kentucky Equal Justice Center (KY)*  
*Maryland Consumer Rights Coalition (MD)*  
*Baltimore Neighborhoods, Inc (MD)*  
*Public Justice Center (MD)*  
*Montana Organizing Project (MT)*  
*Charlotte Center for Legal Advocacy (NC)*  
*North Carolina Justice Center (NC)*  
*Legal Services of New Jersey (NJ)*  
*New Jersey Citizen Action (NJ)*  
*Community Service Society of New York (NY)*  
*Center for NYC Neighborhoods (NY)*  
*VOICE – OKC (OK)*  
*South Carolina Appleseed Legal Justice Center (SC)*  
*Virginia Poverty Law Center (VA)*

3. Additional comments were received on the following topics and for which representative sentiments are available upon request:

- The appropriateness of Supervision as a tool choice
- Information requests; including timing, content, scope, and burden
- Communication between examination teams and supervised entities
- Supervisory Letters and Examination Reports
- Involvement of Headquarters on examinations

## 2. Research, Markets, and Regulations

### Introduction

This chapter represents the culmination of this initiative and presents a summary overview of the comments received on the four RFIs issued in the course of the Call for Evidence that pertain directly to the work of the Division of Research, Markets, and Regulations. Those four RFIs relate to (1) the Bureau’s rulemaking processes, (2) its inherited regulations and rulemaking authorities, (3) its adopted regulations and new rulemaking authorities, and (4) its guidance and implementation support function.

If you have any questions regarding this chapter, please do not hesitate to contact:

- Kate Fulton, Deputy Chief of Staff; or
- Kate Parkhurst, Office of Regulations’ Chief of Staff.

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## 2.1 Rulemaking Processes

### Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>15</sup> states that the Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.<sup>16</sup> The Dodd-Frank Act further authorizes the Director of the Bureau to prescribe rules and issue orders and guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, including both enumerated consumer laws<sup>17</sup> and provisions of Title X of the Dodd-Frank Act,<sup>18</sup> and to prevent evasions thereof.<sup>19</sup> The Bureau has engaged in rulemakings mandated by Congress as well as discretionary rulemakings pursuant to these and other authorities.

The Bureau’s rulemaking processes are subject to a number of statutory requirements, including notice-and-comment requirements under the Administrative Procedure Act; the small business review process required for certain rulemakings under the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA); analyses of impacts of proposed and final rules pursuant to requirements in the Dodd-Frank Act, the RFA, and the Paperwork Reduction Act (PRA); reporting to each House of Congress and the Government Accountability Office which includes, among other things, a determination by the administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OMB OIRA) as to whether the rule is a “major rule” as defined by the

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<sup>15</sup> Public Law 111-203, 124 Stat. 2081 (2010).

<sup>16</sup> 12 U.S.C. 5512(a).

<sup>17</sup> Enumerated consumer laws are the 18 statutes (or portions thereof) specifically listed in the Dodd-Frank Act, including, for example, the Fair Credit Billing Act, the Fair Debt Collection Practices Act, the Home Mortgage Disclosure Act of 1975, the Truth in Lending Act, and the Truth in Savings Act. 12 U.S.C. 5481(12). The Bureau has rulemaking authority for these and certain other Federal consumer financial laws as defined by 12 U.S.C. 5481(14). See generally 12 U.S.C. 5512.

<sup>18</sup> This includes the Dodd-Frank Act’s prohibition against unfair, deceptive, or abusive acts or practices. 12 U.S.C. 5531.

<sup>19</sup> 12 U.S.C. 5512(b)(1).

Congressional Review Act; and consultation with other certain Federal agencies pursuant to the Dodd-Frank Act.

While many elements of Bureau rulemakings are required by law, a number of the Bureau’s rulemaking processes, and certain aspects of how the Bureau implements required processes, are discretionary. To assist the Bureau in assessing the overall efficiency and effectiveness of its rulemaking processes and, consistent with law, considering whether any changes to its rulemaking processes would be appropriate, the Bureau published an RFI on March 9, 2018 (CFPB-2018-0009) seeking comment on all discretionary aspects of its rulemaking processes, including current practices, timelines, and potential improvements in each stage of these processes.

## Methodology Specific to the Rulemaking Processes RFI

### **Comment Summary**

The data in the “Comment Summary” section below accounts for all comment letters submitted to the Rulemaking Processes RFI docket. Additionally, the data in this section includes comment letters referred from other RFIs that are relevant to rulemaking processes.

### **RFI Topic Areas**

The data in the “RFI Topic Areas” section below includes all comment letters relevant to each topic area listed. The topic areas presented are the main topic areas addressed by commenters on the Rulemaking Processes RFI.<sup>20</sup>

### **Representative Sentiments**

The Bureau received comments relating to the 12 specific questions posed in the Rulemaking Processes RFI as well as on a number of other related matters. Below, this report provides representative sentiments for comments relating to the four overarching topic areas for which we received the greatest number of comments.<sup>21</sup> The representative sentiments included in this

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<sup>20</sup> Other topics areas addressed by commenters outside those for which we have provided representative sentiments are noted in item 3 of the Additional Notes section for this RFI. Representative sentiments are available for those topics upon request.

<sup>21</sup> To improve the clarity of representative sentiments, where appropriate, we have made non-substantive formatting changes and have omitted non-substantive footnotes.

report are meant to provide a flavor for the range of comments that the Bureau received on the topics included; they generally reflect the sub-issues that garnered the most comments but are not intended to catalog the most frequent comments (as that would largely just pick up comments made via letter-writing campaigns).<sup>22</sup> We have tried to select the most clear and succinct articulations of each issue, even though that may mean that some commenters are quoted more frequently than others.

We have endeavored to include information, for reference, about the number of comments received on each topic covered below, as well as on topics and subtopics for which we have not provided representative sentiments. Commenters generally did not identify by number the RFI questions they were responding to, or responded to multiple questions together. We have reviewed and considered all the comments submitted on docket CFPB-2018-0009, as well as the comments referred to us by reviewers for other RFIs, but we caution that the counts of comments may not be exact depending on how particular issues were categorized.

Also, the numbers and the representative sentiments do not reflect the relative importance to commenters of particular issues, or the level of detail in which commenters addressed particular issues.

In selecting representative sentiments, we have focused on actionable comments—that is, specific suggestions to do or not do particular things, or expressing support for current practices. We have not included comments that simply recite historical background, even where such recitation may imply a complaint about Bureau practices, or that make generalized statements without specific suggestions. (The latter two types of comments are, however, included in the relevant counts of substantive comments.)

The representative sentiments provided below are grouped by (1) trade groups and industry commenters, (2) consumer advocacy groups and individual commenters, and (3) other commenters.<sup>23</sup> Where multiple commenters addressed an issue using identical or very similar language, we have endeavored to include those sentiments and list all the commenters.

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<sup>22</sup> The representative sentiments are not intended to reflect all the issues that were raised by commenters on a particular topic.

<sup>23</sup> Commenters were grouped this way as the trade associations' commenters were generally closely aligned with those of industry, as were individual commenters with the consumer advocacy groups. The "other" category includes Federal legislative and executive branch commenters, academics/researchers, and others.

However, other commenters may have expressed similar sentiments to the ones included below, but due to space constraints the representative sentiments provided generally do not note those similarities.

## Comment Summary

**Total comments:** 210 comments representing 195 unique commenters or groups of commenters<sup>24</sup>

**Substantive comments responsive to this RFI submitted on this docket:** 91<sup>25</sup>

**Substantive comments referred from other RFIs:** 119 letters from 113 commenters (9 of these commenters also submitted comments responsive to this RFI directly)

**Substantive comments responsive to other RFIs:** 44 (35 of which are also responsive to this RFI)

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<sup>24</sup> This total includes the number of comment letters submitted to this docket and posted on Regulations.gov that were substantive and relevant for this RFI. Additionally, it includes the number of substantive, relevant comment letters referred to us from other dockets.

<sup>25</sup> 103 comments were submitted specific to this docket and are posted on Regulations.gov under CFPB-2018-0009. Regulations.gov indicates the count for the docket is 120, but only 104 items are actually posted; 16 items had been posted but were removed because they were duplicates of other posted items. One posted item contains the attachments to a separately posted comment letter. Thus there are 103 submissions posted for this docket.

**Substantive and responsive comments received from:<sup>26</sup>**

Individual Entities					Government	
Individual Consumers	Depository Institutions and Credit Unions	Non-Depository Institutions	Industry Trade Groups	Consumer Advocacy Groups	(i.e., other Federal agencies, state and local governments, US Senators)	Other (e.g., academia, non-consumer advocacy groups, etc.)
37 (+87) <sup>27</sup>	13 (+7)	2	23 (+9)	7	4 (+1)	5

**RFI Topic Areas**

Topic	Description	Number of Comments
1 Rule contents and issuance	The content of NPRMs and final rules, and the Bureau's issuance of NPRMs and final rules including supporting materials that the Bureau may release simultaneously with an NPRM or final rule.	60 14 trade groups and industry 40 consumer advocacy groups and individuals (including 35 individual commenters) 6 other
2 SBREFA	The Bureau's convening of a small business review panel pursuant to its obligations under SBREFA <sup>28</sup> when required, including the outline of the proposal under	62 18 trade groups and industry

<sup>26</sup> Comments are counted for this purpose by letter; these tallies do not reflect multiple signatories to particular letters. (Multiple signatories are noted below for representative sentiments, where relevant. The commenter totals reflected here are for substantive comments only; non-substantive comments were not included.)

<sup>27</sup> The numbers in parentheses reflect the number of additional substantive comments submitted on other RFIs that were referred to us as relevant for this RFI by commenters who had not also submitted comments on this RFI directly.

<sup>28</sup> Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996). The RFA, as amended by SBREFA, requires the Bureau to engage in a small business feedback process prior to proposing a rule for which (1) the Administrative Procedures Act (APA) requires notice and comment and (2) the Bureau does not certify that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Prior to issuing

Topic	Description	Number of Comments
	<p>consideration and the analysis of potential impacts on small entities and regulatory alternatives that are released at the start of the SBREFA panel process; selection of and interaction with small entity representatives during the SBREFA panel process; the SBREFA panel report; and outreach to other stakeholders on the basis of public release of the outline of the proposal under consideration.</p>	<p>40 consumer advocacy groups and individuals (including 35 individual commenters) 4 other</p>
3 Public comments and outreach	<p>The Bureau's solicitation for, and treatment of, public comments on NPRMs, including the length of the comment period, the use of "reply periods" for commenters to review and formally respond to other commenters' comment letters, consideration of comments received after the close of the comment period, the Bureau's processing and posting of comments received to its electronic docket on <a href="http://www.regulations.gov">http://www.regulations.gov</a>, outreach and engagement by the Bureau during and after the comment period, including meetings with stakeholders, and disclosure of such communications under the Bureau's <i>ex parte</i> policy.</p>	<p>59 14 trade groups and industry 39 consumer advocacy groups and individuals (including 35 individual commenters) 6 other</p>
4 Impact analyses and data	<p>Impact analyses for NPRMs and final rules, including the qualitative and quantitative analysis therein, and the data on which they rely. Additionally, the Bureau's efforts to gather data from industry, academia, think tanks, consumer advocacy groups, and others to support</p>	<p>133 30 trade groups and industry 97 consumer advocacy groups and individuals (including 92 individual commenters)</p>

an NPRM in these rulemakings, a review panel must seek input from a representative cross section of affected small entities to obtain advice and recommendations on proposals the Bureau is considering. The panel must be comprised of representatives from the Bureau, OMB OIRA, and the Office of Advocacy of the U.S. Small Business Administration. The panel is required to prepare a report on its findings and make this report part of the rulemaking record. The Bureau typically releases a SBREFA panel report, and any written comments from the small entity representatives, to the public at the same time that it releases an NPRM. As required by SBREFA, the Bureau's NPRMs reflect how the Bureau has acted on or otherwise responded to the report's recommendations.

Topic	Description	Number of Comments
	quantitative analysis, and how the Bureau might best encourage industry and other stakeholders to share data to inform a potential proposed rule and whether concerns about treatment of proprietary business data could be better addressed consistent with existing law.	6 other

## Representative Sentiments

### 1. Rule Contents and Issuance

Commenter Type	Representative Sentiments
Multiple commenter types	<p><b>Regarding issuance on the Bureau's website before <i>Federal Register</i> publication:</b></p> <p>"I appreciate the Bureau's issuance of ANPRs and NPRMs on its website in advance of publication in the <i>Federal Register</i>. ... In issuing a final rule, it is very helpful that the Bureau releases the final rule on its website in advance of publication in the <i>Federal Register</i>. ..." – American Airlines Federal Credit Union (-0080);<sup>29</sup> similar support was expressed regarding posting proposed and/or final rules on the Bureau's website in advance of <i>Federal Register</i> publication by a number of other commenters, including 45 consumer advocacy groups (-0062),<sup>30</sup> four consumer advocacy groups (-0061),<sup>31</sup> American Financial Services Association (AFSA) (-0056), Appleseed (-0066), Financial Regulation and Consumer Protection Scholars and Former Regulators (-0121),<sup>32</sup> Mortgage Bankers Association (MBA) (-0047), National Association of Home Builders (-0028), National Reverse Mortgage Lenders</p>

<sup>29</sup> Comments quoted in this part 1 were submitted on the Rulemaking Processes RFI docket (CFPB-2018-0009) unless otherwise noted.

<sup>30</sup> Comment letter submitted by Americans for Financial Reform (AFR) on behalf of a group of 45 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 1 of the Additional Notes section for this RFI.

<sup>31</sup> Comment letter submitted jointly by AFR, Center for Responsible Lending, National Consumer Law Center (NCLC) (on behalf of its low-income clients), and U.S. PIRG.

<sup>32</sup> Comment letter submitted by Patricia A. McCoy on behalf of a group of scholars and former regulators. The full list of signatories to this comment letter can be found in item 2 of the Additional Notes section for this RFI.

Association (-0053), Wisconsin Bankers Association (-0031), Woodstock Institute (-0071), and Amy Harlib (-0064) and 34 other individuals in separate letters<sup>33</sup>

**Regarding supplemental materials released in conjunction with NPRMs and/or final rules:**

“NAFCU also recommends that the Bureau provide redlines for final rules and also for the purpose of demonstrating the evolution of proposals and piecemeal amendments.” – National Association of Federally-Insured Credit Unions (NAFCU) (-0115); similar suggestions for providing redlines were also made by other commenters, including Consumer Bankers Association (CBA) (-0079), Independent Community Bankers of America (-0046), and Office of Advocacy of the U.S. Small Business Administration (SBA Office of Advocacy) (-0055)

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**Regarding the length or complexity of NPRMs and/or final rules:**

“AFSA believes that NPRMs should be shorter and streamlined. ... More specifically, the background section [of the payday rule] could have been significantly shorter, as could the section-by-section analysis, which was somewhat repetitive.” – AFSA (-0056)

“One concern NAHB has with the Bureau’s preproposal requests as well as its proposed rules, is with the length and complexity of these requests and proposals. ... The sheer size of these documents is a barrier to the interested public, especially small businesses seeking to comply with Bureau rules.” – National Association of Home Builders (-0028)

**Suggestions for improving/changing NPRM and/or final rule notices:**

“The Bureau should enhance the accessibility of NPRMs [and final rules] by incorporating indexes, executive summaries, and examples where appropriate.” – NAFCU (-0115)

Trade groups  
and industry

“[T]he Bureau should formally consider alternatives to proposed rules that are offered by the CUAC or other advisory work groups much like it considers alternatives generated by small business review panels.” – NAFCU (-0115)

**Regarding the current content/level of detail in NPRMs and/or final rules:**

“In the issuance of final rules, I appreciate the Bureau’s explanations of its rationale for the final rule in the analysis portion, the discussion in the section by section analysis and the explanation of changes from the NPRM.” – American Airlines Federal Credit Union (-0080)

**Other comments regarding the content of NPRMs and/or final rules:**

“Transparency is key and the more information and detail the Bureau can provide about a new regulation or amendment to a regulation in advance and during the rulemaking, including posting online and in the *Federal Register*, will facilitate a more robust and productive process.” – National Association of REALTORS (-0036)

“The inclusion of appendices, model or sample forms, examples or illustrations, in an NPRM are also useful to explain the Bureau’s reasoning and goals of a particular rule.” – National Association of REALTORS (-0036)

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<sup>33</sup> These 35 individuals submitted letters that were nearly identical to the letter submitted by the 45 consumer advocacy groups (-0062).

	<p><b>Regarding the current content/level of detail in NPRMs or final rules:</b></p> <p>“To its credit, the CFPB has always relied on a broad range of both quantitative and qualitative data in its analyses to inform its rulemaking. It is imperative that the CFPB continue to draw from a variety of sources for this type of research going forward.” – 45 consumer advocacy groups (-0062), Woodstock Institute (-0071), and Amy Harlib (-0064) and 34 other individuals in separate letters</p>
Consumer advocacy groups and individuals	<p>“In assessing the content of the CFPB’s NPRMs and the notices it issues when it announces a final rule, it is important to consider the history of rulemaking for the statutes under the CFPB’s authority. Using the Truth in Lending Act [] as an example, the evolution of Regulation Z demonstrates that the nature and content of the CFPB’s rulemaking notices align with well-established previous rulemaking procedures, while providing even more robust analysis and information to support its findings and inform the public about the rule.” – four consumer advocacy groups (-0061)</p>
	<p><b>Regarding supplemental materials released in conjunction with an NPRM and/or final rule:</b></p> <p>“We [] strongly support publishing both proposed and final rules along with a press release, blog post, summaries, fact sheets, videos and other materials to make the rulemaking process more accessible and more comprehensible to a wider audience.” – Appleseed (-0066) and Woodstock Institute (-0071)</p>
	<p><b>Regarding the length or complexity of NPRMs and/or final rules:</b></p> <p>“Like the NPRMs, the Bureau’s final rules tend to be long and dense. ... Small entities do not have the time to read a rule of [the length of the small dollar/payday lending final rule] or the financial resources to hire an attorney to read such a cumbersome rule. ... Advocacy encourages the Bureau to simplify its final rules.” – SBA Office of Advocacy (-0055)</p>
	<p><b>Suggestions for improving/changing NPRM and/or final rule notices:</b></p> <p>“Ensure that compliance expectations are clear. Given the length and complexity of the Bureau’s rules, requirements contained within rulemakings can be easily obscured and confused, especially by small institutions with limited compliance resources. State regulators appreciate that the Bureau has released small entity compliance guides for certain rules, and encourage the Bureau to continue to do so.” – Conference of State Bank Supervisors (-0032)</p>
Others	<p><b>Regarding the current content/level of detail in NPRMs or final rules:</b></p> <p>“The Consumer Bureau should continue to provide comprehensive and through [sic] notices of proposed rulemaking. ...” – Sen. Catherine Cortez Masto (Nev.) (-0035)</p> <p>“The detailed content of the Bureau’s preambles to major rulemakings should also be preserved because it injects transparency into the rulemaking process. The extended discussion of the legal basis, evidentiary record, and impact analyses helps Bureau rules withstand any possible judicial challenge. Detailed preambles also provide a historical record for future policymakers to consult.” – Financial Regulation and Consumer Protection Scholars and Former Regulators (-0121)</p>

**Regarding supplemental materials released in conjunction with an NPRM and/or final rule:**

"[A] table of contents that links to the particular sections in the electronic version would be helpful." – SBA Office of Advocacy (-0055)

2. SBREFA<sup>34</sup>

Commenter Type	Representative Sentiments
Trade groups and industry	<p><b>Regarding the SBREFA process and the Bureau's SBREFA practices generally:</b></p> <p>"CBA is supportive of the SBREFA process, which provides the CFPB with an opportunity to gather feedback and input from small entities likely to face significant economic impacts from a Bureau rulemaking. When used in conjunction with outreach to larger stakeholders, the SBREFA process helps provide the Bureau with a complete picture of industry views on a rulemaking proposal." – CBA (-0079)</p> <p><b>Regarding the timing to provide materials to small entity representatives (SERs) and for SERs to review materials:</b></p> <p>"ICBA recommends the Bureau send materials at least 30 business days before convening a Panel or amend its definition of 'convene' to mean the day the Panel meets in order to provide SERs sufficient time to undertake a comprehensive analysis of the complex materials, solicit feedback within their respective institutions, and develop discussion points for an effective Panel meeting." – Independent Community Bankers of America (-0046)</p> <p><b>Regarding the Bureau's consideration of feedback and recommendations provided by SERs:</b></p> <p>"WBA fully supports the Bureau continuing to convene these important panels and trusts the Bureau will ensure participants' suggestions will be carefully considered." – Wisconsin Bankers Association (-0031)</p>
Consumer advocacy	<p><b>Regarding the SBREFA process and the Bureau's SBREFA practices generally:</b></p> <p>"The manner in which the CFPB has conducted the SBREFA process has contributed to robust collection of input from small business representatives, which the CFPB has used in formulating its proposed and final rules." – four consumer advocacy groups (-0061)</p>

<sup>34</sup> Commenters also addressed selection of SERs (3 commenters); the timing of convening a SBREFA panel within the overall rulemaking process (2 commenters); treatment of sensitive information provided by SERs (3 commenters); the contents of the SBREFA panel report (3 commenters); other reports or outcomes from the SBREFA process (4 commenters); and concerns about the SBREFA process for the payday rulemaking (5 commenters), the debt collection rulemaking (4 commenters), or other rules (2 commenters). Representative sentiments are available for these subtopics upon request.

groups and individuals	<p><b>Regarding public release of SBREFA materials:</b></p> <p>“[W]hile the CFPB is required by law to meet with small business representatives before commencing rulemaking, the CFPB’s commitment to transparency is demonstrated in its practice of distributing the briefing materials to the general public before these meetings, which provide insight into what options the CFPB is considering and an opportunity for all sides to provide input before the rulemaking process begins.” – 45 consumer advocacy groups (-0062), Appleseed (-0066), Woodstock Institute (-0071), and Amy Harlib (-0064) and 34 other individuals in separate letters</p>
Others	<p><b>Regarding the Bureau’s pre-panel interactions with SERs:</b></p> <p>“The Bureau should improve its interactions with SERs prior to the SBREFA panel SERs meeting, particularly its teleconference calls by providing more time for SERs to prepare for the calls and by scheduling sufficient time to consider and respond to the SERs’ comments and to allow SERs to respond to Bureau comments.” – SBA Office of Advocacy (-0055)</p> <p><b>Regarding materials provided to SERs:</b></p> <p>“The Bureau should improve its SBREFA panel process by improving the information in the SBREFA materials provided to small entity representatives, and by providing more time for small entity representatives to review those materials and respond to them.” – SBA Office of Advocacy (-0055)</p> <p><b>Regarding the Bureau’s timing to issue the SBREFA panel report:</b></p> <p>“Advocacy encourages the Bureau to release the report to the public at the time that it is completed and to provide a hard copy of the report to the SERs.” – SBA Office of Advocacy (-0055)</p> <p><b>Other:</b></p> <p>“Creating a small business liaison under the external affairs department for closer outreach and coordination with SBA would improve the bureau’s compliance with rulemaking requirements.” – Competitive Enterprise Institute (CEI) (-0040)</p>

### 3. Public Comments and Outreach<sup>35</sup>

Commenter	Representative Sentiments
Type	<b>Regarding the length of comment periods:</b>
Trade groups and industry	<p>"MBA ... believes that 90 days should be the default length of a comment period for significant rules. Shorter comment periods of 30 -60 [sic] days could be prescribed for less significant and complex matters." – MBA (-0047)</p>
Consumer advocacy	<p><b>Regarding reply periods:</b>            "[R]eply periods' may provide the Bureau with additional data and information. Reply periods would need to be at least 60 days to allow stakeholders time to read other comments and compose their response." – AFSA (-0056)</p>
	<p><b>Regarding treatment of identical comments, anonymous comments, fake comments, etc.:</b></p>
	<p>"Preventing the filing of fake or duplicative comment letters is a difficult task, but the Bureau must adopt new tactics to minimize their impact and improve the efficiency of the rulemaking process." [The letter includes specific suggestions regarding requiring commenters to register to electronically file comment letters, automation of initial comment letter review to separate unique comments from duplicates, publication of authenticated comments, and prohibition on posting anonymous comment letters.] – CBA (-0079)</p>
	<p>"The Bureau should provide an explanation of its policy for its treatment of comments, and in particular the grouping and redacting of public comments on the website." – Financial Service Centers of America (-0038)</p>
	<p><b>Regarding the Bureau's <i>ex parte</i> policy or <i>ex parte</i> comments in general:</b></p>
	<p>"The BCFP's <i>ex parte</i> policy hinders the Bureau's ability to issue effective and efficient regulations. CBA members have expressed a reluctance to meet with the Bureau during the rulemaking process based on the concern that any information shared with the BCFP will be publicly released as a part of its <i>ex parte</i> policy. ... The Bureau should reexamine its <i>ex parte</i> policy to determine whether it strikes the right balance between the desire for transparency and the need for candid, substantive input from industry stakeholders during the rulemaking process." – CBA (-0079) (internal citations omitted)</p>
	<p><b>Regarding reply periods:</b></p>
	<p>"The CFPB should not impose a formal reply period to comments. Doing so would burden consumers, industry, and other stakeholders with a double comment obligation and would</p>

<sup>35</sup> Commenters also addressed extensions of comment periods (3 commenters); methods for submitting comments (2 commenters); and outreach and engagement with stakeholders during and after the comment period (45 commenters (including 35 individual commenters)). Representative sentiments are available for these subtopics upon request.

groups and individuals burden CFPB staff with reading additional comments. Such an approach would also unduly favor industry, which has the resources to read and respond to numerous comments, whereas neither our organizations nor certainly the general public has comparable capacity to do so.” – 45 consumer advocacy groups (-0062), and Amy Harlib (-0064) and 34 other individuals in separate letters. (Very similar remarks were also made by Woodstock Institute (-0071).)

**Other remarks regarding comment periods:**

“While the public should be encouraged to submit comments on a timely basis, the CFPB should not impose any hard rules against continuing input after the comment period closes. Many rulemakings take many years, during which new information can become available, new issues may arise, or the public may become newly aware about the importance of a rulemaking.” – 45 consumer advocacy groups (-0062), Appleseed (-0066), and Amy Harlib (-0064) and 34 other individuals in separate letters; very similar remarks were also made by four consumer advocacy groups (-0061) and Woodstock Institute (-0071)

**Regarding treatment of identical comments, anonymous comments, fake comments, etc.; and treatment of multiple signatories to a single letter:**

“For posting comments, we support posting identical comments as a single batch with the list of companies, organizations, or individuals submitting them. The CFPB should take into account the number and diversity of organizations signing on to group letters and differentiate them from individual letters.” – four consumer advocacy groups (-0061)

**Regarding the Bureau’s *ex parte* policy:**

“Recognizing the danger of undue influence from one-sided communications behind closed doors, the CFPB implemented a policy requiring *ex parte* communications to be documented in writing and publicized. … We urge the CFPB to complete and publish *ex parte* memoranda promptly and to post a log of each *ex parte* contact that occurs regarding a rulemaking process.” – four consumer advocacy groups (-0061), 45 consumer advocacy groups (-0062), Woodstock Institute (-0071), and Amy Harlib (-0064) and 34 other individuals in separate letters

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**Regarding the length of comment periods:**

“Advocacy encourages the Bureau to provide comment periods that reflect the complexity of the proposal. Longer comment periods would allow the opportunity to fully digest proposals, gather information from vendors and other sources, contemplate viable alternatives and provide thoughtful comments.” – SBA Office of Advocacy (-0055)

**Other remarks regarding comment periods:**

“[See ACUS] Recommendation 2011-2, *Rulemaking Comments*, 76 Fed. Reg. 48,789, 48,791 (Aug. 9, 2011): Offers advice to agencies on how to encourage the public to submit effective comments, as well as advice on the adoption of policies for anonymous and late comments.” [In particular, ¶¶ 5 and 7 address treatment of late comments and the need to refresh the rulemaking record.] – Office of the Chairman of the Administrative Conference of the United States (-0016)

**Regarding the Bureau’s *ex parte* policy or *ex parte* comments in general:**

“[W]e object to the Bureau engaging in and considering *ex parte* communications after the close of the comment period. For the Payday Loan Rule, the Bureau stated that it considered

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more than 50 *ex parte* comments after the comment period closed. Our review of records obtained from the Bureau through Freedom of Information Act requests revealed that the Bureau primarily received post-comment period *ex parte* communications from consumer advocacy groups. Because of this access, these groups have had the ability to provide arguments to the Bureau to which no other person may respond. Moreover, these groups also have had an unfair ability to attack any of the arguments that were submitted during the regular comment period.” – McIntyre & Lemon PLLC (-0049) (internal citations omitted)

#### 4. Impact Analyses and Data<sup>36</sup>

Commenter	Representative Sentiments
Type	
	<b>Regarding the Bureau’s current approach to cost/benefit analysis:</b>
	“More robust initial cost-benefit analyses will help strike the appropriate balance between consumer protections and access to financial opportunities.” – MBA (-0047)
	<b>Other remarks regarding cost/benefit analyses generally:</b>
	“The Bureau should use data to inform foundational decisions such as whether market intervention in the form of a new regulation is appropriate. … Further, when conducting cost-benefit analysis, the Bureau should look beyond an individual rule and also consider the cumulative impact of all rules impacting the same financial product or service. Though some incremental changes might be justified in isolation, market participants exit product lines by assessing the cumulative costs impacting profitability relative to the risk of continuing to offer a product.” – American Bankers Association (ABA) (-0039)
	<b>Regarding the collection and/or use of data generally:</b>
	“To be an agency informed by data, the data must be inclusive and representative of the entire industry. This is crucial as policy decisions are informed by data. In the past, the agency has gathered data primarily from the largest financial institutions over which it has supervisory oversight. The agency uses this data pulled from larger financial institutions (over \$10 billion in assets) to implement one-size fits all regulations and guidance….” – Ohio Credit Union League (-0012); very similar remarks were also made by Integrity Federal Credit Union (-0011), GROhio Community Credit Union (-0013), Impact Credit Union (-0014), Emerald Credit Union (-0015), Port Conneaut Federal Credit Union (-0017), Bridge Credit Union (-0019), Cincinnati Ohio Police Federal Credit Union (-0021), and ProMedica Federal Credit Union (-0023)

<sup>36</sup> Commenters also addressed the Office of Cost Benefit Analysis (45 commenters (including 35 individual commenters)); concerns specifically about the cost/benefit analysis for the payday rulemaking (3 commenters) or other rules (2 commenters); concerns specifically about the data used in the payday rulemaking (1 commenter); and the Bureau’s PRA obligations (4 commenters). Representative sentiments are available for these subtopics upon request.

“CBA is supportive of the Bureau’s data collection efforts as we are in favor of evidence-based regulations. … We recommend the CFPB provide model data forms whenever it seeks data or information to support a rulemaking. While commenters should not be limited to providing only the requested information, model data forms would measurably improve their ability to provide the Bureau with the data it needs, rather than waste time and resources gathering irrelevant information.” – CBA (-0079)

**Regarding Bureau studies and research:**

“The Bureau should conduct peer-reviewed research and give consideration to all research in the public domain – not just that research that suits its predetermined agenda.” – Community Financial Services Association of America, Ltd. (-0045)

**Regarding the Bureau’s public disclosure of data and privacy restrictions thereon:**

“[T]he Bureau [] shields its ‘market monitoring’ information and data requests from public oversight by treating these requests as confidential supervisory information, even though the Bureau can – and should – provide anonymized and aggregated data to help the public test the veracity of the Bureau’s findings and conclusions. … [T]he Bureau should provide access to the anonymized data and adequate time for the public to evaluate and comment on the research. … ABA renews its recommendation that the Bureau amend its privacy rule to enable public review of anonymized and aggregated data collected using Section 1022.” – ABA (-0039) (internal citation omitted)

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**Regarding the Bureau’s current approach to cost/benefit analysis:**

“We support the CFPB’s current practice of providing its analyses and supporting data with the NPRM and the final rule. … The CFPB should continue its current flexible approach to impact analysis, which complies with its statutory obligations under the Dodd-Frank Act and suitably takes into account the limitations of methodologies underlying such analysis. Financial regulatory impact analysis, particularly cost-benefit analysis, is highly speculative at best and is misleading and subject to manipulation based on arbitrary assumptions at worst.” – four consumer advocacy groups (-0061)

**Regarding netting of costs and benefits:**

Consumer advocacy groups and individuals

“[W]hile the CFPB is required to consider costs and benefits, it is not required to conduct a quantitative net benefit analysis and should not be required to do so. Industry will provide projections of costs, which may be overstated, while many benefits are inherently not quantifiable. Any requirement to quantify benefits downplays the very real but often unquantifiable benefits that CFPB regulations provide, including enhanced disclosures for consumers, stability and soundness in mortgage markets, and preventing abusive and deceptive practices that harm consumers.” – 45 consumer advocacy groups (-0062) and 35 individual commenters; very similar remarks were also made by four consumer advocacy groups (-0061)

**Regarding submission of Bureau rules for OIRA review:**

“The CFPB is, by design, independent from the White House and is not required to, and should not, submit its rules to the Office of Management and Budget (OMB) for review. An OMB review would be a fundamental violation of the CFPB’s independence and contradictory to congressional intent in maintaining the agency’s independence from the executive branch.” – 45 consumer advocacy groups (-0062) and Woodstock Institute (-0071); very similar

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remarks were also made by four consumer advocacy groups (-0061) and Amy Harlib (-0064) and 34 other individuals in separate letters

**Regarding the collection and/or use of data generally:**

"The Bureau has looked to complaint data since its inception to help decide which, if any rules would most benefit consumers. While collecting and compiling this data is an important function of the Bureau, how this information is collected and what it is used for must be transparent. Many times consumers and financial institutions are not fully informed about how the data they are providing is being used. In addition, the Bureau must do a better job showing sufficient evidence from the data that substantiate the assertions in its rulemakings." – Stephen Quigley (Adopted -0012) and 29 other individuals in separate letters

**Regarding sources for data:**

"[R]ecognizing that numeric fields may not tell an entire story, the CFPB enhances its analysis with qualitative data and field insights. This qualitative data, including individual stories, is a fundamentally important part of meaningful research into the impact of consumer financial products and services, and must not be disregarded. Examples of consumer problems play a valuable role in alerting the CFPB to new issues, possible trends, emerging types of consumer harm, and gaps in or evasions of existing protections." – 45 consumer advocacy groups (-0062), Appleseed (-0066), and Amy Harlib (-0064) and 34 other individuals in separate letters; very similar remarks were also made by four consumer advocacy groups (-0061) and Woodstock Institute (-0071)

**Regarding the Bureau's public disclosure of data and privacy restrictions thereon:**

"Data for data's sake is insufficient; it is critical that the agency's policy and regulatory decisions be wholly supported by relevant, timely, representative data." – Kristin Prather (Adopted -0011) and 30 other individuals in separate letters; very similar remarks were also made by Credit Union National Association (CUNA) (-0029)

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**Remarks regarding cost/benefit analyses generally:**

"The Bureau should identify its understanding of the requirement to consider the impact of its rules on the cost of credit to small entities and establish a methodology to follow in calculating that cost. ... The Bureau's compliance with the cost of credit provisions has been limited to a few questions at the end of SBREFA panel SERs meetings, and a few lines in the RFA section of its rulemakings." – SBA Office of Advocacy (-0055)

**Others** "Moving forward, the BCFP should focus less on [Behavioral Law & Economics (BLE)], and instead recognize the severe limitations present in the literature. At the very least, the bureau should make the effort to at least empirically test its BLE claims." – CEI (-0040)

"[I]f the Bureau wishes to properly solicit public feedback on its approach to impact analyses, it should issue a separate, new [RFI] in which it fully fleshes out the methodologies that it currently uses for impact studies and any resulting issues. That RFI should give specifics about the qualitative and quantitative analyses that the Bureau uses and any issues concerning those approaches and the data relied on. The Bureau should also describe what new approaches it might consider to its impact analyses going forward. Without a detailed enumeration of the Bureau's current approach and any critiques or issues, it is virtually impossible to comment on any changes the Bureau might be contemplating to its impact

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studies.” – Financial Regulation and Consumer Protection Scholars and Former Regulators (-0121)

**Regarding the collection and/or use of data generally:**

“The CFPB should maximize its use of data (whether public or not) held by other government agencies.” – Consumer Advisory Board (CAB) member (-0018)<sup>37</sup>

“In the past years, the Bureau has earned accolades for its rulemaking process. It should continue its record of outreach and data gathering efforts from stakeholders when developing rules, and ensure that proposals reflect the analysis and data that contributed to the development of a rule.” – Sen. Catherine Cortez Masto (Nev.) (-0035)

**Regarding the Bureau’s public disclosure of data and privacy restrictions thereon:**

“Any data used in a rulemaking should be made public and not be given confidential status.” – CAB member (-0018)

**Regarding the PRA:**

“The CFPB should get OMB approval for requiring data production from 10 or more regulated entities when appropriate. As someone who works extensively with data, there are real problems with voluntarily produced data—one does not know if it is reliable, exactly what the data report, and how good the quality of the data is. The idea that the CFPB would rely on data provided voluntarily by regulated entities or consumer groups is troublesome. Academics rarely have original, hand-collected data, and when they do, they aren’t going to share it until they’ve worked it over themselves first.” – CAB member (-0018)

“To improve the rulemaking process, the BCFP should more carefully study, assess, and consider the impact of the paperwork burdens it is imposing, including the consideration of alternative regulatory proposals.” – CEI (-0040)

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<sup>37</sup> The then-Chair and Vice Chair of the Bureau’s CAB submitted a comment letter, dated May 25, 2018, presenting the results of a survey of then-current and former CAB members on this and several other RFIs. The comment letter describes the survey results as reflecting “the responses of 39 current and former CAB members, including 22 current members (88% of all current members) and 17 former members (47% of all former members). The survey was shared with a total of 55 individuals, for a total response rate of 71%.” The letter includes a summary of the overall feedback provided by all respondents. In addition, respondents were offered the opportunity to offer additional comments with their responses. These additional comments from individual CAB members are reflected as being from a “CAB member.”

## Additional Notes

1. The following organizations were signatories to the comment letter submitted by AFR on behalf of a group of 45 consumer, community, civil rights, and legal services groups, identified above as from “45 consumer advocacy groups” (-0062):

*30th District Democrats  
Allied Progress  
American Consumer Justice Fellowship  
Americans For Financial Reform  
Arizona PIRG Education Fund  
Arkansans Against Abusive Payday Lending  
Boston Tax Help Coalition  
Center for NYC Neighborhoods  
Center for Responsible Lending  
Chaudhri Group  
Citizens For Honest Government  
Common Cause  
Connecticut Fair Housing Center  
Consumer Action  
Delaware Community Reinvestment Action Council, Inc.  
Dragonfly Financial Solutions LLC  
The Financial Clinic  
Florida Consumer Action Network  
Green Party of Taos County  
Heartland Alliance for Human Needs & Human Rights  
Interfaith Center on Corporate Responsibility  
Mac's Transit Authority, LLC  
Main Street Alliance  
Massachusetts Communities Action Network  
Mobilization for Justice Inc.  
MoBo Bicycle Cooperative  
Montana Organizing Project  
NAACP  
Naples Florida League of Women's Voters  
National Active and Retired Federal Employees Association*

*National Alliance of Community Economic Development Associations - NACEDA*  
*National Association of Consumer Advocates*  
*National Consumer Law Center (on behalf of its low-income clients)*  
*NEA/CTA*  
*New Jersey Citizen Action*  
*Oregon Food Bank*  
*Prosperity Now*  
*Public Justice Center*  
*Self-Help Federal Credit Union*  
*Society of Saint Vincent De Paul*  
*South Carolina Appleseed Legal Justice Center*  
*Tennessee Citizen Action*  
*U.S. PIRG*  
*Virginia Organizing*  
*Wilshire Baptist Church*

2. The following individuals were signatories to the letter submitted by Patricia A. McCoy on behalf of a group of scholars and former regulators, identified above as from “Financial Regulation and Consumer Protection Scholars and Former Regulators” (-0121):<sup>38</sup>

- Patricia A. McCoy  
Professor of Law, Boston College Law School  
Former Assistant Director, Mortgage Markets, Consumer Financial Protection Bureau
- Richard Alderman  
Professor Emeritus and Director of the Center for Consumer Law, University of Houston Law Center
- William Black  
Associate Professor of Economics and Law, University of Missouri-Kansas City

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<sup>38</sup> Names, titles, and affiliations are listed as they appear in the letter. This same general group also submitted comments quoted in other parts of this report, though some signatories vary and the titles and affiliations for those listed are not consistent across all letters.

- Susan Block-Lieb  
Cooper Family Professor of Urban Legal Issues, Fordham University, School of Law
- Mark Budnitz  
Professor of Law Emeritus, Georgia State University College of Law
- Prentiss Cox  
Associate Professor of Law, University of Minnesota Law School
- Susan DeJarnatt  
Professor of Law, Temple University Beasley School of Law
- Kurt Eggert  
Professor, Chapman University School of Law
- Kate Elengold  
Clinical Associate Professor of Law, University of North Carolina School of Law
- Kathleen Engel  
Research Professor, Suffolk University Law School
- Pamela Foohey  
Associate Professor, Indiana University Maurer School of Law
- Judith Fox  
Clinical Professor, Notre Dame Law School
- Richard Frankel  
Associate Professor of Law, Drexel University Thomas R. Kline School of Law
- Anna Gelpert  
Professor of Law, Georgetown
- Jeffrey Gentes  
Visiting Clinical Lecturer, Yale Law School
- Brian Gilmore  
Director, Michigan State University - College of Law - Housing Law Clinic

- Kathleen Keest  
Retired Former AAG, Office of Iowa AG; FDIC (ret'd)
- Angela Littwin  
Professor of Law, University of Texas
- Jeffrey Lubbers  
Professor of Practice in Administrative Law, American University, Washington College of Law
- Cathy Lesser Mansfield  
Professor [of] Law, Drake University Law School
- Kent Markus  
General Counsel, [Cordray for Ohio]
- Ted Mermin  
Interim Executive Director, Center for Consumer Law & Economic Justice, UC Berkeley School of Law
- James Nehf  
Professor of Law and Cleon H. Foust Fellow, Indiana University McKinney School of Law
- Christopher Odinet  
Horatio C. Thompson Assistant Professor, Southern University Law Center
- Sarah Orr  
Director, Consumer Law Clinic, University of Wisconsin Law School
- Christopher Peterson  
John J. Flynn Endowed Professor of Law, University of Utah, S.J. Quinney College of Law
- Dee Pridgen  
Carl M. Williams Professor of Law and Social Responsibility, University of Wyoming College of Law
- Carolina Reid  
Assistant Professor, University of California, Berkeley

- David Reiss  
Professor of Law, Brooklyn Law School
- Jacob Rugh  
Associate Professor of Sociology, Brigham Young University
- Jacob Hale Russell  
Assistant Professor of Law, Rutgers, The State University of New Jersey
- Ellen Seidman  
Former Director, Office of Thrift Supervision
- Norman I. Silber  
Senior Research Scholar, Yale Law School, Professor of Law, Maurice A. Deane School of Law, Hofstra University
- Neil Sobol  
Professor, Texas A&M University School of Law
- Jeff Sovern  
Professor of Law, St. John's University School of Law
- Gregory Squires  
Professor of Sociology, Public Policy, and Public Administration, George Washington University
- Debra Stark  
Professor of Law, The John Marshall Law School
- Mark E. Steiner  
Professor of Law, South Texas College of Law Houston
- Corey Stone  
Senior Advisor, Oliver Wyman
- Peter Strauss  
Betts Professor of [Law] Emeritus, Columbia Law School
- Jennifer Taub  
Professor of Law, Vermont Law School

- Lauren Willis  
Professor of Law, Loyola Law School, Los Angeles
- Arthur Wilmarth  
Professor of Law, George Washington University Law School
- Eric Wright  
Professor of Law, Santa Clara University School of Law

3. Additional comments were received on the following topics and for which representative sentiments are available upon request:

- General remarks regarding the Bureau’s current rulemaking processes, including:
  - Support for the Bureau’s current rulemaking processes and things the Bureau should continue doing (48 commenters (including 35 individual commenters)).
  - Suggestions for improving the Bureau’s rulemaking processes (9 commenters).
  - General requests to reduce the complexity of Bureau rules (4 commenters).
  - Suggestions for where the Bureau should focus its rulemaking efforts generally (11 commenters).
  - Other general remarks regarding the Bureau’s rulemaking processes overall (7 commenters).
  - Concerns specifically about particular rulemakings (3 commenters).
  - Feedback regarding the Call for Evidence RFI process generally (42 commenters (including 35 individual commenters)).
- Pre-rule information gathering, including:
  - The use of RFIs and ANPRs (12 commenters).
  - Pre-rule outreach efforts, including support for the Bureau’s current outreach efforts and things the Bureau should continue doing (50 commenters (including 35 individual commenters)) and suggestions for improvement to the Bureau’s outreach efforts (43 commenters (including 35 individual commenters)).

- Other general remarks (6 commenters).
- Concerns specifically regarding pre-rule outreach for the payday rulemaking (2 commenters).
- Concerns specifically regarding pre-rule outreach for the debt collection rulemaking (2 commenters).
- Consultations with tribal governments (1 commenter).
- Consultations with other Federal regulators (18 commenters).
- Mechanisms for encouraging additional feedback on all or part of an NPRM (5 commenters).
- Consideration of new data or information received after the close of the comment period (40 commenters (including 35 individual commenters)).
- Guidance or regulatory implementation-related issues, which were referred to the Guidance RFI team and addressed in part 4 of this report (19 commenters).
- Rulemaking by enforcement or rulemaking through guidance (12 commenters).
- Effective dates and compliance periods (9 commenters).
- Use of the Bureau’s exemption authority under section 1022 of the Dodd-Frank Act (108 commenters (including 84 individual commenters)).
- Lookbacks and EGRPRA reviews (7 commenters).
- Other general comments regarding coordination within and outside the Bureau, rulemaking priorities, and similar matters (7 commenters).
- Plain language writing (4 commenters).
- The Unified Agenda (1 commenter).
- Standards and requirements governing the Bureau’s own rulemakings and guidance (i.e., a “Rule on rules”) (1 commenter).
- Negotiated rulemakings and petitions for rulemakings (1 commenter).

- UDAAP rules and policies (3 commenters).
- Use of sunset clauses (1 commenter).
- Fostering innovation and the Office of Innovation (4 commenters).
- Regulatory budgets (1 commenter).
- Public disclosure of senior management's calendars (39 commenters (including 35 individual commenters)).

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## 2.2 Adopted Regulations and New Rulemaking Authorities

### Background

The Dodd-Frank Act transferred to the Bureau “consumer financial protection functions” previously vested in certain other Federal agencies, effective July 21, 2011.<sup>39</sup> The transfer included “all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.”<sup>40</sup> The Dodd-Frank Act authorizes the Bureau to “exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.”<sup>41</sup> Further, the Act generally authorizes the Bureau to “prescribe rules and issue orders … as may be necessary or appropriate to carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.”<sup>42</sup> Relying on these and other authorities, the Bureau has promulgated a number of rules, some mandated by Congress and others discretionary.

In March 2018, the Bureau published two RFIs related to the regulations administered by the Bureau and its rulemaking authorities. The first RFI focused on the rulemakings adopted by the Bureau and the new rulemaking authorities given to the Bureau by the Dodd-Frank Act (Adopted RFI). The second RFI focused on the regulations and rulemaking authorities that were in place before the Bureau existed for which the Dodd-Frank Act transferred rulemaking

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<sup>39</sup> Section 1061; 12 U.S.C. 5581.

<sup>40</sup> Section 1062(a)(1); 12 U.S.C. 5581(a)(1). The Act defines “Federal consumer financial law” broadly to include “the provisions of [Title X of the Dodd-Frank Act], the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or other order prescribed by the Bureau under [Title X], an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.” 12 U.S.C. 5481(14).

<sup>41</sup> Section 1022(a); 12 U.S.C. 5512(a).

<sup>42</sup> Section 1022(b)(1); 12 U.S.C. 5512(b)(1). The “Federal consumer financial laws” include 18 specific statutes specifically enumerated in the Dodd-Frank Act; the provisions of Title X; the laws for which authorities are transferred to the Bureau under subtitles F and H; and any rule or order prescribed by the Bureau under Title X, the 18 enumerated statutes, or pursuant to the authorities transferred under subtitles F and H. See section 1002(14); 12 U.S.C. 5481(14).

authority from other agencies to the Bureau (Inherited RFI).<sup>43</sup> Except as explained below, this part of this report discusses comments received in response to the Adopted RFI.

The Bureau issued the Adopted RFI on March 14, 2018 (CFPB-2018-0011). The Adopted RFI stated that the Bureau was not requesting feedback on the 2015 Home Mortgage Disclosure Act final rule or the 2017 rule entitled “Payday, Vehicle Title, and Certain High-Cost Installment Loans” because the Bureau had previously expressed its intention to engage in rulemaking processes to reconsider those rules. As to other rules, the Adopted RFI generally requested that commenters:

1. Offer specific suggestions regarding any potential updates or modifications to the adopted regulations, including the nature of the requested change; and
2. Identify specific aspects of the adopted regulations that should not be modified.

In making these requests, the Adopted RFI prompted respondents to provide supporting data or other information on, for example, impacts and costs and public benefits of the adopted regulations or the suggested changes. The Adopted RFI also requested that commenters indicate their highest priorities for where modifications of the adopted regulations or further exercise of the Bureau’s rulemaking authorities may be appropriate and explain why.

## Methodology specific to the Adopted Regulations and New Rulemaking Authorities RFI

### Note on Overlap between Adopted and Inherited RFIs

Because some of the new rulemakings adopted by the Bureau, at least in part, amended inherited regulations or relied on inherited rulemaking authorities, there is overlap between the two RFIs and the public comments they elicited. Comments received in response to the Adopted RFI are described primarily in this part of this report. Those responsive to the Inherited RFI, along with cross-cutting issues that may relate to both adopted and inherited rules and authorities, are described primarily in part 3 below. We note that many comment letters

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<sup>43</sup> Congress generally transferred to the Bureau rulemaking authority for Federal consumer financial laws previously vested in certain other Federal agencies, and the Bureau thereafter assumed responsibility over the various regulations that these agencies had issued under this rulemaking authority (the “inherited regulations”). The Bureau generally restated these regulations first through a series of interim final rules published in the *Federal Register* and subsequently through a final rule. 81 FR 25323 (Apr. 28, 2016). Bureau rules are generally set forth in title 12, chapter X of the Code of Federal Regulations.

received on these two RFIs discussed both adopted and inherited rules and authorities. Because of this overlap, we have combined discussion of the comments received on the Adopted and Inherited RFIs for the RFI Topic Areas and the Representative Sentiments sections for the Adopted RFI, as discussed in more detail just below.

We note that the numerical data in the Comment Summary section for the Adopted RFI does not include any comments submitted on the Inherited RFI docket, even if they relate to adopted rules or new rulemaking authorities. Instead, all comments submitted on the Inherited RFI docket are captured in the Comment Summary section for the Inherited RFI (see part 3 of this report). This avoids over counting a significant number of comment letters in both the Adopted and Inherited Comment Summary sections, as many comments raised issues relating to both.

However, this only applies to the numerical data in the Comment Summary section for the Adopted RFI. As described below, for other sections of the report relating to the Adopted RFI, we have included relevant comments in accordance with our methodology, regardless of the docket to which they were submitted. This includes quantitative and qualitative data collected in the RFI Topic Areas and Representative Sentiments sections for the Adopted RFI. Our goal was to provide in the appropriate location within this report a reliable review of commenters' substantive feedback per topic area.

### **Comment Summary**

The data in the “Comment Summary” section below accounts for all comment letters submitted to the Adopted RFI docket. Additionally, the data in this section includes comment letters submitted on the Rulemaking Processes RFI or Guidance and Implementation Support RFI (Guidance RFI) that are relevant to the adopted regulations or the new rulemaking authorities.

### **RFI Topic Areas**

The data in the “RFI Topic Areas” section below includes all comment letters relevant to each topic area listed, regardless of the docket under which the commenter submitted the comment letter. For example, if a comment letter submitted under the Inherited RFI was relevant, in whole or in part, to the Bureau’s remittances rulemaking or the relevant authorities, the comment letter is captured in this table’s data under Remittances. Our intention was to provide an accurate count of all comment letters relating to each specific topic area; that information would not otherwise be captured elsewhere in this report.

### **Representative Sentiments**

The Bureau received comments relating to 19 adopted rulemakings or adopted rulemaking authorities.<sup>44</sup> Below, this report provides representative sentiments for comments relating to the seven adopted rulemakings for which we received the greatest number of comments.<sup>45</sup> The representative sentiments included below are meant to provide a flavor of the most numerous substantive comments that the Bureau received on these topics.<sup>46</sup> We have tried to select the most succinct articulations of each issue found among the comment letters, even though that resulted in some commenters being quoted more frequently than others.

Two topics implicate both adopted and inherited rules or rulemaking authorities: electronic disclosure and innovation. These cross-cutting topics are discussed in part 3 of this report. These issues also are discussed in this part on the adopted topics where relevant comments were among the most numerous on a particular topic. The “innovation” topic discussed in part 3 below only includes comments that specifically used the keywords “innovation” or “innovate.” Other comments that relate to innovation were included in this part, even if they did not specifically use the term “innovation” or “innovate,” if these comments were among the most numerous on a particular topic. Finally, several comments received on the Adopted RFI discussed no-action letters. These comments related to no-action letters are discussed in part 4 in relation to the Guidance RFI.

For the representative sentiments in this part, we have endeavored to include a sample of all relevant comments on a particular topic regardless of whether the commenter submitted the comments under the Adopted RFI, Inherited RFI, Rulemaking Processes RFI, or Guidance RFI. For example, due to subject-matter overlap between the Bureau’s adopted and inherited rules and rulemaking authorities, some commenters submitted letters relevant to this Adopted RFI under the Inherited RFI.

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<sup>44</sup> The 19 areas include: (1) TILA-RESPA integrated mortgage disclosures (TRID); (2) remittances; (3) prepaid accounts; (4) mortgage servicing; (5) loan originator rule; (6) ability-to-repay/qualified mortgages (ATR/QM); (7) debt collection; (8) mortgage appraisals/valuations; (9) small business lending/1071; (10) Home Mortgage Disclosure Act (HMDA); (11) UDAAP; (12) payday; (13) mortgage escrow; (14), high-cost mortgages; (15) access to financial information; (16) credit card rulemakings; (17) larger-participants rule; (18) arbitration; and (19) sharing of confidential supervisory information.

<sup>45</sup> To improve the clarity of representative sentiments, where appropriate, we have made non-substantive formatting changes and have omitted non-substantive footnotes.

<sup>46</sup> The representative sentiments are not intended to reflect all the issues that were raised by commenters on a particular topic.

The representative sentiments are arranged by topic area. In some cases, a topic relates to both adopted and inherited regulations and rulemaking authorities. This part contains all comments on such topics; we did not separate them between this part on the Adopted RFI and the Inherited RFI under part 3 below. For example, although we received comment letters on mortgage servicing relating to both adopted and inherited regulations and rulemaking authorities, we grouped them all in this part below. The purpose was to make it easier for readers to locate and review all relevant representative sentiments.

We have also endeavored to include information, for reference, about the number of comments received on each topic covered below. However, we caution that the counts of comments may not be exact depending on how particular issues were categorized.

In selecting representative sentiments, we have focused on actionable comments (that is, specific suggestions for the Bureau to undertake specific rulemaking activity, or expressing support for current practices). We have not included comments that simply recite historical background, even where such recitation may imply a complaint about Bureau practices, or that make generalized statements without specific suggestions. However, the latter two types of comments were included in the relevant counts concerning substantive comments. The representative sentiments provided below are grouped by (1) trade groups, (2) consumer advocacy groups, (3) other industry,<sup>47</sup> and (4) others.<sup>48</sup> We have not indicated below where multiple commenters addressed an issue using substantially similar language due to space constraints.

In the Adopted RFI, the Bureau specifically requested supporting data and other information on, for example, impacts and costs and public benefits of the adopted regulations or the suggested changes. The Bureau also requested that commenters indicate their highest priorities for where modifications of the adopted regulations or further exercise of the Bureau’s

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<sup>47</sup> Because of the variety of issues discussed in the comments on the Adopted RFI and the significant number of industry commenters that are not trade groups commenting on the RFI, we considered the comments from trade groups separately from other industry for the Adopted RFI, to ensure that we better captured comments by other industry commenters that may not necessarily be represented by trade groups.

<sup>48</sup> The “other” category includes individual consumers, Federal, state or local governments, academics/researchers and other entities that submitted anonymously.

rulemaking authorities may be appropriate and explain why. Many commenters, however, did not provide such data or prioritizations.

## Comment Summary

**Total comments:** 216<sup>49</sup>

**Substantive comments responsive to this RFI submitted on this docket:** 98<sup>50</sup>

**Substantive comments referred from other RFIs:** 22<sup>51</sup>

**Substantive comments responsive to other RFIs submitted on this docket:** 117 (26 of which are also responsive to this RFI)<sup>52</sup>

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<sup>49</sup> This total includes the number of comment letters submitted to this docket and posted on Regulations.gov. Additionally, it includes the number of comment letters submitted on the Rulemaking Processes RFI (CFPB-2018-0009) or on the Guidance RFI (CFPB-2018-0013) that are relevant to the adopted regulations and/or the new rulemaking authorities. In this data, we did not include comment letters that were submitted on the Inherited RFI even if they contained discussions relevant to the adopted regulations and/or the new rulemaking authorities.

<sup>50</sup> 194 comments were submitted to this docket and are posted on Regulations.gov under CFPB-2018-0011. Regulations.gov indicates the count for the docket is 218, but only 194 items are actually posted; 3 items had been posted but were removed because they were duplicates of other posted items. Due to subject-matter overlap between the Bureau's adopted and inherited rules and rulemaking authorities, many comments submitted on the Adopted RFI contained information relevant to the inherited rules and/or inherited rulemaking authorities. For simplicity, in this data, we do not detail how many comments letters submitted on the Adopted RFI relate only to the adopted rules, relate only to the inherited rules, or relate to both. Instead, for this total, a comment submitted on this docket is considered relevant to this docket if it is either relevant to: (1) the adopted regulations and/or the new rulemaking authorities; or (2) the inherited regulations and/or the inherited authorities.

<sup>51</sup> This total reflects comment letters submitted on the Rulemaking Processes or Guidance RFIs that are relevant to the adopted regulations and/or the new rulemaking authorities.

<sup>52</sup> Five comments submitted and posted on this docket were neither relevant to this docket nor relevant to any other RFI docket.

**Substantive and responsive comments received from:<sup>53</sup>**

Individual Consumers	Individual Entities			Consumer Advocacy Groups	Government	
	Depository Institutions and Credit Unions	Non-Depository Institutions	Industry Trade Groups		(i.e., other Federal agencies, state and local governments, US Senators)	Other (e.g., academia, non-consumer advocacy groups, etc.)
11 (+1) <sup>54</sup>	10 (+2)	24 (+7)	35 (+7)	12 (+3)	2	4 (+2)

**RFI Topic Areas**

	Topic	Description	Total Number of Comment Letters <sup>55</sup>
1	TILA-RESPA Integrated Disclosures (TRID)	Amendments to Regulations X and Z to integrate certain mortgage disclosures under the respective regulations. Regulation X is the implementing regulation for the Real Estate Settlement Procedures Act (RESPA), and Regulation Z is the implementing regulation for the Truth in Lending Act (TILA).	63 27 trade groups 4 consumer advocacy groups 26 other industry 6 other
2	Remittances	Amendments to Regulation E to address remittance transfers by requiring, for example, consumer disclosures and establishing procedures for cancellation and error resolution. Regulation E	32 12 trade groups 3 consumer advocacy groups 14 other industry

<sup>53</sup> Comments are counted for this purpose by letter; these tallies do not reflect multiple signatories to particular letters. (Multiple signatories are noted below for representative sentiments, where relevant. The commenter totals reflected here are for substantive comments only; non-substantive comments were not included.)

<sup>54</sup> The numbers in parentheses reflect the number of additional substantive comments submitted on the Rulemaking Processes or Guidance RFIs that were relevant for this RFI.

<sup>55</sup> The total number of comment letters for each topic includes the comment letters relevant to that topic regardless of whether the comment letter was submitted to the Adopted, Inherited, Rulemaking Processes, or Guidance RFI.

<b>Topic</b>	<b>Description</b>	<b>Total Number of Comment Letters<sup>55</sup></b>
	is the implementing regulation for the Electronic Fund Transfer Act (EFTA).	3 other
3 Mortgage Servicing	Amendments to Regulation X and Regulation Z to address various elements of mortgage servicing, including, <i>inter alia</i> , periodic statements, loss mitigation procedures, consumer requests for information, and the crediting of payments.	32 13 trade groups 7 consumer advocacy groups 6 other industry 6 other
4 Ability-to-Repay/Qualified Mortgages (ATR/QM)	Amendments to Regulation Z to require minimum standards that creditors must use before extending certain closed-end mortgage loans to determine consumers have the ability to repay.	30 17 trade groups 5 consumer advocacy groups 6 other industry 2 other
5 Prepaid Accounts	Amendments to Regulation E and Regulation Z to extend coverage to prepaid accounts with tailored disclosure requirements, limited liability and error provisions, periodic statements, and overdraft credit protections.	29 11 trade groups 7 consumer advocacy groups 9 other industry 2 other
6 Loan Originator Compensation and Qualifications	Amendments to Regulation Z provisions related to loan originator compensation and qualifications.	29 15 trade groups 4 consumer advocacy groups 6 other industry 4 other
7 Debt Collection	Advanced notice of proposed rulemaking to implement the Fair Debt Collection Practices Act (FDCPA) through notice-and-comment rulemaking.	23 15 trade groups 4 consumer advocacy groups 4 other industry 0 other

## Representative Sentiments

### 1. TRID<sup>56</sup>

Commenter Type	Representative Sentiments
	<p><b>Curing violations:</b></p> <p>“Presently, Section 130(b) prevents creditors from correcting significant, yet obviously clerical and easily-remedied errors—for example, in instances where a settlement agent’s [Closing Disclosure (CD)] leaves the loan calculation table blank or inserts zeroes for the values—because to be effective for Section 130(b) correction purposes, a lender must adjust the account such that the consumer does not pay more than the disclosed charges or dollar equivalent of the APR disclosed at closing. In instances where the CD is obviously defective and not simply inaccurate—and particularly where the [Loan Estimate (LE)] or other disclosure document in the loan file makes evident that the correct information had been properly disclosed to the consumer—the Bureau should consider using its discretionary authority to permit correction of obvious clerical errors without requiring windfall reimbursements.” – Housing Policy Council (HPC) (-0080)<sup>57</sup></p>
Trade groups	<p><b>Waiting periods:</b></p> <p>“The TRID Rule includes strict waiting periods that can be waived in the case of a ‘bona fide personal financial emergency.’ Few creditors grant such waivers because they are concerned that a regulator or court will later determine that the emergency did not qualify as a bona fide personal financial emergency under the rule. ... The official interpretations only provide one example of a qualifying bona fide personal financial emergency: ‘The imminent sale of the consumer’s home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period. ...’ ... Therefore, we request that the Bureau provide additional examples of qualifying events that creditors may actually encounter.” – MBA (-0084)</p>
	<p><b>Redesigning disclosures:</b></p> <p>“The TRID Rule contemplates the provision of certain disclosures in some, but not all, cases, such as appraisal and foreclosure liability disclosures. These dynamic disclosures create heightened quality assurance and quality control burdens for companies. Due to the variable</p>

<sup>56</sup> Subtopics for TRID comments include: (1) curing violations; (2) waiting periods; (3) redesigning disclosures; (4) guidance/rulemaking process; (5) TRID overall effectiveness; (6) title insurance; (7) legal liability; (8) affiliate charges; (9) appraisal fees; (10) construction loans; (11) electronic delivery; (12) the Finance Charge/APR; (13) formatting; (14) lender credits; (15) the list of service providers; (16) defining “application” for Loan Estimate timing; (17) loan originator compensation; (18) post-consummation disclosures; (19) tolerances; (20) the Total Interest Percentage; and (21) transfer taxes.

<sup>57</sup> Comments quoted in this part 2 were submitted on the Adopted RFI docket (CFPB-2018-0011) unless otherwise noted.

nature of these disclosures, lenders must determine whether they are appropriate in each particular origination. This burden could be easily avoided if these variable disclosures were simply replaced by standard, nondynamic disclosures.” – U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness (CCMC) (-0093)

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Consumer advocacy groups

**Guidance/rulemaking process:**

“The CFPB should not re-open the Integrated Disclosure rules. … [T]he CFPB put an extensive amount of time and effort developing the proposed TILA-RESPA Integrated Disclosure rules … including conducting consumer testing and focus groups to get direct feedback from consumers on whether the disclosure was accessible and useful. The CFPB also solicited input from the public, including consumer advocates and industry participants. The agency did not favor consumer concerns more than those of industry members, but properly focused on the question of whether consumers could understand disclosures intended to convey key information.” – six consumer advocacy groups (-0097)<sup>58</sup> (emphasis omitted)

**TRID overall effectiveness:**

“The know-before-you-owe rule provides consumers essential information when shopping for mortgages, combining in a single form the disclosures required by the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). Integrating the requirements of two different statutes was a challenge, and the new form is a major improvement that helps consumers understand the key terms of their mortgages and helps them comparison shop. The provisions limiting deviance from estimated disclosures and providing final disclosures three business days before closing prevent bait-and-switch tactics and enable borrowers to check for errors or surprises.” – California Reinvestment Coalition (CRC) (-0070)

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Other industry

**Title insurance:**

“Current regulation requires a complicated formula that discloses to consumers an inaccurate price for title insurance in most real estate transactions. For more than three years ALTA has been trying to work with the Bureau to address this issue and, despite overwhelming evidence, the Bureau has yet to resolve this matter or consider alternatives. Research shows that the majority of consumers this rule is intended to help find it confusing. Amending the rule to require the disclosure of the actual cost of title insurance is the best way to achieve the Bureaus missions to ensure consumers are provided with timely and understandable information to make responsible decisions about financial transactions.” – Gaylene Anderson (Inherited -0016)

**Legal liability:**

“There needs to be a ‘safe harbor’ dollar amount that can be used without taking on the risk of being out of compliance. With such a ‘safe harbor’ dollar amount, it would still be possible for individual Financial Institutions to prove higher amounts if they so choose. Words such as ‘reasonable’ within any regulation should always trigger a safe harbor amount and that

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<sup>58</sup> Comment letter submitted jointly by AFR; Center for Responsible Lending; Consumer Action; Consumer Federation of America; Housing Clinic, Jerome N. Frank Legal Services Organization, at Yale Law School; and NCLC (on behalf of its low-income clients).

amount should be included in the guidance. It is not reasonable for our government regulators to expect Financial Institutions to take the risk of being out of compliance just because of differing opinions on what is Reasonable.” – State Bank of Chandler (Guidance -0007)

**Redesigning disclosures:**

“The TRID rule introduces too many trivial and prescriptive requirements. The Bureau needs to revisit the disclosures and the processes to simplify and clarify. The combination of rounding, alphabetizing, confusing definitions of business days in combination with questionable placement of financial information adds to confusion not clarity. The misplacement of lender credits that prevents the consumer from [sic] actually seeing the total loan costs causes confusion and can lead to decisions based on misinformation. The convoluted approach to calculating title insurance premiums has been addressed and continues to cause tremendous confusion in the marketplace. The forms are confusing, not simple; misleading not direct, and offer more questions than answers.”<sup>59</sup> – Shane Jackson (-0041)

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**Redesigning disclosures:**

Others

“The LE and CD are confusing, complex, misleading, and lead to more questions than answers. The forms should be redesigned with consumers in mind, not relying on academics but rather relying on the thousands of professionals who are involved with the origination and settlement service process. If the forms will not be redesigned in entirety, the lender credit disclosure location needs to move to Box A from Box J.<sup>[60]</sup> To tell consumers to compare Box A when the lender credit is not in Box A is misleading the consumer and making the consumer unwittingly choose an option that may indeed be worse for them.” – Anonymous (-0088)

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<sup>59</sup> The commenter may have intended to say that the convoluted approach to calculating title insurance premiums has “not” been addressed.

<sup>60</sup> Box A is the section of the TRID forms with the “Origination Charges” heading, and Box J is the section with the “Total Closing Costs” heading.

## 2. Remittances<sup>61</sup>

Commenter	Representative Sentiments
Type	Simplification of disclosure requirements:
Trade groups	<p>“Currently, the Remittance Rule requires [remittance transfer providers (RTPs)] to provide a written pre-payment disclosure when the sender requests a transfer. This requirement has proven to be unduly burdensome for remittance transfers for several reasons. First, written disclosures increase the length of time for RTPs to process transactions because they must first generate and print a pre-payment disclosure receipt. Next, the requirement also has increased the cost to operate (i.e., ink, paper, labor costs and training). Some of our member RTPs have had to implement new or updated software and systems to generate the required information on the pre-payment disclosure. These additional out-of-pocket expenses are unnecessarily burdensome to RTPs and provide little in the way of consumer protection. In addition to the written pre-payment disclosure, the Rule requires RTPs to provide the sender with a receipt once the payment is made which includes the same information provided on the pre-payment disclosure, the dates of availability of the funds, and information regarding the sender’s error resolution and cancellation rights. Thus, for each transaction, RTPs must provide two separate printed receipts and the same information from the pre-payment disclosure must be re-printed on the final receipt. This duplicative effort provides no further value to the customer.” – Money Services Business Association (MSBA) (-0065)</p>
	<p><b>Error resolution:</b></p>
	<p>“[The Bureau should] [s]upport [a] statutory amendment to the Dodd-Frank Act to shorten the length of time within which a sender must assert error (currently 180 days) and to a timeframe (e.g., 60 days) that would be equally protective of consumer rights, but increase the ability of the provider to correct the error. It is unlikely that a sender would require six months to discover an error, and such time period is three times the 60-day period that a consumer has to assert an error under Subpart A of Regulation E. A 180-day time period within which to report an alleged error rewards senders who are dilatory in pursuing their rights and makes it more difficult for providers to seek recourse for the out-of-pocket losses they have to bear. The Associations understand that the elongated timeframe is set forth in the Dodd-Frank Act and request that the Bureau support an amendment to Section 1073 of the act to shorten the timeframe to be consistent with the error resolution time period set forth in Subpart A of Regulation E.” – The Clearing House Association, L.L.C., CBA, Bankers Association for Finance and Trade, and ABA (-0055) (emphasis omitted)</p>

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<sup>61</sup> Subtopics for the remittance comments include: (1) simplification of disclosure requirements; (2) shortening the timeframe by which consumers may assert errors; (3) modifying senders’ cancellation rights; (4) requests for and against modifying the rule; (5) enforcement of the rule’s requirements; (6) the 100-transfer safe harbor threshold; (7) coverage of large value remittance transfers; (8) the sunset of the temporary exception for insured banks and credit unions in July 2020; and (9) the countries list.

**Cancellation rights:**

“This requirement creates additional burdens for RTPs who must be able to immediately stop a transaction when the order is cancelled by the sender and the funds have not yet been picked up or deposited into the account of the designated recipient. As a result of this requirement, many of our members have had to implement a cut-off time for money remittances prior to the close of business each day to provide the customer the ability to cancel the transaction. Given the shortcomings of existing technologies, many RTPs do not have the ability to cancel a transaction once it is completed. Thus, some of our members have had to manually delay the submission of all transactions to ensure that an order can be cancelled by a consumer in this 30-minute window if requested. However, when a transaction is delayed there is a risk that the exchange rate could change during the 30-minute delay window. Thus, many Financial Institutions and MSBs have simply decided not to provide remittance services which restricts consumer choice and limits competition in the marketplace. Not only has the manual delay of all transactions increased the regulatory burden and expense associated with each transaction but implementing a delay of all the transactions creates hardships for senders who need their money delivered to their intended recipient as soon as possible.” – MSBA (-0065) (emphasis omitted)

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**Do not modify the rule:**

“The undersigned organizations support the CFPB’s remittance rule and urge the bureau not to revisit or weaken it. A ‘remittance transfer’ means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The experience of our organizations is that the remittance rule is [sic] working and is protecting money sent abroad and the financial security of U.S. residents who send this money. Prior to the remittance rule, customers had inadequate up-front information about fees and exchange rates needed to compare the cost of different services. Our surveys show that consumers now have more confidence when sending remittances. Moreover, the volume of remittances is up but the cost is down since the CFPP [sic] rule was adopted. The average cost of sending remittances has fallen to 5.67% in 2018 down from 6.75% in 2013.” – 32 consumer advocacy groups (-0100)<sup>62</sup>

Consumer advocacy groups

**Enforcement:**

“We also urge the CFPB to ensure that (a) consumers receive accurate information regardless of the provider used to send funds abroad, and (b) the promises made to consumers about costs and times for funds availability are enforced. Consumer complaints to the CFPB indicate that too often consumers believe that they are sending enough money to pay for an important bill, but deceptive exchange rates and transaction costs eat away at the actual amount that their family receives.” – CRC (-0070)

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**Safe harbor threshold:**

Other industry

“The exemption under Regulation E needs to be raised to a much higher number than 100 remittances per year. When the regulation was issued in 2013, the Credit Union provided about 800 remittances per year. Since we were over the 100 exemption threshold, we had to

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<sup>62</sup> Comment letter submitted by NCLC on behalf of a group of 32 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 1 of the Additional Notes section for this RFI.

enter into a contract with a new vendor as we did not have the capability or resources to be compliant with the regulation. While we did not pass on the entire cost to our members, we did have to raise the fee that we charged and require our members to request this service on-line instead of in-person. Five years later, the Credit Union still only does about 800 international remittances per year for our more than 287,000 members. The Credit Union clearly offers remittances as a service to our members and not as a money-maker. The exemption should be raised so that other credit unions who stopped offering this service can again offer their members this service.” – American Airlines Federal Credit Union (-0068)

**Cancellation rights:**

“The Bureau should also remove consumers’ ability to cancel a transfer for 30 minutes (or longer) following initiation of a transaction because of the associated compliance burden. This requirement has created an unduly burdensome compliance concern for credit unions.”  
– Michelle Hunter (-0183)

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**Safe harbor threshold:**

“Because the Bureau prides itself on being a data-driven organization, data obtained by the Bureau must play a key role in identifying and prioritizing the agency’s actions, including in the realm of rulemakings. Unfortunately, it is not uncommon for Bureau rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. A good past example of this was the Remittance Transfer Rule where the safe harbor threshold was set at 100 remittances per year.” – Jim Morrell (-0108)

Others

**Modify the rule:**

“Congress and the CFPB must work together to protect consumers. Unfortunately, the remittance transfer rule is limiting access to this important financial product and making it needlessly more expensive for consumers. I urge you to exercise your authority to amend this burdensome and harmful rule so that credit unions can more easily offer international remittances products to their customers.” – Rep. Andy Barr (Ky.) (-0196)

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### 3. Mortgage Servicing<sup>63</sup>

Commenter Type	Representative Sentiments
	<p><b>Foreclosure hold:</b></p> <p>“Servicers need time to review documents submitted by a borrower to determine if the borrower’s loss mitigation application is complete, and, if so, implement a foreclosure hold. The current mortgage servicing rule does not provide any period of time for this process, even though the Bureau has acknowledged in other parts of the rule that a servicer may need up to five days to evaluate documents submitted by a borrowers. The Bureau should interpret 12 C.F.R. § 1024.41(g) to require a servicer to halt progress towards foreclosure within five business days of receipt of a complete loss mitigation application.” – AFSA (-0061)</p> <p><b>Evaluating incomplete loss mitigation applications:</b></p> <p>“Section 1024.41(c)(2)(ii) permits a servicer to evaluate an incomplete loss mitigation application if the servicer has exercised ‘reasonable diligence’ in obtaining documents and information to complete a loss mitigation application, but the application remains incomplete for ‘a significant period of time under the circumstances.’ The lack of specificity around these vague standards, and the risk of violating the general prohibition against evaluating an incomplete loss mitigation application, has encouraged many servicers to completely forego use of this exemption. The Bureau should offer additional guidance, and perhaps a safe harbor, to enable servicers to rely on this carve out.” – MBA (-0084)</p> <p><b>Small servicer exemption:</b></p> <p>“The Bureau should extend the small servicer exemption to fully exclude application of the following provisions found in RESPA’s Regulation X, including for successors in interest: Subpart C – Mortgage Servicing, including: mortgage servicing transfers, error resolution procedures, requests for information, force-placed insurance requirements; and 1024.17 – Escrow accounts.” – CUNA (-0034)</p> <p><b>Effectiveness of the Bureau’s Mortgage Servicing rules:</b></p> <p>“The [Bureau’s Mortgage Servicing rules] have made a significant, positive impact in the lives of homeowners by providing better access to loan information and by helping to prevent avoidable foreclosures, including for successors in interest (widows and orphans). The rules require fair and common sense procedures surrounding force-placed insurance, servicing</p>

<sup>63</sup> Subtopics for comments on mortgage servicing include: (1) foreclosure holds; (2) loss mitigation; (3) small servicer exemption; (4) the effectiveness of the rule; (5) exemptions for home equity lines of credit and reverse mortgages; (6) servicing transfers; (7) exemptions for credit unions; (8) bankruptcy; (9) forced place insurance; (10) model forms; (11) information requests and error resolution; (12) periodic statements; (13) successors in interest; and (14) preemption.

transfers, and review of borrowers for loss mitigation. The rule has helped align the incentives of servicers with investors, homeowners, and communities.” – CRC (-0070)

**Exemptions for home equity lines of credit and reverse mortgages:**

“If [the Bureau] opens Regulation X’s servicing provisions, it should … repeal exemptions for home equity lines of credit and reverse mortgages.” – 32 consumer advocacy groups (Inherited -0064)<sup>64</sup>

**Consumer protections when transferring servicing:**

“[A]dopt a comprehensive regulatory framework for addressing the many servicing problems that occur at or near the time of a transfer of servicing. These problems are often caused by servicers’ inability to communicate with each other adequately and reconcile account records. … The adopted regulations do not go far enough in helping borrowers avoid unwarranted or unnecessary costs from getting the runaround when loss mitigation is pending at the time of servicing transfer.” – six consumer advocacy groups (-0097)

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**Exemptions for credit unions from the Bureau’s Mortgage Servicing rules:**

Other industry

“I recommend … that credit unions be exempt from this rule because of the burdensome nature it places on our ability to service loans and comply. This allows us to focus on more efficient ways to communicate with successors of properties subject to loans. These procedures are best developed locally and within each organization.” – Truliant Federal Credit Union (Inherited -0079)

Others

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**Effectiveness of the Bureau’s Mortgage Servicing rules:**

“The CFPB … create[d] new mortgage servicing rules to make it easier for borrowers - particularly borrowers who were in trouble - to understand exactly how much they owe. The rules require servicers to provide a billing statement that simply and clearly outlines the amount of money that a borrower owes, the current interest rate on the loan, and the servicer’s contact information so that they can pay their bill or arrange a modification. … [T]hese rules resulted in increased efficiency and transparency in mortgage servicing and loss mitigation, as well as increased access to mortgage information and foreclosure relief.” – Sen. Elizabeth Warren (Mass.) (Inherited -0035)

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<sup>64</sup> Comment letter submitted by Carolyn Carter on behalf of a group of 32 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 2 of the Additional Notes section for this RFI.

4. ATR/QM<sup>65</sup>

Commenter Type	Representative Sentiments
	<p><b>Temporary government-sponsored enterprise (GSE) QM:</b>            “To provide certainty for markets and to expand access to credit, the GSE patch should be extended indefinitely. Further, the Bureau should grant QM status to jumbo loans that meet GSE purchase or guarantee criteria except for the loan amount (i.e. loans too large for GSE purchase or guarantee). GSE eligibility is currently capped at \$453,100 for a one-unit property, and at \$679,650 in designated high-cost markets. Loans exceeding this amount do not qualify for QM status under the GSE patch, even if they otherwise meet GSE underwriting standards. This unnecessarily increases the cost for these loans and unfairly disfavors consumers in the jumbo loan market.” – MBA (-0084)</p>
Trade groups	<p><b>Ability to cure:</b>            “The ATR rule must expressly permit lenders to correct errors and deal directly with consumers to resolve harmless or clerical errors or omissions.” – ABA (-0048)</p>
	<p><b>Appendix Q:</b>            “Appendix Q should be simplified and the Bureau should release much clearer, binding guidance for its use and application. The CFPB should, in particular, review Appendix Q standards for determining borrower debt and income levels to mitigate overly prescriptive and rigid requirements and to provide greater latitude to offset debts with readily available liquid assets. Review of these requirements should be sensitive towards self-employed and non-traditional borrowers who do not ordinarily prepare profit-and-loss statements or balance sheet statements.” – CBA (-0107)</p>
Consumer advocacy groups	<p><b>ATR/QM general:</b>            “These rules have restored sense to the market by ensuring that lenders have an incentive to make loans homeowners can afford and to make safe loans. The CFPB has balanced the need for robust affordability requirements with flexibility for smaller institutions. While section 101 of Public Law No. 115-174 expands the small creditor exemption for loans held in portfolio, the CFPB should implement this requirement as narrowly as possible, in order to preserve access to affordable mortgage loans. Any other changes to the QM rule should similarly be narrowly crafted and should follow a regular process of notice and comment to consider the impact of any changes both on responsible underwriting that supports</p>

<sup>65</sup> Subtopics for the ATR-QM comments include: (1) temporary GSE QM; (2) ability to cure; (3) Appendix Q; (4) the ATR/QM rules generally; (5) residual income; (6) QM definition; (7) assignee liability; (8) points and fees; (9) debt-to-income; (10) small loans; (11) dispute resolution; and (12) S. 2155.

consumers and the costs of compliance and access to credit.” – five consumer advocacy groups (-0063)<sup>66</sup>

**Residual income:**

“The CFPB should not re-open the rule at this time, but instead should monitor implementation and further collect data on its impact, including on the increasingly expanding market of non-QM lending. If the CFPB does re-open the rule, however, the Qualified Mortgage rule should maintain its limited approach to institutional exemptions but carve out riskier products, such as high-cost mortgages and land installment contracts. Moreover, the CFPB should actively study how to incorporate predictive residual income measures into the ability to repay analysis.” – six consumer advocacy groups (-0097)

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**QM definition:**

“The Bureau should consider all credit union mortgage loans that are held in portfolio to be qualified mortgage (QM) loans. The reason for the ability-to-repay rule was to ensure that lenders gave quality loans to borrowers which could also be sold on the secondary market. By following the ability-to-repay rule, the mortgage became a QM which afforded the lender certain legal protections. It can be strongly presumed that if a credit union holds its mortgage loans in-house that it would be extra prudent in making sure that it is giving its borrowers loans that are of a high quality and that have been strongly underwritten. It makes sense that loans held in-house should be given the same protections as those sold in the secondary market.” – American Airlines Federal Credit Union (-0068)

**ATR/QM general:**

Other industry

“An appropriate balance between consumer access and consumer protection lies in a dramatic simplification of the Ability to Repay Rules and the definition of Qualified Mortgage. First, a Qualified Mortgage should be defined as a mortgage that at consummation qualifies for purchase by a government sponsored enterprise or is eligible for insurance or guarantee by a government agency. No further qualifications should apply. Second, the criteria for Ability-to-Repay should be overhauled. In the case of credit unions, the ability to repay should be demonstrated by adherence to underwriting standards established by the secondary market. If a credit union wants to keep a loan in portfolio, the ability to repay should be demonstrated by duly adopted underwriting criteria that verify income and expenses and calculate debt-to-income. The result strikes a proper balance ensuring consumer access and affording reasonable regulatory relief that enables a credit union to serve its members.”  
– Sun East Federal Credit Union (-0066)

**Appendix Q:**

“Require the Bureau to revisit the Dodd Frank Act requirement which in Section 1411 amends the TILA by adding Section 129C and allow the creditors that have assumed the risk to establish the underwriting criteria that meet the requirements of the statute. Implementing the Appendix Q requirement does not allow the level of risk-based evaluation that provides consumers with the broadest choice of options for which they might qualify. Nothing in the DFA directs the regulator to implement underwriting guides. Further, as written and in spite of

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<sup>66</sup> Comment letter submitted jointly by Woodstock Institute, Equal Voice Action, Heartland Alliance for Human Needs & Human Rights, Illinois Asset Building Group, and Partners in Community Building, Inc.

DFA provisions that allow for evaluating the entire financial position, the existing rule basically ignores many assets that effect ability to repay. This prevents a more holistic approach to evaluating the consumer ability to repay, places the underwriting determination in the wrong hands and creates potential inequity for those that have large amounts of liquid reserves that have been excluded by post DFA underwriting guidelines caused mostly by the Bureau's overly prescriptive rule." – Shane Jackson (-0041) (emphasis omitted)

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**ATR/QM general:**

Others "Regulation Z pertaining to Ability-to-Repay/Qualified Mortgages needs to be examined and should allow more liberty to financial institutions lending practices. The current regulation is truly challenging for self-employed borrowers, borrowers with seasonal or intermittent income, borrowers seeking smaller-than-average loan amounts, borrowers who use asset derived income to repay the loan, borrowers with debt-to-income ratios above 43 percent, lower-income borrowers, minority borrowers and borrowers in rural areas." – K B (-0006)<sup>67</sup>

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5. Prepaid Accounts<sup>68</sup>

Commenter Type	Representative Sentiments
<b>Credit features:</b>	
Trade groups	"[With respect to overdraft services,] [p]repaid cards provide significant value to consumers who do not have access to traditional banking accounts by providing them with convenient access to credit. ... The restrictions on overdraft and credit have the potential to discourage prepaid issuers from offering these products and limit consumers' access to short term liquidity dampening the accessibility of prepaid products to the more than 10 million unbanked consumers in the United States. ... [With respect to application of the rule to digital wallets,] [t]he Bureau's decision to include mobile products and other online-based services, including digital wallets, within the definition of prepaid account has the potential to restrict consumer access to credit. Such products allow existing credit account to be linked to the mobile wallet, a feature distinct from non-credit [general purpose reloadable] cards and non-linked credit products." – Electronic Transactions Association (ETA) (-0062)

Commenter Type	Representative Sentiments
<b>Definition of prepaid account:</b>	
	"ABA recommends that the Bureau revise the definition of a prepaid account in Regulation E ... to make clear the distinction between checking accounts and prepaid accounts. The current vague definition presents a trap for banks, which cannot know whether they comply with the regulation. Clarifying the definition will not diminish consumer protections, promotes

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<sup>67</sup> The commenter indicated his or her name as "K B."

<sup>68</sup> Subtopics for comments on prepaid accounts include: (1) credit features; (2) definition of prepaid account; (3) pre-acquisition disclosures; (4) general comments about the rule; (5) submission and posting of agreements; (6) error resolution; (7) effective date; and (8) the periodic statement alternative.

choices for consumers, and encourages simplified checking accounts that regulators have encouraged banks to offer.” – ABA (-0048)

**Pre-acquisition disclosures:**

“The Bureau should remove the long form disclosure from the Rule as it is redundant to information already provided to the consumer and, according to the Bureau’s own research, is likely to overwhelm and confuse consumers when provided pre-acquisition. … The Bureau should remove the requirements for electronic disclosures provided under the Rule to be responsive to varying screen sizes and to be machine readable. … The Bureau should remove the short form disclosure for additional fee types as it is potentially misleading and not informative. … The calculations required to disclose additional incidental fee types (5% Fees) are overly difficult and should be removed from the Rule. … The Bureau should remove compulsory use language requirements from the disclosure requirements for payroll and government benefit cards.”<sup>69</sup> – Network Branded Prepaid Card Association (-0067)

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**General:**

“[T]he problems with prepaid cards are well-documented, as is the need for rules to ensure the safety and transparency of prepaid products. The CFPB’s prepaid rule is a commonsense rule that provides clear fee disclosure, access to account information, error resolution rights, and protection against inappropriate and dangerous credit features. Moreover, in constructing the rule, the Bureau took a measured approach. When industry expressed concerns, the Bureau responded, making amendments and twice delaying the effective date. We urge the Bureau to keep the rule in its present form and stick to the April 1, 2019 implementation date.” – Consumers Union (-0089)

**Credit features:**

Consumer advocacy groups

“The prepaid rules will encourage companies to develop savings and budget tools, not to push people into spending more than they have and overdrafting. The rules do not stop people from being offered credit, and do not even prevent credit from being loaded onto or linked to a prepaid card, as long as the consumer affirmatively accesses the credit first rather than drawing on it indirectly through overdrafts. … The credit provisions in the rule are a compromise that should be left intact and not weakened further.” – 42 consumer advocacy groups (-0078)<sup>70</sup>

**Definition of prepaid account:**

“We also urge the bureau to reject any call to narrow the definition of ‘prepaid account’ in order to exempt newer fintech products. … The rule appropriately covers not only physical plastic cards but also newer forms of prepaid accounts that operate online and through mobile devices. … The CFPB should provide guidance on the distinction between safe bank accounts (‘checkless checking’) and prepaid accounts to provide clarity to industry and avoid evasions. … This is important for two reasons. First, banks that have long offered safe bank

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<sup>69</sup> This quote contains multiple bolded headings from the comment letter. The bolding has been removed in this document for readability.

<sup>70</sup> Comment letter submitted by NCLC on behalf of a group of 42 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 3 of the Additional Notes section for this RFI.

accounts that they did not view as prepaid accounts are seeking clarity. Second, it is essential that prepaid accounts not be allowed to evade the prepaid rule simply by styling themselves as checkless checking accounts.” – 42 consumer advocacy groups (-0078) (emphasis omitted)

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**Credit features:**

“By leaving in place the 30-day cooling period where a prepaid account issuer or its affiliate issues a linked credit product, the Bureau puts these issuers at a disadvantage vis-à-vis prepaid account issuers that contract with unaffiliated entities to offer linked credit products. Additionally, the Bureau puts at a disadvantage consumers who want a prepaid account with a linked credit product from such prepaid account issuers because there is a reasonable risk that these consumers will be confused as to why, with some prepaid accounts, they have to go through a separate process to obtain credit not long after having gone through the process to register the prepaid card and, with other prepaid accounts, they do not. ... [With respect to overdraft services,] [w]e encourage the Bureau to permit consumers to opt-in to overdraft and to address any concerns regarding transparency through the short- and long-form disclosures rather than by applying Regulation Z to overdrafts. The Bureau has not sought to prohibit any forms of fees elsewhere in the Prepaid Rule. Instead, it has favored an approach that ensures consumers generally have access to transparent information prior to acquiring a prepaid account. The Bureau should adopt the same type of approach with respect to any back-end fees that could arise from permitting consumers to opt-in to overdraft.” – Mastercard (-0044)

**Pre-acquisition disclosures:**

Other industry

“Green Dot is, and always has been, supportive of clear and conspicuous disclosure of material account-usage fees to consumers prior to the acquisition of a prepaid account. However, we believe the highly-prescriptive nature of the disclosure requirements set forth in the Rule can confuse consumers rather than help them understand the product’s features and fees. We also believe that the rigid nature of the forms and nature of disclosures mandated by the Rule may inhibit product innovation. To that end, we believe the Bureau should consider whether (1) the long form disclosure is necessary and (2) the short form disclosure should be limited to including only the prescribed set of static fees. ... We further believe that the Bureau should consider abandoning the current disclosure requirements in the Rule and adopting, as an alternative, a more flexible overall disclosure framework that maintains the important goal of providing meaningful disclosure to consumers that is consistent with disclosure rules currently applicable to checking accounts.” – Green Dot Corporation (-0103)

**Definition of prepaid account:**

“[T]he Bureau ... should exclude other cards ... which (i) are not marketed to the general public; and (ii) are not a traditional account substitute. These products include utility refund cards, security deposit refund cards and cards used to compensate survey or limited pilot participants. The Prepaid Rule is not well suited for cards that are not marketed to the general public and are not traditional account substitutes. For example, the Prepaid Rule’s pre-acquisition disclosures, including the disclosures related to fees, overdraft features, and FDIC insurance coverage, do not enable consumers to comparison shop, because consumers of these products only have a single prepaid card option. Moreover, prepaid cards that are not marketed to the general public tend to have terms that are simpler than

those for publicly available [general purpose reloadable] cards, and, therefore, the pre-acquisition disclosure requirements risk consumer confusion.” – Visa (-0104)

<b>CAB survey on the effectiveness of the prepaid rulemaking:</b>	
Other	[The CAB Chair and Vice Chair implemented a survey of current and former members to solicit input on several RFIs. The survey included five items related to the RFI about adopted regulations and new rulemaking authority.] “Item 1: Below is a list of adopted CFPB regulations i.e., regulations promulgated by the Bureau pursuant to new rulemaking authority granted by the Dodd-Frank Act or using its discretionary authority. Please share your opinion regarding how effective these regulations are or will be in meeting the CFPBs statutory purpose and responsibilities. … For each of the adopted regulations, respondents could select one of five options: effective, somewhat effective, somewhat ineffective, ineffective, and no opinion. … 5. Rules Governing Prepaid Accounts: 28 (71.79%) found the rule effective or somewhat effective; 6 (15.39%) found the rule ineffective or somewhat ineffective; 5 (12.82%) had no opinion.” – CAB (-0010)

## 6. Loan Originator Compensation and Qualifications<sup>71</sup>

Commenter Type	Representative Sentiments
	<b>Definition of loan originator:</b> “The Bureau should revise the broad definition of loan originator. The Bureau has adopted a broad definition of loan originator to cast a ‘wide net’ in ensuring consistency across persons that may have financial incentives, this effectively subjects anyone who comes in contact with a residential mortgage at a credit union to be labeled as a loan originator.” – NAFCU (-0087) (emphasis omitted)
Trade groups	<b>Prohibition on dual compensation:</b> “The Rule, however, carves out a sweeping and unfair exception to its prohibition on payments to loan originators. Because the definition of ‘loan originator’ does not include ‘creditors’, large banks and other lenders are free to compensate their employees on a commission basis. Thus, when consumers pay loan origination fees to a creditor, that creditor is free to share a portion of that fee with its employees in the form of commissions. As noted under the Rule, loan originators like mortgage brokerages are prohibited from paying compensation to their employees/loan officers.” – National Association of Mortgage Brokers (Inherited -0044)

<sup>71</sup> Commenters addressed the following subtopics on the Bureau’s Loan Originator rule: (1) definition of loan originator; (2) dual compensation; (3) pricing concessions; (4) effectiveness of the rule; (5) exemptions from the rule; (6) proxy analysis; (7) small entities; (8) payment based on product type; (9) loan originator qualifications; (10) profit-sharing; and (11) anti-steering provisions.

**Pricing concessions:**

"We understand that the rule does not prohibit a loan originator from decreasing his or her compensation to defray the cost, in whole or part, of an *unforeseen* increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer, or an *unforeseen* actual settlement cost not disclosed to the consumer. However, in many instances, the cost elements that loan originators want to cover from their own 'pocket'—which would benefit the consumer—relate to oversights, not unforeseen transactional events." – ABA (-0048)

Consumer advocacy groups

**Effectiveness of the Bureau's Loan Originator rule:**

"The limits on loan originator compensation contained in the Dodd-Frank Act and in the CFPB's rule are important consumer protections that fundamentally improved the mortgage market and reduced the incentives that mortgage originators had to benefit themselves financially by placing borrowers in more expensive loans. ... [Prior to the rule,] [b]orrowers often paid brokers an upfront fee and were under the impression that the broker would obtain the best possible loan for the borrower. Yet, the borrower was unaware that the lender was paying a commission – or a yield spread premium – to the originator. The premium increased with the interest rate or other loan terms. These deceptive practices grossly inflated the cost of a mortgage, even when borrowers qualified for a better deal." – six consumer advocacy groups (-0097)

Other industry

**Rewrites to definition of loan originator required by statute:**

"[W]e urge the CFPB to draw the exemption required by section 107 of Public Law No. 115-174 for certain employees of manufactured home retailers as narrowly as possible to protect homeowners and the market." – 44 consumer advocacy groups (-0091)<sup>72</sup>

**Prohibition on dual compensation:**

"Due to the way the rule is implemented creditors that self-fund enjoy much more flexibility with respect to pricing than traditional non-self-funding originators do. This inequity reduces consumer choice, can cause less than fully informed consumer decisions and has not justifiable support as a consumer protection. If anything it produces just the opposite result. To the extent that the rule's provisions are retained, all entities should be treated the same, without regard to their source of funding or compensation. And, while it will take legislative action to change the treatment of secondary market sales; the other disparate approaches to the rule can be changed by the agency." – Shane Jackson (-0041)

**Exemptions from the Bureau's Loan Originator rule:**

"Prior to the adoption of loan originator compensation rules, the NCUA regulated this activity specifically in rule 701.21(c)(8). The rule requires incentives or bonuses to be established with internal controls and reviewed annually. Incentives cannot be paid on a per loan basis but awarded on the overall performance of the credit union. In short, CFPB can accomplish the purposes of the Dodd-Frank Act by simply including a subsection that states: 'Federally insured credit unions that structure loan originator compensation in a manner consistent with

<sup>72</sup> Comment letter submitted by Jos A on behalf of a group of 44 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 4 of the Additional Notes section for this RFI.

NCUA Regulation 701.21(c)(8) are deemed to be in compliance.” – Clearview Federal Credit Union (-0076)

<b>Effectiveness of the Bureau's Loan Originator rule:</b>	
Others	“CFPB also amended Regulation Z to change the rules about how mortgage companies are paid to prevent conflicts of interest. The Loan Originator Compensation rule sets out new training and qualification standards for loan originators and prevents them from getting kickbacks for selling borrowers higher cost loans. Before the financial crisis, the compensation for mortgage originators was often structured to incentivize them to steer consumers into higher price loans. To fix this mismatch of incentives, the rule prohibited any compensation scheme that adjusted the terms or transaction costs of the loan.” – Sen. Elizabeth Warren (Mass.) (Inherited -0035)

## 7. Debt Collection<sup>73</sup>

<b>Commenter Type</b>	<b>Representative Sentiments</b>
	<p><b>Communications:</b></p> <p>“When considering an industry that is dependent on communications as much as the receivables management industry is, without an update to address the tectonic shift in modern technology that has occurred over the same time period, the regulations are in desperate need of an update that incorporate new modern technologies. To read the FDCPA, one would think the use of a telegram is a common practice in debt collection. In fact, the only modes of communication addressed in the FDCPA are by ‘mail’ (seven references), ‘telephone’ (five references), and ‘telegraph’ (three references). Absent are any references to cell phones, personal computers, e-mails, texting, smartphone apps, voicemail, and the Internet. The lack of clarity as it relates to modern technology in the FDCPA has resulted in a complex patchwork of judicial decisions, many of which come to contradictory conclusions, stretching from coast to coast.” – Receivables Management Association International (Inherited -0072)</p>
Trade groups	<p><b>Rulemaking scope (creditors):</b></p> <p>“[T]he Bureau should ensure that any regulations clearly treat creditors and third-party debt collectors differently. Moreover, any debt collection rules the Bureau promulgates should neither unduly restrict a creditor’s ability to contact its customer, nor impose onerous and pointless validation requirements upon a creditor.” – AFSA (Inherited -0047)</p>

<sup>73</sup> Subtopics for the Debt Collection comments include: (1) communications; (2) rulemaking scope (creditors); (3) statute of limitations; (4) general approach to rulemaking; (5) general technology updates; (6) consumer education; (7) definitions; (8) disclosures; (9) rulemaking scope (collectors); and (10) UDAAP for creditor collections.

Consumer advocacy groups

**Communications:**

"The CFPB should enact regulations that enforce and strengthen collectors' legal obligations to comply with any cease communication requests, whether written or oral. ... Consumer privacy is a critical concern. ... Privacy is relevant to particular methods of communication (discussed below) and in the CFPB's proposal to allow limited content messages ... these limited content messages would violate 1692c(b) and consumer privacy. The CFPB should abandon this proposal. The CFPB should increase consumer control over the debt collection process by clearly articulating the FDCPA requirement that communications cease when the consumer indicates that the communications are inconvenient. ... The CFPB should further clarify that collectors must comply with communication preferences whether expressed orally or in writing. ... Debt collection regulations can also promote consumers' ability to advocate for themselves by requiring all collectors with online payment portals to allow consumers to express communication and language preferences, submit disputes, and ask questions about the alleged debt online. Regardless of the communication method, the CFPB should clarify that FDCPA disclosure requirements and privacy protections always apply to all communications by debt collectors." – 46 consumer advocacy groups (-0077)<sup>74</sup> (emphasis omitted)

**Statute of limitations:**

"Disclosures about time-barred debts are not sufficient to protect the least sophisticated consumer from the range of abusive and deceptive practices that some collectors engage in when collecting time-barred debts. Instead, the CFPB should prohibit all efforts to collect on time-barred debt. The risks that any communications will be deceptive and will be misunderstood by the consumer and will result in injury are simply too great. Alternatively, if the CFPB allows continued collection of time-barred debt it should enhance consumer protections by: prohibiting deceptive offers to 'settle' a time-barred debt that imply that the collector still has the ability to file a lawsuit; forbidding suits on a 'revived' debt; requiring repetition of a time-barred debt disclosure in each communication; limiting collection of time-barred debts to written communications that can be monitored and that included tested disclosures that enable consumers to understand the time-barred nature of their debt; prohibiting oral collection efforts, which will be inherently deceptive and abusive and cannot be easily reviewed or monitored; and prohibiting the sale or transfer of time-barred debts, as the buyers of such debts are more likely to lack accurate information on the debt and the consumer and to engage in deceptive abusive practices." – 46 consumer advocacy groups (-0077)

Other industry

**General approach to rulemaking:**

"Courts across the nation have, with the lack of formal rules, issued a host of different and often conflicting standards for virtually every aspect of collections. The result is, simply put, a web of different standards and rules across states and sometimes across cities and counties. ... [W]e urge the Bureau to apply its rulemaking to accounts that are charged-off or go into default after the effective date of the rules. ... In the debt collection rulemaking, there should also be a close look at the importance of promoting communication between collectors and

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<sup>74</sup> Comment letter submitted by NCLC on behalf of a group of 46 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 5 of the Additional Notes section for this RFI.

consumers, including the potentially harmful impact of unduly restrictive contact caps and modern communication methods (e.g., email, cell phone, text and voicemail messages) that are not reflected in the Fair Debt Collection Practices Act enacted that was enacted over four decades ago.” – Encore Capital Group (-0133)

**General technology updates:**

“Please move forward on long awaited debt collection rules so those of us who try to comply with the spirit of FDCPA can operate our agencies like any other business in 2018 instead of the 70’s. Please give us a ‘safe harbor’ rules that protect consumers and the relationship between debtors and collectors will improve drastically and immediately. … Let us use technology like Autodialers in a prescribed, responsible fashion without fear of being extorted by frivolous suits and professional debtors. We should also be able to pass on the cost of using credit cards/ACH transactions to the consumers/debtors who are the ones benefiting by not having to type a check and mail it in.” – John D. Bradshaw P.C. (-0003)

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## Additional Notes

1. The following organizations were signatories to the comment letter submitted by NCLC on behalf of a group of 32 consumer, community, civil rights, and legal services groups, identified above as from “32 consumer advocacy groups” (-0100):

*Allied Progress  
Americans for Financial Reform  
Arkansans Against Abusive Payday Lending  
Atlanta Legal Aid Society, Inc.  
Brooklyn Coop Federal Credit Union  
Center for NYC Neighborhoods  
Consumer Action  
Consumer Federation of America  
East Bay Community Law Center  
Florida Alliance for Consumer Protection  
Georgia Watch  
Heartland Alliance for Human Needs & Human Rights  
Interfaith Center on Corporate Responsibility  
Jacksonville Area Legal Aid, Inc.  
Kentucky Equal Justice Center  
Maryland Consumer Rights Coalition  
NAACP  
National Association of Consumer Advocates*

*National Center for Law and Economic Justice  
National Consumer Law Center (on behalf of its low-income clients)  
National Fair Housing Alliance  
The One Less Foundation  
People's Action Institute  
Public Justice Center  
Tennessee Citizen Action  
Texas Appleseed  
Tzedek DC  
U.S. PIRG  
UnidosUS  
Virginia Poverty Law Center  
West Virginia Center on Budget and Policy  
Woodstock Institute*

2. The following organizations were signatories to the comment letter submitted by Carolyn Carter on behalf of a group of 32 consumer, community, civil rights, and legal services groups, identified above as from “32 consumer advocacy groups” (Inherited -0064):

*Allied Progress  
Americans for Financial Reform  
Arizona Community Action Association  
Arkansans Against Abusive Payday Lending  
Atlanta Legal Aid Society, Inc.  
CASH Campaign of Maryland  
Center for NYC Neighborhoods  
Center for Responsible Lending  
Consumer Action  
Consumer Federation of America  
Equal Justice Society  
Florida Alliance for Consumer Protection  
Heartland Alliance for Human Needs & Human Rights  
Housing Options & Planning Enterprises, Inc.  
Illinois People's Action  
Main Street Alliance  
Maryland Consumer Rights Coalition*

*Mississippi Center for Justice  
National Association of Consumer Advocates  
National Association of Social Workers  
National Consumer Law Center (on behalf of its low income clients)  
National Fair Housing Alliance  
National Housing Law Project  
Neighborhood Housing Services of Baltimore  
New Jersey Citizen Action  
People's Action Institute  
Public Counsel  
Public Justice Center  
Public Law Center  
Texas Appleseed  
U.S. PIRG  
West Virginia Center on Budget and Policy*

3. The following organizations were signatories to the comment letter submitted by NCLC on behalf of a group of 42 consumer, community, civil rights, and legal services groups, identified above as from “42 consumer advocacy groups” (-0078):

*Allied Progress  
Americans for Financial Reform  
Arkansans Against Abusive Payday Lending  
Atlanta Legal Aid Society, Inc.  
Brooklyn Coop Federal Credit Union  
Center for Economic Integrity  
Center for NYC Neighborhoods  
Center for Responsible Lending  
Connecticut Legal Services, Inc.  
Consumer Action  
Consumer Advocacy and Protection Society (CAPS)  
Consumer Federation of America  
Consumers Union  
East Bay Community Law Center  
Florida Alliance for Consumer Protection*

*Georgia Watch*  
*Heartland Alliance for Human Needs & Human Rights*  
*Interfaith Center on Corporate Responsibility*  
*Jacksonville Area Legal Aid, Inc.*  
*Kentucky Equal Justice Center*  
*Maryland Consumer Rights Coalition*  
*Montana Organizing Project*  
*NAACP*  
*National Association of Consumer Advocates*  
*National Center for Law and Economic Justice*  
*National Consumer Law Center (on behalf of its low-income clients)*  
*National Consumers League*  
*National Fair Housing Alliance*  
*The One Less Foundation*  
*People's Action Institute*  
*Public Good Law Center*  
*Public Justice Center*  
*Public Law Center*  
*Reinvestment Partners*  
*Tennessee Citizen Action*  
*Texas Appleseed*  
*Tzedek DC*  
*U.S. PIRG*  
*Virginia Poverty Law Center*  
*West Virginia Center on Budget and Policy*  
*Woodstock Institute*  
*World Privacy Forum*

4. The following organizations were signatories to the comment letter submitted by NCLC on behalf of a group of 46 consumer, community, civil rights, and legal services groups, identified above as from “46 consumer advocacy groups” (-0077):

*Allied Progress*  
*Americans for Financial Reform*  
*Arizona Community Action Association*  
*Arkansans Against Abusive Payday Lending*

*Arkansas Community Organizations  
Atlanta Legal Aid Society, Inc.  
Brooklyn Coop Federal Credit Union  
Center for Justice & Democracy  
Center for NYC Neighborhoods  
Center for Responsible Lending  
Connecticut Veterans Legal Center  
Consumer Action  
Consumer Advocacy and Protection Society (CAPS)  
Consumer Federation of America  
Consumers Union  
East Bay Community Law Center  
Florida Alliance for Consumer Protection  
Georgia Watch  
Heartland Alliance for Human Needs & Human Rights  
Interfaith Center on Corporate Responsibility  
Jacksonville Area Legal Aid, Inc.  
Kentucky Equal Justice Center  
Legal Aid Foundation of Chicago  
Maryland Consumer Rights Coalition  
Mobilization for Justice  
Mountain State Justice  
NAACP  
National Association of Consumer Advocates  
National Association of Consumer Bankruptcy Attorneys (NACBA)  
National Center for Law and Economic Justice  
National Consumer Law Center (on behalf of its low income clients)  
National Fair Housing Alliance  
North Carolina Justice Center  
People's Action Institute  
Public Good Law Center  
Public Justice Center  
Public Law Center  
Tennessee Citizen Action  
Texas Appleseed*

*The One Less Foundation  
Tzedek DC  
U.S. PIRG  
Virginia Poverty Law Center  
West Virginia Center on Budget and Policy  
Woodstock Institute  
World Privacy Forum*

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## 2.3 Inherited Regulations and Inherited Rulemaking Authorities

### Background

As discussed in part 2 of this report regarding the Adopted RFI, in March 2018, the Bureau published two RFIs related to the regulations administered by the Bureau and its rulemaking authorities. The first RFI focused on the rulemakings adopted by the Bureau and the new rulemaking authorities given to the Bureau by the Dodd-Frank Act (Adopted RFI). The second RFI focused on the regulations and rulemaking authorities that were in place before the Bureau existed for which the Dodd-Frank Act transferred rulemaking authority from other agencies to the Bureau (Inherited RFI).<sup>75</sup> Except as explained below, this part of this report discusses comments received in response to the Inherited RFI.

The Bureau issued the Inherited RFI on March 22, 2018 (CFPB-2018-0012). The Inherited RFI requested that commenters:

1. Offer specific suggestions regarding any potential updates or modifications to the inherited regulations, including the nature of the requested change; and
2. Identify specific aspects of the inherited regulations that should not be modified.

In making these requests, the Inherited RFI prompted respondents to provide supporting data or other information on, for example, impacts and costs and public benefits of the inherited regulations or the suggested changes. The Inherited RFI also requested that commenters indicate their highest priorities for where modifications of the inherited regulations or further exercise of the Bureau’s rulemaking authorities may be appropriate and explain why.

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<sup>75</sup> Congress generally transferred to the Bureau rulemaking authority for Federal consumer financial laws previously vested in certain other Federal agencies, and the Bureau thereafter assumed responsibility over the various regulations that these agencies had issued under this rulemaking authority (the “inherited regulations”). The Bureau generally restated these regulations first through a series of interim final rules published in the *Federal Register* and subsequently through a final rule. 81 FR 25323 (Apr. 28, 2016). Bureau rules are generally set forth in title 12, chapter X of the Code of Federal Regulations.

## Methodology Specific to the Inherited Regulations and Inherited Rulemaking Authorities RFI

### **Note on Overlap between Adopted and Inherited RFIs**

Because some of the new rulemakings adopted by the Bureau, at least in part, amended inherited regulations or relied on inherited rulemaking authorities, there is overlap between the Adopted and Inherited RFIs and the public comments they elicited. Comments received in response to the Adopted RFI are described primarily in part 2 of this report above. Those responsive to the Inherited RFI, along with cross-cutting issues that may relate to both adopted and inherited rules and authorities, are described in this part below. We note that many comment letters received on these two RFIs discussed both adopted and inherited rules and authorities. Because of this overlap, we have combined discussion of the comments received on the Adopted and Inherited RFIs for the RFI Topic Areas and the Representative Sentiments sections for the Inherited RFI, as discussed in more detail just below.

We note that the numerical data in the Comment Summary section for the Inherited RFI does not include any comments submitted on the Adopted RFI docket, even if they relate to inherited rules or inherited rulemaking authorities. Instead, all comments submitted on the Adopted RFI docket are captured in the Comment Summary section for the Adopted RFI (see part 2 of this report). This avoids our counting a significant number of comment letters in both the Adopted and Inherited Comment Summary sections, as many comments raised issues relating to both.

However, this only applies to the numerical data in the Comment Summary section for the Inherited RFI. As described below, for other sections of the report relating to the Inherited RFI, we have included relevant comments in accordance with our methodology, regardless of the docket to which they were submitted. This includes quantitative and qualitative data collected in the RFI Topic Areas and Representative Sentiments sections for the Inherited RFI. Our goal was to provide in the appropriate location within this report a reliable review of commenters' substantive feedback per topic area.

### **Comment Summary**

The data in the "Comment Summary" section below accounts for all comment letters submitted to the Inherited RFI docket. Additionally, the data in this section includes comment letters submitted on the Rulemaking Processes RFI or Guidance and Implementation Support RFI (Guidance RFI) that are relevant to the inherited regulations and/or the inherited rulemaking authorities.

### **RFI Topic Areas**

The data in the “RFI Topic Areas” section below includes all comment letters relevant to each topic area listed, regardless of the docket under which the commenter submitted the comment letter. For example, if a comment letter submitted under the Adopted RFI was relevant, in whole or in part, to Regulation B or the relevant authorities, the comment letter is captured in this table’s data under Regulation B. Our intention was to provide an accurate count of all comment letters relating to each specific topic area; that information would not otherwise be captured elsewhere in this report.

### **Representative Sentiments**

The Bureau received comments relating to 15 inherited rulemakings or inherited rulemaking authorities.<sup>76</sup> Below, this report provides representative sentiments for comments relating to the five adopted rulemakings for which we received the greatest number of comments.<sup>77</sup>

The Bureau also received comments related to 10 “cross cutting” topics that may relate to more than one adopted or inherited rule.<sup>78</sup> Below, this report provides representative sentiments for comments related to two cross-cutting issues, namely electronic disclosure and innovation, for which we received the greatest number of comments. These cross-cutting topics are discussed separately in this part. These issues also are discussed in this part on the inherited topics where relevant comments were among the most numerous on a particular topic. The “innovation” topic discussed in this part only includes comments that specifically used the keywords “innovation” or “innovate.” Other comments that relate to innovation were included in the inherited topics,

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<sup>76</sup> The 15 areas include: (1) Regulation B (implementing ECOA); (2) Regulation E (implementing EFTA); (3) Regulation Z general (implementing TILA); (4) Regulation Z, open-end; (5) Regulation X (implementing RESPA); (6) Regulation V (implementing FCRA); (7) Regulation DD (implementing TISA); (8) Regulation G (implementing SAFE Act requirements relating to loan originator registration); (9) Regulation P (relating to privacy); (10) Regulation H (implementing SAFE Act requirements relating to state compliance and registration); (11) Regulation CC (relating to the availability of funds and collection of checks); (12) Regulation M (relating to consumer leasing); (13) Regulation J (implementing ILSA); (14) Regulation N (implementing MAPS); and (15) Regulation O (implementing MARS).

<sup>77</sup> To improve the clarity of representative sentiments, where appropriate, we have made non-substantive formatting changes and have omitted non-substantive footnotes.

<sup>78</sup> The 10 “cross cutting” topics include: (1) electronic disclosure; (2) innovation; (3) priorities for Bureau action; (4) manufactured housing; (5) general comments; (6) threshold amounts for the Bureau’s rules; (7) identity theft; (8) exception for small creditors from the Bureau’s rules; (9) limited English proficiency; and (10) regulatory sandboxes.

even if they did not specifically use the term “innovation” or “innovate,” if these comments were among the most numerous on a particular topic. Finally, several comments received on the Inherited RFI discussed no-action letters or fintech issues. The comments related to no-action letters are discussed in part 4 in relation to the Guidance RFI. The comment on fintech issues is discussed in the “innovation” topic in this part.

The representative sentiments included below are meant to provide a flavor of the most numerous substantive comments that the Bureau received on these topics.<sup>79</sup> We have tried to select the most succinct articulations of each issue found among the comment letters, even though that resulted in some commenters being quoted more frequently than others.

For the representative sentiments in this part, we have endeavored to include a sample of all relevant comments on a particular topic regardless of whether the commenter submitted the comments under the Adopted RFI, Inherited RFI, Rulemaking Processes RFI, or Guidance RFI. For example, due to subject-matter overlap between the Bureau’s adopted and inherited rules and rulemaking authorities, some commenters submitted letters relevant to this Inherited RFI under the Adopted RFI.

The representative sentiments are arranged by topic area. In some cases, a topic relates to both adopted and inherited regulations and rulemaking authorities. Part 2 on the Adopted RFI contains all comments on such topics; we did not separate them between this part on the Inherited RFI and the Adopted RFI under part 2 above. For example, although we received comment letters on mortgage servicing relating to both adopted and inherited regulations and rulemaking authorities, we grouped them all in the Adopted RFI part of this report above. The purpose was to make it easier for readers to locate and review all relevant representative sentiments.

We have also endeavored to include information, for reference, about the number of comments received on each topic covered below. However, we caution that the counts of comments may not be perfectly precise depending on how particular issues were categorized.

In selecting representative sentiments, we have focused on actionable comments (that is, specific suggestions for the Bureau to undertake specific rulemaking activity, or expressing

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<sup>79</sup> The representative sentiments are not intended to reflect all the issues that were raised by commenters on a particular topic.

support for current practices). We have not included comments that simply recite historical background, even where such recitation may imply a complaint about Bureau practices, or that make generalized statements without specific suggestions. However, the latter two types of comments were included in the relevant counts concerning substantive comments. The representative sentiments provided below are grouped by (1) trade groups, (2) consumer advocacy groups, (3) other industry,<sup>80</sup> and (4) others.<sup>81</sup> We have not indicated below where multiple commenters addressed an issue using substantially similar language due to space constraints.

In the Inherited RFI, the Bureau specifically requested supporting data and other information on, for example, impacts and costs and public benefits of the inherited regulations or the suggested changes. The Bureau also requested that commenters indicate their highest priorities for where modifications of the inherited regulations or further exercise of the Bureau’s rulemaking authorities may be appropriate and explain why. Many commenters, however, did not provide such data or prioritizations.

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<sup>80</sup> Because of the variety of issues discussed in the comments on the Inherited RFI and the significant number of industry commenters that are not trade groups commenting on the RFI, we considered the comments from trade groups separately from other industry for the Inherited RFI, to ensure that we better captured comments by other industry commenters that may not necessarily be represented by trade groups.

<sup>81</sup> The “other” category includes individual consumers, Federal, state or local governments, academics/researchers and other entities that submitted anonymously.

## Comment Summary (Inherited Rules)

**Total comments:** 82<sup>82</sup>

**Substantive comments responsive to this RFI submitted on this docket**<sup>83</sup>: 73<sup>84</sup>

**Substantive comments referred from other RFIs:** 2<sup>85</sup>

**Substantive comments responsive to other RFIs submitted on this docket:** 24 (21 of which are also responsive to this RFI)

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<sup>82</sup> This total includes the number of comment letters submitted to this docket and posted on Regulations.gov. It also includes the number of comment letters submitted on the Rulemaking Processes RFI (CFPB-2018-0009) or on the Guidance RFI (CFPB-2018-0013) that are relevant to the inherited regulations and/or the inherited rulemaking authorities. In this data, we did not include comments letters that were submitted on the Adopted RFI even if they contained discussions relevant to the inherited regulations and/or the inherited rulemaking authorities.

<sup>83</sup> 80 comments were submitted to this docket and are posted on Regulations.gov under CFPB-2018-0012. Regulations.gov indicates the count for the docket is 86, but only 80 items are actually posted; 2 items had been posted but one letter was removed because it was a duplicate of another posted item and one item was removed because it was posted to the incorrect docket. Also, seven comment letters submitted and posted on this docket were not counted as relevant for this docket. Two comments were duplicates of letters filed by the same commenters on the Adopted RFI docket and we counted those letters as relevant for the Adopted RFI docket. Three comments were only relevant to another RFI docket. One comment was neither relevant to this docket nor relevant to any other RFI docket. One comment was replaced by a subsequent comment filed by the same commenter on this docket.

<sup>84</sup> Due to subject-matter overlap between the Bureau's adopted and inherited rules and rulemaking authorities, many comments submitted on the Inherited RFI contained information relevant to the adopted rules and/or new rulemaking authorities. For simplicity, in this data, we do not detail how many comments letters submitted on the Inherited RFI relate only to the adopted rules, relate only to the inherited rules, or relate to both. Instead, for this total, a comment submitted on this docket generally is considered relevant to this docket if it is either relevant to: (1) the adopted regulations and/or the new rulemaking authorities; or (2) the inherited regulations and/or the inherited authorities.

<sup>85</sup> This total reflects comment letters submitted on the Rulemaking Processes or Guidance RFIs that are relevant to the inherited regulations and/or the inherited rulemaking authorities.

**Substantive and responsive comments received from:<sup>86</sup>**

Individual Consumers	Individual Entities			Consumer Advocacy Groups	Government (i.e., other Federal agencies, state and local governments, US Senators)	Other (e.g., academia, non-consumer advocacy groups, etc.)
	Depository Institutions and Credit Unions	Non-Depository Institutions	Industry Trade Groups			
4 <sup>87</sup>	1	19	23 (+1)	17	2	7 (+1)

**RFI Topic Areas (Inherited Rules)**

	Topic	Description	Total Number of Comment Letters <sup>88</sup>
1	Regulation B	Regulation B implements the Equal Credit Opportunity Act (ECOA), which generally addresses discrimination in consumer lending on specific prohibited bases, as well as notifications to consumers of credit decisions.	25 8 trade groups 8 consumer advocacy groups 6 other industry 3 other
2	Regulation Z, General	Regulation Z implements the Truth in Lending Act (TILA), which mandates consumer disclosures and sets	22 13 trade groups 5 consumer advocacy groups 4 other industry

<sup>86</sup> Comments are counted for this purpose by letter; these tallies do not reflect multiple signatories to particular letters. (Multiple signatories are noted below for representative sentiments, where relevant. The commenter totals reflected here are for substantive comments only; non-substantive comments were not included.)

<sup>87</sup> The numbers in parentheses reflect the number of additional substantive comments submitted on the Rulemaking Processes, or Guidance RFIs that are relevant for this RFI.

<sup>88</sup> The total number of comment letters for each topic includes the comment letters relevant to that topic regardless of whether the comment letter was submitted to the Adopted, Inherited, Rulemaking Processes, or Guidance RFI.

Topic	Description	Total Number of Comment Letters <sup>88</sup>
	forth a variety of requirements relating to both open- and closed-end consumer credit. <sup>89</sup>	0 other
3 Regulation E, General	Regulation E implements the Electronic Fund Transfer Act (EFTA), which has the general purpose of providing a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. Its stated primary purpose is the provision of individual consumer rights. <sup>90</sup>	19 7 trade groups 5 consumer advocacy groups 6 other industry 1 other
4 Regulation X	Regulation X implements the Real Estate Settlement Procedures Act (RESPA). In relevant part, RESPA regulates certain elements of the mortgage origination process, including the use of referrals, kickbacks, and affiliated business arrangements. <sup>91</sup>	18 13 trade groups 2 consumer advocacy groups 3 other industry 0 other

<sup>89</sup> Regulation Z includes provisions related to open-end credit. These provisions are not addressed in this topic but are discussed separately in this part of the report. Also, this part of the report does not address Regulation Z provisions that relate to adopted rules, such as TRID, and ATR/QM provisions. These topics are addressed in the Adopted RFI part of this report.

<sup>90</sup> Regulation E also includes provisions related to prepaid accounts and remittances. This part of the report does not address those provisions. For simplicity, all prepaid account and remittances provisions are included in the Adopted RFI part of this report.

<sup>91</sup> Regulation X also includes provisions relating to mortgage servicing. This part of this report does not address those provisions. For simplicity, all mortgage servicing regulations, including inherited rules under Regulation X, are included in the Adopted RFI part of this report.

<b>Topic</b>	<b>Description</b>	<b>Total Number of Comment Letters<sup>88</sup></b>
Regulation Z, 5 Open-end credit	Subpart B of Regulation Z implements TILA's provisions relating to open-end credit. These provisions include, among other protections, consumer disclosures, periodic statements, and billing error resolution. Subpart G of Regulation Z generally implements the CARD Act provisions and generally relates to credit card accounts under an open-end (not home-secured) consumer credit plan.	17 5 trade groups 6 consumer advocacy groups 2 other industry 4 other

## Representative Sentiments (Inherited Rules)

### 1. Regulation B (implementing ECOA)<sup>92</sup>

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Trade groups	<p><b>Disparate impact:</b>  “[T]he Bureau should amend the existing Official Staff Commentary to state that disparate impact is not available under ECOA. If the Bureau decides not to clarify the unavailability of disparate impact under ECOA, it should ensure the official interpretation of ECOA reflects the disparate impact standard under the Fair Housing Act articulated in the Supreme Court’s <i>Inclusive Communities</i> decision.” – MBA (-0048)<sup>93</sup></p> <p><b>Adverse action:</b>  “Rules surrounding adverse action decisions require clarity so decisions may be of more use to consumers. ... [C]o-applicants should be permitted to view the credit scores of other coapplicants across an application as consumers become more engaged in the credit process. Additionally, the Bureau should clarify for institutions that providing more than four</p>

<sup>92</sup> Subtopics for Regulation B include: (1) disparate impact; (2) adverse action; (3) demographic information collection; (4) electronic disclosures; (5) definitions; (6) valuations; (7) discouragement; and (8) joint intent.

<sup>93</sup> Comments quoted in this part 3 were submitted on the Inherited RFI docket (CFPB-2018-0012) unless otherwise noted.

reasons for an adverse action or denial of an application is not a regulatory violation. ... Regulation B should also be revised to explicitly exclude loss mitigation applications from adverse action and valuation requirements, as they impose additional burdens on financial institutions that are unnecessary in light of the loss servicing rules present in Regulation X. ... The Bureau should also issue guidance on what circumstances qualify as an ‘application’ under Regulation B. While Regulation B provides discretion for financial institutions to define an application, the Regulation’s Commentary also includes language stripping financial institutions of the discretion, and leaving a broad definition of any written or oral request or inquiry pertaining to credit. ... Further, the Bureau should eliminate Comment 1 to §1002.2(C)(2)(v), which states that if a financial institution does not offer credit terms requested by an applicant, this constitutes a denial of the application. ... Section 1002.2(C)(2)(iv) should also include examples of ‘applicable laws’ and include cases of fraud and identity theft in the exceptions to adverse actions section.” – CBA (-0054)

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**Disparate impact:**

Consumer advocacy groups

“[D]isparate impact is a hallmark of American civil rights jurisprudence. The Supreme Court, in deciding *Griggs v. Duke Power Co.* in 1971, unanimously allowed disparate impact claims under Title VII of the Civil Rights Act of 1964 to move forward. All nine Circuit Courts had extended disparate impact liability to the Fair Housing Act twenty years after it had been passed. Then in 2015, the Supreme Court reaffirmed that disparate impact liability applies under the Fair Housing Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, holding that it is instrumental to achieving the mission of the act. Since 1980, federal courts have consistently recognized that disparate impact claims are cognizable under the Equal Credit Opportunity Act. The federal appellate courts which have addressed the question—the Fifth, Sixth, and Ninth Circuits—have all held that disparate impact claims are cognizable under ECOA. In addition, federal district courts in the First, Second, Third, Fourth, Seventh, Eighth, and Eleventh Circuits have uniformly held that disparate impact claims are cognizable under ECOA. The result is that nationwide jurisprudence regarding ECOA and disparate impact is in unanimous agreement: the Equal Credit Opportunity Act allows for disparate impact claims in lending and credit access.”  
– The Fair Housing Center (-0055)

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**Disparate impact:**

Other industry

“Because ECOA does not contain the requisite language which appears in Title VII or the ADEA, CFPB should propose an amendment to Regulation B that removes authority for asserting disparate impact consumer credit discrimination claims under ECOA by agencies or plaintiffs. Cf., *Garcia v. Johanns*, 444 F.3d 625, 633 n.9 (D.C. Cir. 2006). Second, if the Bureau continues to assert the existence of disparate impact claims under ECOA and Regulation B, it should incorporate the interpretive precedent of *Inclusive Communities Project v. Texas Dept. of Housing*, 135 S.Ct. 2507 (2015) as a natural extension of the analysis that was the basis for the Federal Reserve’s position on including disparate impact under ECOA in Regulation B. Although the Supreme Court’s decision in Inclusive Communities is focused on interpreting the Fair Housing Act, its reasoning has considerable import for enforcement of ECOA, since the majority opinion draws heavily on the *Griggs* line of authority.” – SMAART Consulting (Adopted -0074)

“We are concerned that if the disparate impact regime were not maintained, industry would face regulatory instability. Policies to address widespread concerns about discrimination may come and go with each administration change, which would stymy innovation and create uncertainty for business. Innovators require a consistent regulatory environment to invest in

these new technologies. Of greater concern, if disparate impact is removed future policymakers might apply other policy approaches that lack the pro-innovation flexibility that disparate impact provides. For example, alternative policies might permit some types of modeling techniques and prohibit others, or establish prescriptive requirements that fit the tools of today, but not the tools of the future. For these reasons, we believe the Bureau should maintain the disparate impact policy for financial services. The Bureau could also support innovation in credit analysis by publishing principles clarifying what business purposes are sufficient for consideration in disparate impact analysis.” – LendingClub (-0075)

**Demographic information collection:**

“Some policies should also be aligned, so that the Government Monitoring Information (GMI) or demographic information are consistently collected (e.g., all 1-4 family residential dwellings v. owner occupied, principal, residential dwellings). In addition, Sections 1002.5 and 1002.13 of Regulation B create unnecessary compliance and litigation risks by requiring collection of GMI for a limited set of transactions, while making collection of GMI either permissive or prohibited for all other transactions.” – Wolters Kluwer (-0033)

**Electronic disclosures:**

“The Bureau can effectively achieve its consumer-protection objectives and reduce unwarranted regulatory burdens under the E-Sign Act by exempting certain disclosures from its electronic-document consent requirement. For example, consumers who apply for an online mortgage product cannot receive the required written disclosures electronically unless they consent to receive disclosures by electronic delivery. This consent requirement is no longer necessary and has become confusing for consumers who are already engaged via an electronic channel and reasonably expect that relevant disclosures will be provided in that electronic channel. We therefore recommend that the Bureau use its authority to exempt disclosures from the E-Sign Act’s consent requirements when a consumer uses electronic means to engage in on line and mobile banking services, such as Regulation E disclosures under 12 C.F.R. 1005.7, adverse action notices under Regulation B, and Regulation Z credit card disclosures after the account is open. For these disclosures, the Bureau could implement a more streamlined notice requirement that is more relevant and more likely to be understood by consumers.” – Discover Financial Services (Discover) (-0069)

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**Disparate impact:**

Others

“The importance of the CFPB’s role in maintaining a financial services marketplace that is fair and free from discrimination cannot be overemphasized. Credit transactions are typically highly individualized and very personal. Borrowers normally do not have the opportunity to compare their experiences with those of other borrowers. This makes it very difficult for any particular protected borrower to know whether he or she has been treated fairly, or has been denied credit or offered credit on less favorable terms than other, similarly situated borrowers with different personal characteristics. In addition, borrowers are unlikely to know about a lender’s policies and practices that may work to deny them access to credit, or provide credit on less favorable terms than those offered to other, similarly situated borrowers. Even if a borrower does become aware of what appear to be discriminatory policies or practices, he or she may not know how to address the problem or have the resources to take effective action.” – Tim Iglesias (-0031)

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“When Acting Director Mulvaney took over the reins of the Bureau, he promised to ‘faithfully enforce the consumer protection laws as written, but not attempt to regulate beyond that

mandate.’ Yet, as outlined in the briefing paper, both the text of the law and Supreme Court precedent suggest that the BCFP is not enforcing ECOA as written. Instead, it has been stretched beyond what Congress intended. The Bureau should seek to correct ECOA enforcement. It should rescind any guidance documents that recognize the theory of disparate impact, or seek to bring the rule in line with the underlying statute through a new rulemaking.” – CEI (-0050)

## 2. Regulation Z (implementing TILA), General<sup>94</sup>

Commenter Type	Representative Sentiments
Trade groups	<p><b>Closed-end rescission disclosure forms:</b></p> <p>“Currently, the consumer’s right of rescission, as prescribed by 12 C.F.R. § 1026.23 differentiates between fully and partially rescindable loans based on whether the creditor on the new loan already has a purchase money lien interest on the borrower’s primary residence. To properly describe each situation, the regulation presently provides two sample forms—H-8, for fully-rescindable loans, and H-9, for partially-rescindable loans. Although this differentiation is technically correct, a partial rescission is virtually impossible to achieve in reality. A partial rescission would require the reinstatement of the original loan and the original property lien. As a result, a partial rescission very rarely occurs, if at all. The rescission rules and the attendant notices should be revised to reflect these realities. Accordingly, the Bureau should consider revising the regulation to provide for a more reasonable and unified approach to rescission, which would also eliminate the need for two rescission forms. The provision of a single, unified approach would also limit consumer confusion.” – HPC (-0060)</p> <p><b>Definition of application:</b></p> <p>“Under Regulation B, the term ‘application’ is defined one way, while Regulation C and the new TRID requirements define ‘application’ in two different ways. The Bureau should examine and review the term, and determine if there is a way to harmonize the definition across the regulations.” – CBA (-0054)</p> <p><b>Electronic disclosures:</b></p> <p>“Regulations X, Z, and DD all have standards establishing the prominence and proximity for various disclosures, including where certain disclosures must be displayed, how they must be displayed, and what disclosures they should be grouped together with. These regulations should be amended and harmonized to indicate that the prominence and proximity standards they include meet the ‘clear and conspicuous’ standards for all applicable electronic advertisements and disclosures set forth in the Regulations. Regulations B, E, X, V, Z, and</p>

<sup>94</sup> Subtopics for the Regulation Z general comments include: (1) closed-end rescission provisions; (2) definition of application; (3) electronic disclosures; (4) PACE loans; (5) closed-end provisions generally; (6) closed-end advertising rules; (7) private student loan disclosures; (8) reverse mortgage provisions; (9) calculation of APRs for closed-end loans and HELOCs; (10) mortgage transfer disclosures; and (11) assignee liability.

DD should be amended to better clarify that required language, including required disclosures and language related to advertisements, may be provided to consumers via a hyperlink, when included in an electronic document. This will greatly increase the accessibility of the required language for consumers.” – CBA (-0054)

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Consumer advocacy groups

**PACE loans:**

“Addressing the problems with PACE loans and closing the misinterpreted loophole in Regulation Z is our top priority rulemaking for the CFPB. It is also a priority of Congress: a provision directing the CFPB to adopt ability-to-repay rules for PACE loans is included in the bipartisan banking bill package recently passed by Congress in Public Law 115-174 and signed by President Trump. We note there also is widespread agreement among creditors of the importance of promulgating TILA PACE regulations. While the CFPB should preserve existing TILA regulations, we urge the CFPB to swiftly enact the rules mandated by Congress and to ensure that PACE providers comply with the other mortgage protections required by Regulation Z, with appropriate modifications as necessary to address the unique structure of PACE loans.” – 41 consumer advocacy groups (-0068)<sup>95</sup>

**Closed-end provisions generally:**

“While every regulation can be improved, and we have our own suggestions if the CFPB chooses to revisit Regulation Z’s closed-end provisions, they are working well overall and are a lower priority for revisions than other work before the CFPB. We especially oppose any effort to weaken Regulation Z, add exemptions, or otherwise undercut the protections that it offers.” – 32 consumer advocacy groups (-0064)<sup>96</sup>

**Closed-end rescission:**

“The TILA rescission provisions reflect Congress’s desire to keep homeowners from placing their homes in jeopardy without a clear understanding of the risks and benefits of the transaction. The rescission right is statutory and cannot be taken away by regulation. Moreover, the lending industry has functioned in this environment for decades. There is no need for the CFPB to reopen the rescission provisions of Regulation Z.” – 32 consumer advocacy groups (-0064)

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Other industry

**Closed-end rescission:**

“1026.19(f)(1)(ii)(A) requires consumers to receive the Closing Disclosure at least three business days before closing. Additionally, for loans subject to the 1026.23 rescission period, consumers receive an additional three business day waiting period to consider their new loan following consummation. When coupled together, these two periods mean that a consumer whose loan is subject to rescission has approximately one week to review the loan’s terms. This period is unnecessary, particularly given the seven business day period required between giving the loan estimate and closing required by 1026.19(e)(1)(iii)(B). Indeed, this

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<sup>95</sup> Comment letter submitted by NCLC on behalf of a group of 41 consumer, community, civil rights, and legal services organizations. The full list of signatories to this comment letter can be found in item 1 of the Additional Notes section for this RFI.

<sup>96</sup> Comment letter submitted by Carolyn Carter on behalf of a group of 32 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 2 of the Additional Notes section for this RFI.

long wait period has the perverse effect of causing consumer harm when borrowers are refinancing from a higher interest rate loan to a lower rate loan as they will be paying on their higher rate loan longer. Given the review periods of 1026.19(e)(1)(iii)(B) and 1026.19(f)(1)(ii)(A) [sic], the rescission period of 1026.23 is unnecessary and should be eliminated.” – Brian Holst (-0007)

**Closed-end advertising rules:**

“1026.24(d)(1)(ii) includes various advertising verbiage that triggers additional disclosures. ‘The number of payments or period of repayment’ is a trigger for the additional terms in 1026.24(d)(2) requiring disclosure in an advertisement. Consumers are frequently curious about the length of the loan available. Making this information available, such as ‘We have 30 year fixed rate FHA loans’ in an advertisement without the 1026.24(d)(2) disclosures would not result in any consumer harm, and indeed would benefit consumers by giving them more information.” – Brian Holst (-0007)

**Private student loan disclosures:**

“Another Regulation Z section ripe for reform is reconciling the three mandatory yet redundant disclosures required for student loans. Regulation Z currently requires creditors to provide consumers with three separate TILA disclosures before a private education loan can be disbursed. The application and solicitation disclosure must be provided with every application or solicitation; the approval disclosure is sent within three days of loan approval; and the final disclosure is sent after the consumer accepts the terms of the loan. The approval disclosure alerts consumers that they have 30 days to accept the terms and the final disclosure provides a right to cancel period. The approval disclosure and final disclosure are nearly identical and essentially redundant. Consumers would be better served by a) eliminating or shortening the final disclosure and b) receiving one disclosure at loan approval so they understand the cost of borrowing before accepting the terms of the loan. There is no need for consumers to receive a second copy of the loan information within the approval disclosure again before disbursement of the loan. The consumer’s right to cancel the student loan could be provided appropriately when final loan documents are given to them before disbursement.” – Discover (-0069)

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### 3. Regulation E (implementing EFTA)<sup>97</sup>

Commenter Type	Representative Sentiments
Trade groups	<p><b>Clarify that the data aggregators are “service providers” under Regulation E:</b></p> <p>“The Bureau should clarify that data aggregators (entities that aggregate financial data from accounts at different institutions) are ‘service providers’ under Regulation E (Electronic Fund Transfer Act) and liable for unauthorized electronic fund transfers that exceed the consumer’s liability under that regulation. … Data aggregators that permit consumers to initiate electronic fund transfers from accounts held at financial institutions that do not have an agreement with the financial institution are ‘service providers,’ under Regulation E, as they issue ‘access devices’ that may be used to permit electronic fund transfers to and from the account. As service providers, they are subject to the liability for unauthorized transactions under Regulation E as well as certain other provisions. Imposing liability for unauthorized transactions under these circumstances is appropriate and fair. The data aggregator is in the best position to control for the risk of unauthorized transactions conducted through its system. In contrast, the financial institution holding the account has no relationship with the data aggregator and no knowledge of and no power over the data aggregator’s security system.” – ABA (-0028)</p>
Consumer advocacy groups	<p><b>Allow hyperlinks for disclosures:</b></p> <p>“Regulations B, E, X, V, Z, and DD should be amended to better clarify that required language, including required disclosures and language related to advertisements, may be provided to consumers via a hyperlink, when included in an electronic document. This will greatly increase the accessibility of the required language for consumers.” – CBA (-0054)</p> <p><b>Overdraft model forms/testing:</b></p> <p>“Despite the usage of the Model Forms, credit unions are finding themselves now at risk for litigation due to the vagueness of the forms. Credit unions utilize the Model Forms in an effort to mitigate notice errors and provide consumers with reliable and transparent information. … NAFCU recommends that the Bureau provide a safe harbor for those credit unions that use the Model Forms, or at a minimum, restructure the Model Forms in a way that mitigates vagueness.” – NAFCU (-0037)</p> <p><b>Prevent liability for fraud and unauthorized transactions in new, faster payment systems:</b></p> <p>“A number of new, faster payment systems have been launched or are under development. These systems may have security improvements over older payment methods and may make fraud and unauthorized charges less likely. One advantage of many of these systems is that they may require the consumer to take action to initiate (‘push’) a payment and may not allow an entity to debit (‘pull’) a payment from the consumer’s account based only on a</p>

<sup>97</sup> Subtopics for Regulation E comments include: (1) data aggregators; (2) electronic disclosures; (3) overdraft; (4) fraud and unauthorized transactions; (5) preauthorized electronic fund transfer provisions; (6) dispute resolution; and (7) compulsory use.

purported authorization. While push payments can increase security, they do not eliminate the potential for fraudulent and unauthorized payments and in some cases may increase those risks. Today, telemarketing scammers may have to convince a consumer to visit a store in order to pay through an unusual payment method, such as a prepaid reload pack, gift card or wire transfer. This can impede fraud and raise red flags. But with faster payments, an imposter or other criminal can simply tell the consumer to pay quickly through a method that that consumer already uses from the convenience of her home.” – 30 consumer advocacy groups (-0061)<sup>98</sup>

“Consumers Union urges the Bureau to ensure that the Electronic Funds Transfer Act (EFTA), as implemented by Regulation E, includes protections that reflect the reality of today’s faster, often mobile-enabled payments reality. To accomplish this, we urge the CFPB to extend protections against unauthorized transfers to include those ‘authorizations’ secured by fraud and to enforce error resolution rights in the event of misdirected payments.”  
– Consumers Union (-0039)

**Overdraft credit/limits:**

“Limit overdraft fees to one fee per month, and six per year, and prohibit predatory posting practices. Once an account has gone negative and the customer has incurred an overdraft fee, the customer should have sufficient time to bring the account back to positive before being charged additional fees. Again, the CARD Act limited over-the-limit fees to one per month, and the Federal Reserve determined in the credit card context that requiring ‘reasonable and proportional fees’ meant that no more than any kind of penalty fee could be charged per single event or transaction.” – Center for Responsible Lending (-0081)

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**Amend ambiguous and dated preauthorized electronic fund transfer (EFT) provisions:**

Other industry

“As a result of the outdated requirements in Regulation E, the process for setting up preauthorized EFTs is unnecessarily complex to the point that it may discourage consumers from setting up recurring transactions. While consumers may choose not to use preauthorized EFTs for a number of reasons, ease and efficiency of access should not be one of them, especially where such services could help a consumer to responsibly manage debt and avoid delinquency by making automatic payments. By using its authority to clarify the regulation by (a) defining ‘similarly authenticated’ to include authorizations by e-mail, text, chat, or other electronic means and (b) permitting financial institutions to provide the summary of the authorization electronically, the Bureau can modernize this outdated and unduly burdensome regulation while achieving its goals of protecting consumers and enabling efficient access to financial products and services.” – Discover (-0069)

**Overdraft model forms/testing:**

“Yet another recurring challenge faced by financial institutions relates to making Regulation E disclosures when there is a new type of electronic fund transfer or when there is a payment systems issue that impacts a financial institution’s customers but is not directly the result of anything done by the financial institution. For example, consider the issue of temporary debit authorization holds and the impact the practice has on consumer overdrafts. ... Not only has

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<sup>98</sup> Comment letter submitted by Lauren Saunders on behalf of a group of 30 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 3 of the Additional Notes section for this RFI.

the issue resulted in litigation, but it has become a common topic in bank examinations and audits. The subject is a perfect issue to be addressed within Regulation E. Despite that, Appendix A of Regulation E does not provide any examples or safe harbor language institutions can use to help make consumers aware of this issue.” – Wolters Kluwer (-0033)

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**Dispute resolution:**

Others	<p>“The dispute resolution provisions in Regulation E and Regulation Z should be revised for consistency and to reduce unfair burden on the financial institution/creditor by requiring cooperation by the consumer. ... The consumer should be required to file a police report with local law enforcement if requested by the financial institution/creditor. ... The consumer should be required to dispute the transaction with the vendor. ... The consumer should be required to provide prompt notice to the financial institution/creditor based on when the consumer is first notified of the discrepancy.” – Anonymous (-0066)</p>
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#### 4. Regulation X (implementing RESPA)<sup>99</sup>

Commenter Type	Representative Sentiments
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**Section 8(c)(2), need for additional rules or guidance generally:**

Trade groups

“The industry needs clear rules of the road so that participants can compete on a level playing field. In its enforcement actions, the Bureau consistently disregarded RESPA’s express statement that Section 8 does not prohibit ‘the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.’ ... The court [in *PHH*] stated that ‘[t]he CFPB’s interpretation flouts that statutory goal and upends the entire system of unpaid referrals that has been part of the market for real estate settlement services.’ ... Consistent with the D.C. Circuit’s decision, the Bureau should amend Regulation X and its official interpretations to provide clear guidance on the permissibility of the following common industry business arrangements. ... While the Bureau cannot address every factual scenario, guidance on the most prevalent will significantly reduce uncertainty. The majority of industry participants will seek to operate within the safe harbors created by the Bureau’s guidance. This additional clarity will protect consumers and create a more level playing field for industry. 1. Marketing Services Agreements ... 2. Joint Advertising Agreements ... 3. Desk Rentals ... 4. Lead Generators.” [Note: Each of these four enumerated items included a short descriptive paragraph.] – MBA (-0048) (emphasis omitted)

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<sup>99</sup> Subtopics for the Regulation X comments include: (1) implementation of section 8(c)(2) specifically; (2) updating section 8 regulations generally; (3) referrals and marketing services agreements; (4) affiliated business arrangements; (5) opposition to weakening the regulations; (6) harms to competition and level playing field; (7) homeownership counseling disclosures; (8) co-marketing; (9) implementation of section 8(c) generally; (10) disclosures; (11) definitions; (12) scope of coverage; (13) things of value; (14) enforcement; (15) reverse mortgages; (16) lender credits; (17) assignee liability; and (18) interaction with UDAAP.

**Update Section 8 generally, including for new practices and technology advances:**

"The Real Estate Settlement Procedures Act, passed in 1974, and its implementing regulation, Regulation X, have played an important role in informing and protecting consumers in mortgage transactions for decades. However, RESPA is showing its age in many respects. Numerous changes have been made over the years to add or amend elements of its coverage as new and additional concerns came to light. In some cases, these changes were not fully integrated to address all impacted sections of the Act, Regulation, and interpretive materials. In other cases, the rules have not kept up with changes in the market as products, practices and technological innovations have developed and evolved. In order for RESPA to efficiently achieve its goals, many existing shortcomings in the Regulation and its interpretive materials must be addressed. ... Currently, the rules regarding the applicability of RESPA Section 8 to numerous common activities are confusing and imprecise. ... In order to limit fear of liability and quell lenders' concerns about adequate compliance, the industry needs a clear test for Section 8 compliance. Particular areas in need of clarity include the need for further guidance on relationships with marketers, builders, and other service providers such as relocation vendors; and further clarification as to how to evidence the market value of services rendered." – HPC (-0060)

**Referrals and marketing services agreements:**

"ABA recommends that the Bureau devote resources to review Section 8's anti-kick-back provisions, including the existing rule, recent orders (including private consent orders), and guidelines and update the regulation as appropriate. ... Coupled with the Bureau's history of questionable RESPA interpretations, applying Section 8 to new modes of business and communication in an electronic world significantly increases compliance challenges and legal risks. Considering the importance of Section 8 to the regulation of settlement services and the fact that violators are subject not only to significant potential fines, but imprisonment, it is critical that the Bureau modernize these sections of the regulation to ensure requirements are clear and that they do not inappropriately impede innovation and progress in the developing digital world. ... Every new bank mortgage product, every step to enhance mortgage-related digital capability, and every relationship with third-party market partners is entangled in the vague and uncertain requirements of Section 8. These legal uncertainties include: Hyperlinks and 'Click-Throughs' ... Leads vs. Referrals ... Endorsements ... Website Operators ... Facility ... Marketing Agreements--The Bureau should provide direction on how to analyze the legality of compensation paid to real estate professionals for *bona fide* marketing and advertising service given the growth and variety of such agreements. ... Consumer Discounts." [Note: Similar to "Marketing Agreements," each of the other items in this list included a short description of the item.] – ABA (-0028) (emphasis omitted)

**Affiliated business arrangements:**

"Similarly, the *Borders* decision and the prior decision in *Carter vs. Welles Bowen* (6th Circuit) has sown some confusion as well. The core rule for an affiliated business arrangement (AfBA) is of course section 8(c)4 [sic] that requires prompt disclosure, limits profit to a reasonable and commensurate return on investment, and prohibits required use of the AfBA. Adding some additional color to these provisions via guidance to prevent the creation of sham entities that provide no real services would benefit consumers and compliant AfBAs." – The Real Estate Services Providers Council, Inc. (-0015)

Consumer advocacy groups

**Opposes weakening Regulation X generally and Section 8 specifically:**

“RESPA and Regulation X are intended to ensure that consumers in real estate transactions receive timely information about the nature and cost of the settlement process and to protect consumers from unnecessarily high settlement charges caused by certain abusive practices. This is accomplished through a combination of disclosure and restrictions on kickbacks and referral fees. After more than 40 years, the mortgage industry has long been accustomed to Regulation X compliance and the rule continues to meet the needs of mortgage borrowers. We support Regulation X and oppose any effort to weaken its protections. In particular, the regulations implementing the ban on kickbacks and referral fees are effective and should not be weakened. This rule is vital to RESPA’s original purpose by preventing consumers from being steered into high-cost settlement services by hidden incentives.” – 42 consumer advocacy groups (-0063)<sup>100</sup>

**Affiliated business arrangements:**

“While we do not recommend opening Regulation X for amendments, if the CFPB does so, it should consider [the following change]. … [T]he affiliated business rule is a gaping loophole in RESPA’s otherwise strong ban on referral fees and kickbacks. The statute clearly allows affiliated business arrangements, but Regulation X should more strictly regulate them. Service providers know that consumers have difficulty shopping for settlement services and must accept whatever the provider offers. As a result, merely disclosing the arrangement is not enough. The CFPB should ensure that the arrangement is legitimate and not merely a cover for illegal conduct.” – 32 consumer advocacy groups (-0064)

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Other industry

**Harms to competition/Level playing field:**

“In addition there are many Joint Ventures, AFBA’s, Marketing agreements, that are just legal form of kick backs to realtors, lenders, loan officers, builders etc. especially here in Ohio. This is not good for the consumer and also causes unfair business practices that are hard to compete against when you operate within the rules and laws and with ethics, integrity and professionalism. Realtors and lenders who direct business to title companies constantly have their hands out for kick backs, gifts, and exorbitant entertainment to send their business to title companies. it needs to be cleaned up with real enforcement and crack downs.”

– TransCounty Title Agency (-0027)

**Homeownership counseling disclosures:**

“Reg. X: 1024.20 requires creditors to provide a list of homeownership counseling organizations. The requirement to provide a list of homeownership counselors is an unnecessary burden on creditors. The information within the list could be provided to borrowers in a more efficient alternative manner than today’s requirement. … As an alternative to today’s separate disclosure, the availability of homeownership counseling can be disclosed on the third page of the Loan Estimate with verbiage such as: ‘You can access a list of nationwide HUD-approved housing counselors at [http://portal.hud.gov/hudportal/HUD?src=/ohc\\_nint](http://portal.hud.gov/hudportal/HUD?src=/ohc_nint). You may also request a list from your loan originator.’ If requested, the creditor should supply the list within three business days. A

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<sup>100</sup> Comment letter submitted by Jose Alcoff on behalf of a group of 42 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 4 of the Additional Notes section for this RFI.

similar process has worked well for the mortgage servicing transfer information which now resides on the loan estimate's third page after previously being a required separate document." – Brian Holst (-0007)

## 5. Regulation Z (implementing TILA), Open-end Credit<sup>101</sup>

Commenter	Representative Sentiments
Type	
Trade groups	<p><b>Account upgrades/consolidations:</b></p> <p>"To illustrate, Regulation Z's prohibition on increasing fees in an account's first year<sup>29</sup> in certain circumstances prevents customers from 'trading up' benefits (such as richer rewards) but is subject to a higher annual fee or APR. ... The advance change in term notice requirement poses similar inconvenience and potential costs when customers want to trade up (regardless of how long the account has been open). Where a material term is changing, customers may have to wait 45 days to trade up, potentially incurring an additional annual fee and losing opportunities for preferred rewards or other desired features." – ABA (-0028)</p>
Consumer advocacy groups	<p><b>Balance transfers:</b></p> <p>"While Regulation Z permits changes to a credit product without enduring the CIT waiting period for paper access checks, this exemption should be modernized to cover other notice and payment technologies that provide effective disclosure, and permit informed affirmative consent. ... There is no reason to believe that consumers are more likely to understand disclosures on paper checks than they are to understand the same disclosures on channels they more frequently use, including digital channels." – CBA (-0054)</p>
Consumer advocacy groups	<p><b>Overdraft credit:</b></p> <p>"Regulate overdrafts as credit under Regulation Z, subject to an ability-to-repay assessment and repayment through installments. Overdraft fees have long enjoyed a regulatory pass in many respects because banks have posited that overdraft is not being used as credit but instead is merely an occasional courtesy. However, data showing that many consumers are charged many fees annually belies this argument." – 30 consumer advocacy groups (-0061) (emphasis omitted)</p>
	<p><b>Deferred interest plans:</b></p> <p>"Deferred interest promotions are one of the biggest credit card abuses that remains after the enactment of the Credit CARD Act. We urge the CFPB, as we have many times before, to ban this deceptive and costly practice." – 32 consumer advocacy groups (-0064)</p>

<sup>101</sup> Subtopics for the Regulation Z open-end credit comments include: (1) account upgrades and consolidations; (2) balance transfers; (3) covering overdraft under Regulation Z; (4) deferred interest plans; (5) advertising rules; (6) electronic disclosures; (7) foreign transaction fees as finance charges; (8) dispute resolution; (9) penalty fee safe harbors; (10) disclosures returned undeliverable; (11) penalty rate notices; (12) unauthorized transactions; (13) submission of credit card agreements to the Bureau; (14) ability to pay provisions; (15) calculation of APRs; and (16) convenience checks.

**Advertising rules – trigger terms:**

“Amending Regulation Z to eliminate the trigger-term disclosure requirement would not create any additional risk of consumer harm, because all of the disclosures are provided to consumers in other ways. Further, eliminating this duplicative disclosure requirement would promote the Bureau’s statutory objectives by helping to eliminate unnecessary burdens and ensure that consumers receive clear, simple, and understandable information to help them make financial decisions.” – Discover (-0069)

**Other industry**

**Electronic disclosures:**

“We therefore recommend that the Bureau use its authority to exempt disclosures from the E-Sign Act’s consent requirements when a consumer uses electronic means to engage in online and mobile banking services, such as Regulation E disclosures under 12 C.F.R. 1005.7, adverse action notices under Regulation B, and Regulation Z credit card disclosures after the account is open. For these disclosures, the Bureau could implement a more streamlined notice requirement that is more relevant and more likely to be understood by consumers.” – Discover (-0069)

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**Foreign transaction fees as finance charges:**

“For example, the staff commentary to Reg Z, 12 CFR 1026.4(a)-4(ii) provides that a finance charge includes any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States ... regardless of whether a charge is imposed on debit cardholders for such transactions. ... For federal credit unions, however, the commentary might be interpreted to impact a federal credit unions ability to assess foreign transaction fees because of the interest cap on federal credit union lending under 12 CFR 701.21. ... Instead of the commentary that was drafted, the CFPB (or FRB if this is an inherited provision) could have required the foreign transaction fee to be included in the solicitation and account-opening disclosure tables, without changing the commentary to provide that the foreign transaction fee is a finance charge and without changing the basic notion that a fee imposed on both a cash transaction and a credit transaction is not a finance charge. The CFPB could have achieved its result (disclosure) without adversely impacting federal credit unions.” – Anonymous (-0082)

**Others**

**Dispute resolution:**

“The dispute resolution provisions in Regulation E and Regulation Z should be revised for consistency and to reduce unfair burden on the financial institution/creditor by requiring cooperation by the consumer. ... The consumer should be required to file a police report with local law enforcement if requested by the financial institution/creditor. ... The consumer should be required to dispute the transaction with the vendor. ... The consumer should be required to provide prompt notice to the financial institution/creditor based on when the consumer is first notified of the discrepancy.” – Anonymous (-0066)

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## RFI Topic Areas (Cross-Cutting Issues)

	<b>Topic</b>	<b>Description</b>	<b>Total Number of Comment Letters<sup>102</sup></b>
1	Electronic Disclosure	This topic includes comment letters that related to the use of electronic disclosures.	28 14 trade groups 9 consumer advocacy groups 4 other industry 1 other
2	Innovation	This topic includes comment letters that specifically used the keywords “innovation” or “innovate.” <sup>103</sup>	27 17 trade groups 0 consumer advocacy groups 6 other industry 4 other

## Representative Sentiments (Cross-Cutting Issues)

### 1. Electronic Disclosures<sup>104</sup>

<b>Commenter Type</b>	<b>Representative Sentiments</b>
<b>E-Sign coverage/potential exemptions:</b>	
Trade groups	“Rules should generally reflect that electronic disclosures can be delivered without E-Sign consent, and should foster flexibility in how electronic disclosures are provided.” – CCMC (Adopted -0093) <sup>105</sup>

<sup>102</sup> The total number of comment letters for each topic includes the comment letters relevant to that topic regardless of whether the comment letter was submitted to the Adopted, Inherited, Rulemaking Processes, or Guidance RFI.

<sup>103</sup> This topic does not include comment letters that discussed technology or other issues that could impact innovation, if the comment letter did not specifically use the terms “innovation” or “innovate.”

<sup>105</sup> Comments quoted in this part were submitted on the Inherited RFI docket (CFPB-2018-0012) unless otherwise noted.

**E-Sign reasonable demonstration requirement:**

“[T]he Bureau should provide guidance on what consumer conduct constitutes ‘reasonable demonstration of access’ to electronically receive and access information, especially when consumers consent to a bank’s E-SIGN disclosure using bank technology (for example at a branch on a bank-provided device).” – AFSA (-0047)

**Hyperlinks:**

“[I]nteractive technologies offer a means of delivering information that is more consumer-friendly than paper-based disclosures. By presenting key terms of information in summary form and including links to additional information, consumers can access information more quickly and efficiently in an interactive electronic format than they can with paper disclosures.” – ABA (-0028)

**Clear and conspicuous, screen size/machine readability, retainability:**

“[C]urrent requirements for written disclosures, including the formatting and presentation requirements, impede the advancement of efficient electronic disclosures. ... [W]e recommend that the Bureau undertake a ground up review of formatting and related presentation requirements that may not be suited for emerging communications technologies, and ... develop alternative standards that can be used for different modes of communications.” – ABA (-0028)

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**E-Sign coverage/potential exemptions:**

“[W]e oppose giving providers more latitude to deliver disclosures, statements, records or other information electronically for consumers who prefer a paper format using postal mail. ... Financial institutions can substitute electronic delivery for paper statements, but only in compliance with ... [E-Sign].” – 29 consumer advocacy groups (-0062)<sup>105</sup>

**Right/access to free paper statements:**

Consumer advocacy groups  
“Paper disclosures and statements must be available for free for consumers who want them, and consumers should not be coerced into electronic versions or steered into them by default if paper is the consumer’s first choice. Paper is a more reliable way of ensuring that the consumer actually sees the information, can digest it as time permits, and can retain important records. Millions of Americans -- particularly those who are lower-income, less educated, older, and households of color -- are on the other side of the ‘digital divide,’ lacking home broadband Internet access.” – 29 consumer advocacy groups (-0062)

**Hyperlinks:**

“[F]ee disclosures forms should be provided on websites in a location that is clear and easily accessible for all accounts that may be opened online or that contain pricing information. The fee schedules should be prominent and easy to access before beginning the sign-up process

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<sup>105</sup> Comments quoted in this part were submitted on the Inherited RFI docket (CFPB-2018-0012) unless otherwise noted.

<sup>106</sup> Comment letter submitted by Chi Chi Wu on behalf of a group of 29 consumer, community, civil rights, and legal services groups. The full list of signatories to this comment letter can be found in item 5 of the Additional Notes section for this RFI.

or any personal information is collected from the consumer.” – 30 consumer advocacy groups (-0061)

**Clear and conspicuous, screen size/machine readability, retainability:**

“[S]ome products are too complex to be adequately disclosed on a mobile device, and not all electronic information can be saved and retained by the consumer. ... Consumers must have the right to receive critical information in the manner that works for them.” – 29 consumer advocacy groups (-0062)

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**E-Sign coverage/potential exemptions:**

“The Bureau can effectively achieve its consumer-protection objectives and reduce unwarranted regulatory burdens under the E-Sign Act by exempting certain disclosures from its electronic-document consent requirement. ... This consent requirement is no longer necessary and has become confusing for consumers who are already engaged via an electronic channel and reasonably expect that relevant disclosures will be provided in that electronic channel.” – Discover (-0069)

**E-Sign reasonable demonstration requirement:**

Other industry

“[T]here is no bright line test for determining what it means to ‘reasonably demonstrate’ that the consumer can access the information in the electronic form in which it is provided, and many financial institutions have determined that it is unworkable to offer electronic disclosures, particularly in face-to-face account openings. ... Visa believes that the Bureau has the authority to address the impediments of the E-SIGN ‘reasonable demonstration’ requirement in most, if not all, of the consumer financial services laws for which it has rule writing authority to allow information that must be provided ‘in writing’ to be provided electronically on a screen.” – Visa (Adopted -0104)

**Clear and conspicuous, screen size/machine readability, retainability:**

“Although nothing in the Bureau’s regulations precludes a financial institution from providing disclosures on a mobile device, certain specific requirements (e.g., font size requirements) make it challenging for financial institutions to provide clear and conspicuous disclosure via newer and emerging mechanisms.” – Visa (Adopted -0104)

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Other

**Right/access to free paper statements:**

“Any proposal to shift mandatory disclosures to electronic delivery alone ... raises serious questions about the effectiveness of that form of delivery. ... Empirical research has shown that virtually no consumers actually read ... electronic disclosures.” – Financial Regulation and Consumer Protection Scholars (Adopted -0039)<sup>107</sup>

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<sup>107</sup> Comment letter submitted by Patricia McCoy on behalf of a group of scholars and former regulators. The full list of signatories to this comment letter can be found in item 6 of the Additional Notes section for this RFI.

2. Innovation<sup>108</sup>

Commenter Type	Representative Sentiments
<b>Alternative data:</b>	
“[T]he Bureau should clarify for institutions that providing more than four reasons for an adverse action or denial of an application is not a regulatory violation. As financial institutions look to incorporate the use of alternative data and modeling techniques in their credit process to make credit more readily available for consumers, providing more than four reasons for an adverse action will help inform consumers, especially as it may be difficult to distinguish and convey the primary reason for denial.” – CBA (-0054)	
<b>Data aggregation:</b>	
Trade groups	“The Bureau should proceed carefully in the context of third-party access to consumer data. Credit unions are concerned with the very real threats to financial account providers, such as potential liability and the potential harm to consumers. Such harm could result from unauthorized account access or authorized access by unscrupulous third-party aggregators.” – CUNA (Adopted -0034)
<b>General innovation:</b>	
“Bureau regulations should promote innovation in the consumer finance market and protect consumer choice and access to a range of financial products and services. When regulation is deemed necessary, the Bureau’s rules should be narrowly tailored to achieve the Bureau’s goal while minimizing unnecessary burdens on the affected industries.” – ETA (Adopted -0062)	
<b>Disparate impact:</b>	
Other industry	“[T]he application of disparate impact to ECOA/Reg B may unnecessarily chill beneficial innovations that can help to improve the accessibility and cost of consumer credit. For example, new technologies are enabling institutions to develop new algorithms for credit scoring or underwriting models that could expand credit access to new consumers previously unable to qualify for credit. ... However, these beneficial new products or practices may be chilled by an overzealous interpretation of ECOA/Reg B that creates significant risk for using these otherwise neutral innovations.” – Discover (-0069)
“We believe the Bureau should maintain the disparate impact regime as it (a) can address a widely held policy concern while flexibly accommodating innovation in data, machine learning, and AI, (b) has not been onerous to comply with in our experience, and (c) provides	

<sup>108</sup> Subtopics for innovation comments include: (1) alternative data; (2) data aggregation; (3) general innovation; (4) disparate impact; (5) regulatory sandboxes; (6) prepaid accounts; (7) mortgage servicing; (8) RESPA; and (9) FCRA.

the regulatory stability that supports innovation and investment.” – LendingClub  
(Adopted -0075)

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**Regulatory sandboxes:**

“Federal regulation poses an impediment to state efforts to enhance consumer welfare through FinTech investment and innovation. To help fulfill the promise of FinTech for consumers and entrepreneurs alike, the CFPB should partner with states to facilitate regulatory sandbox environments.” – Attorney General of Arizona (-0038)

**General innovation:**

Other	“Even beyond our very recent and catastrophic experiences with deregulation, the very suggestion of innovation implies that existing laws need to be interpreted in order to apply them to new financial products. It is unreasonable to expect the slow legislative process to adjust to every single new product with new laws. The best analogy is the creation of new drugs. Some may be medicinal, some will have no benefit except to foster addiction and the creation of a new market. We cannot wait until someone invents some new opioid or methamphetamine or cancer treatment to regulate it-- we leave that to rule-making authorities.” – Andrew Sedrel (-0005)
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## Additional Notes

1. The following organizations were signatories to the comment letter submitted by NCLC on behalf of a group of 41 consumer, community, civil rights, and legal services organizations, identified above as from “41 consumer advocacy groups” (-0068):

*Allied Progress*  
*Americans for Financial Reform*  
*Arizona Community Action Association*  
*Arkansans Against Abusive Payday Lending*  
*Atlanta Legal Aid Society, Inc.*  
*Bet Tzedek Legal Services (CA)*  
*CASH Campaign of Maryland*  
*Center for NYC Neighborhoods*  
*Consumer Action*  
*Consumer Federation of America*  
*Consumers Union*  
*Florida Alliance for Consumer Protection*  
*Georgia Watch*  
*Heartland Alliance for Human Needs & Human Rights*  
*Housing and Economic Rights Advocates (CA)*

*Housing Options & Planning Enterprises, Inc. (MD)*  
*Illinois People's Action*  
*Jacksonville Area Legal Aid, Inc.*  
*Legal Aid Society of San Diego, Inc.*  
*Low-Income Energy Affordability Network (MA)*  
*Main Street Alliance*  
*Maryland Consumer Rights Coalition*  
*Mississippi Center for Justice*  
*National Association of Consumer Advocates*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Fair Housing Alliance*  
*National Housing Law Project*  
*Neighborhood Housing Services of Baltimore*  
*New Jersey Citizen Action*  
*Pennsylvania Utility Law Project*  
*People's Action Institute*  
*Public Citizen*  
*Public Counsel (CA)*  
*Public Justice Center (MD)*  
*Public Law Center (CA)*  
*Public Utility Law Project of New York*  
*Texas Appleseed*  
*The Utility Reform Network (CA)*  
*U.S. PIRG*  
*West Virginia Center on Budget and Policy*  
*Woodstock Institute*

2. The following organizations were signatories to the comment letter submitted by Carolyn Carter on behalf of a group of 32 consumer, community, civil rights, and legal services groups, identified above as from “32 consumer advocacy groups” (-0064):

*Allied Progress*  
*Americans for Financial Reform*  
*Arizona Community Action Association*  
*Arkansans Against Abusive Payday Lending*  
*Atlanta Legal Aid Society, Inc.*

*CASH Campaign of Maryland*  
*Center for NYC Neighborhoods*  
*Center for Responsible Lending*  
*Consumer Action*  
*Consumer Federation of America*  
*Equal Justice Society*  
*Florida Alliance for Consumer Protection*  
*Heartland Alliance for Human Needs & Human Rights*  
*Housing Options & Planning Enterprises, Inc.*  
*Illinois People's Action*  
*Main Street Alliance*  
*Maryland Consumer Rights Coalition*  
*Mississippi Center for Justice*  
*National Association of Consumer Advocates*  
*National Association of Social Workers*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Fair Housing Alliance*  
*National Housing Law Project*  
*Neighborhood Housing Services of Baltimore*  
*New Jersey Citizen Action*  
*People's Action Institute*  
*Public Counsel*  
*Public Justice Center*  
*Public Law Center*  
*Texas Appleseed*  
*U.S. PIRG*  
*West Virginia Center on Budget and Policy*

3. The following organizations were signatories to the comment letter submitted by Lauren Saunders on behalf of a group of 30 consumer, community, civil rights, and legal services groups, identified above as from “30 consumer advocacy groups” (-0061):

*Allied Progress*  
*Americans for Financial Reform*  
*Arizona Community Action Association*  
*Arkansans Against Abusive Payday Lending*

*Atlanta Legal Aid Society, Inc.*  
*CASH Campaign of Maryland*  
*Center for NYC Neighborhoods*  
*Consumer Action*  
*Consumer Federation of America*  
*Consumers Union*  
*Equal Justice Society*  
*Heartland Alliance for Human Needs & Human Rights*  
*Housing Options & Planning Enterprises, Inc.*  
*Illinois People's Action*  
*Main Street Alliance*  
*Maryland Consumer Rights Coalition*  
*Mississippi Center for Justice*  
*National Association of Consumer Advocates*  
*National Association of Social Workers*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Fair Housing Alliance*  
*New Jersey Citizen Action*  
*People's Action Institute*  
*Public Counsel*  
*Public Justice Center (Baltimore, MD)*  
*Public Law Center (Santa Ana, CA)*  
*Texas Appleseed*  
*U.S. PIRG*  
*West Virginia Center on Budget and Policy*  
*Woodstock Institute*

4. The following organizations were signatories to the comment letter submitted by Jose Alcoff on behalf of a group of 42 consumer, community, civil rights, and legal services groups, identified above as from “42 consumer advocacy groups” (-0063):

*Allied Progress*  
*Americans for Financial Reform*  
*Arizona Community Action Association*  
*Arkansans Against Abusive Payday Lending*  
*Atlanta Legal Aid Society, Inc.*

*Baltimore Neighborhoods, Inc.*  
*CASH Campaign of Maryland*  
*Center for Economic Integrity*  
*Center for NYC Neighborhoods*  
*Center for Responsible Lending*  
*Consumer Action*  
*Consumer Federation of America*  
*Equal Justice Society*  
*Florida Alliance for Consumer Protection*  
*Georgia Watch*  
*Heartland Alliance for Human Needs & Human Rights*  
*Housing Options & Planning Enterprises, Inc.*  
*Illinois People's Action*  
*Jacksonville Area Legal Aid, Inc.*  
*Leadership Conference on Civil and Human Rights*  
*Legal Services NYC*  
*Main Street Alliance*  
*Maryland Consumer Rights Coalition*  
*Mississippi Center for Justice*  
*NAACP*  
*National Association of Consumer Advocates*  
*National Association of Social Workers*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Fair Housing Alliance*  
*National Housing Law Project*  
*Neighborhood Housing Services of Baltimore*  
*New Jersey Citizen Action*  
*People's Action Institute*  
*Public Citizen*  
*Public Counsel*  
*Public Justice Center*  
*Public Law Center*  
*Texas Appleseed*  
*U.S. PIRG*  
*UnidosUS*

*West Virginia Center on Budget and Policy  
Woodstock Institute*

5. The following organizations were signatories to the comment letter submitted by Chi Chi Wu on behalf of a group of 29 consumer, community, civil rights, and legal services groups, identified above as from “29 consumer advocacy groups” (-0062):

*Allied Progress  
Americans for Financial Reform  
Arizona Community Action Association  
Arkansans Against Abusive Payday Lending  
Atlanta Legal Aid Society, Inc.  
CASH Campaign of Maryland  
Center for NYC Neighborhoods  
Consumer Action  
Consumer Federation of America  
Equal Justice Society  
Georgia Watch  
Heartland Alliance for Human Needs & Human Rights  
Housing Options & Planning Enterprises, Inc.  
Illinois People’s Action  
Main Street Alliance  
Maryland Consumer Rights Coalition  
Mississippi Center for Justice  
National Association of Consumer Advocates  
National Association of Social Workers  
National Consumer Law Center (on behalf of its low income clients)  
National Fair Housing Alliance  
New Jersey Citizen Action  
People’s Action Institute  
Public Counsel  
Public Justice Center  
Texas Appleseed  
U.S. PIRG  
West Virginia Center on Budget and Policy  
Woodstock Institute*

6. The following individuals were signatories to the letter submitted by Patricia McCoy on behalf of a group of scholars and former regulators, identified above as from “Financial Regulation and Consumer Protection Scholars” (Adopted -0039):<sup>109</sup>

- Patricia A. McCoy  
Professor of Law, Boston College Law School  
Former Assistant Director, Mortgage Markets, Consumer Financial Protection Bureau
- Richard Alderman  
Professor Emeritus and Director, Center for Consumer Law  
University of Houston Law Center
- William Black  
Associate Professor of Economics and Law  
University of Missouri-Kansas City
- Susan Block-Lieb  
Cooper Family Professor of Urban Legal Issues  
Fordham Law School
- Lauren Dreshman  
Associate Professor/Paralegal and Law Program Director  
Sinclair College
- Kate Elengold  
Clinical Associate Professor of Law; Director, Consumer Financial Transactions Clinic  
University of North Carolina School of Law; Former Trial Attorney, United States  
Department of Justice
- Kathleen Engel  
Research Professor  
Suffolk University Law School

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<sup>109</sup> Names, titles, and affiliations are listed as they appear in the letter. This same general group also submitted comments quoted in other parts of this report, though some signatories vary and the titles and affiliations for those listed are not consistent across all letters.

- Robert Fellmeth  
Price Professor of Public Interest Law  
University of San Diego School of Law
- Linda Fisher  
Professor of Law  
Seton Hall University School of Law
- Anne Fleming  
Associate Professor of Law  
Georgetown University Law Center
- Pamela Foohey  
Associate Professor of Law  
Indiana University Maurer School of Law
- Judith Fox  
Clinical Professor  
Notre Dame Law School
- Jeffrey Gentes  
Visiting Clinical Lecturer  
Yale Law School
- Michael Greenfield  
George Alexander Madill Professor of Contracts and Commercial Law  
Washington University in St. Louis
- Dalié Jiménez  
Professor of Law  
University of California, Irvine School of Law
- Kathleen Keest  
Formerly Iowa Attorney General's Office, Consumer Protection Division
- Daniela Kraiem  
Associate Director, Women and the Law Program  
American University, Washington College of Law

- Angela Littwin  
Robert D. Krist Professor of Law  
University of Texas
- Cathy Mansfield  
Professor of Law  
Drake University Law School
- Nathalie Martin  
Frederick M. Hart Chair in Consumer and Clinical Law  
University of New Mexico School of Law
- Christopher Odinet  
Horatio C. Thompson Assistant Professor of Law  
Southern University Law Center
- Gary Pieples  
Teaching Professor and Clinic Director  
Syracuse University
- David Reiss  
Professor of Law  
Brooklyn Law School
- Jacob Rugh  
Assistant Professor of Sociology  
Brigham Young University
- Jacob Russell  
Assistant Professor of Law  
Rutgers Law School
- Ann Shalleck  
Professor of Law and Carrington Shields Scholar  
American University, Washington College of Law
- Lea Krivinskas Shepard  
Professor of Law  
Loyola University Chicago School of Law

- Alexandra Sickler  
Associate Professor of Law  
University of North Dakota School of Law
- Neil Sobol  
Professor  
Texas A&M University School of Law
- Gregory Squires  
Professor of Sociology and Public Policy and Public Administration  
George Washington University
- Mark E. Steiner  
Professor of Law  
South Texas College of Law Houston
- Mark Totten  
Associate Professor  
Michigan State University College of Law
- Rebecca Tushnet  
Frank Stanton Professor of First Amendment Law  
Harvard University
- William Vukowich  
Professor of Law  
Georgetown Law School
- Alan White  
Professor of Law  
CUNY School of Law
- Amy Widman  
Associate Professor  
Northern Illinois University College of Law
- Arthur Wilmarth  
Professor of Law  
George Washington University Law School

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## 2.4 Guidance and Implementation Support

### Background

The Bureau, since its inception, has provided guidance through a variety of means, and its guidance and implementation support functions are continuing to evolve in response to feedback from industry and other stakeholders. The Bureau published the RFI regarding guidance and implementation support (Guidance RFI) on April 4, 2018 (CFPB-2018-0013), to seek feedback on current and potential new forms of guidance.

First, the Guidance RFI discussed the types of guidance in the context of the APA. As explained in the RFI, currently, the Bureau’s guidance can be bucketed into one of the following categories:

1. Interpretive Rules
2. General Statements of Policy
3. Non-Rule Guidance

In explaining the types of guidance, the Bureau explained the tradeoffs it must consider when issuing guidance and how those tradeoffs differ for each category of guidance. These tradeoffs include the timeframes to develop, issue, and publish, the binding effect it has on the Bureau and industry, risk of revisiting guidance issued too quickly, the deference it receives from courts, the certainty and reliability of the guidance, and the ease of access to guidance.

After providing the APA framework and tradeoffs, the RFI then requested input and feedback on its current and potential future guidance functions, taking the framework and tradeoffs into consideration. The following types of guidance or guidance related items were highlighted in the Guidance RFI:

- The Bureau’s regulatory inquiries function;
- The Bureau’s existing implementation deliverable types including Small Entity Compliance Guides and webinars;
- Potential new deliverable types, including an advisory letter program and FAQs;

- SEFL guidance materials, including compliance bulletins;
- The disclaimers used on non-rule guidance documents; and
- The use of Official Interpretations (or rule commentary) to provide guidance.

For each type of guidance, the Bureau asked for general opinions on the structure of the current program or potential new program, as well as specific thoughts on the formats, processes, and delivery methods for providing such guidance consistent with applicable law (e.g., the APA).

## Methodology and Definitions

In addition to the methodology described above, below are notes specific to the methodology for the Guidance RFI's respective sections.

### **Comment Summary**

The data in the “Comment Summary” section below includes all comment letters submitted to the Guidance RFI docket. Additionally, the data in this section includes comment letters submitted on the Rulemaking Processes RFI, Adopted RFI, and Inherited RFI that are relevant to guidance topics and processes.

### **RFI Topic Areas**

The data in the “RFI Topic Areas” section below includes all comment letters relevant to each topic area listed. The topic areas presented are the main topics addressed in the Guidance RFI.<sup>110</sup>

Because commenters generally did not reference the specific RFI question or always state the type of guidance they were addressing, reviewers had to use some judgment in deciding which comments were relevant to which topic areas. Thus, the data included in the selected topic areas are based on our assumptions during review. Additionally, they are included regardless of the docket to which they were submitted. For example, if a comment letter submitted under the

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<sup>110</sup> Aside from the topic areas discussed below, 34 comments also discussed topics unaddressed by the RFI, such as the Bureau’s website structure, the eRegulations Tool, or only requests for guidance material on specific regulations. Those discussions are not a part of the summary below, but the Regulatory Implementation Team has reviewed them as they pertain to active workstreams, and an analysis can be provided upon request. Additionally, both comment letters that were solely about requests for guidance on specific regulations and comments on topic for the Guidance RFI that also included specific regulation guidance requests were referred to the Adopted and Inherited RFIs team if the guidance requests seemed to include interpretive rule requests.

Rulemaking Processes RFI was relevant, in whole or in part, to the Bureau’s use of official commentary to memorialize guidance, the comment letter is captured in this table’s data under Official Interpretation for Guidance. Further, all comments on use of official commentary for guidance were grouped into one category, rather than separated by the sub-questions present in the RFI.

Our intention was to provide an accurate count of all comment letters relating to each specific topic area regardless of whether the commenter submitted the comments under the Rulemaking Processes RFI, Adopted RFI, Inherited RFI, or Guidance RFI; that information would not otherwise be captured elsewhere in this report. However, the numbers do not necessarily reflect the relative importance to commenters or the level of detail in comments on particular issues. Additionally, the numbers do not reflect how many were in favor or opposed, if asked in the RFI.

### **Representative Sentiments**

The data in the “Representative Sentiments” section below reflects representative comments on each of the issues present within the topic areas arranged accordingly. Unlike the Rulemaking Processes, Adopted, and Inherited RFIs, the commenters on the Guidance RFI were consistent in their opinions. In topic areas where there was consistency, but two opposing views, each consensus is represented in that topic area. We have tried to select the most succinct articulations of each issue, even though that may mean that some commenters are quoted more frequently than others.

In selecting representative sentiments, we have focused on actionable comments (that is, specific suggestions to do or not do particular things, or expressing support for current practices). We have not included comments that simply recite historical background, even where such recitation may imply a complaint about Bureau practices, or that make only generalized statements without specific suggestions. However, the latter two types of comments were included in the relevant counts concerning substantive comments. Because 80% of the comments on the Guidance RFI came from industry and, as stated above, because there was commenter consensus on the issues, the number of comments and representative sentiments for each topic are not broken out separately by commenter type. We have not indicated below where

multiple commenters addressed an issue using substantially similar language due to space constraints.<sup>111</sup>

## Comment Summary

**Total comments:** 57<sup>112</sup>

**Substantive comments responsive to this RFI:** 42

**Substantive comments referred from other RFIs:** 8

**Substantive comments responsive to other RFIs:** 19<sup>113</sup>

<b>Substantive and responsive comments received from:<sup>114</sup></b>					
Individual Consumers	Individual Entities or Industry Members	Industry Trade Groups	Consumer Advocacy Groups	Government (i.e., other Federal agencies, state and local governments, US Senators)	Other (e.g., academia, non-consumer advocacy groups, etc.)
3	12 (+1) <sup>115</sup>	23 (+4)	2	3 (+2)	1 (+1)

<sup>111</sup> The Guidance RFI received one comment letter campaign from title insurance companies and trade groups. As this was a request for guidance in a specific area, it is among the 34 comments discussed in the prior footnote and further details can be provided upon request.

<sup>112</sup> 49 comments were originally posted to this RFI. Of those comments, 42 were substantive and responsive to this RFI, 2 were substantive, but responsive solely to other RFIs, and 5 were non-substantive. We also received an additional 8 substantive, non-duplicate comments from other RFIs, bringing the total substantive and responsive comments to this RFI to 57.

<sup>113</sup> 19 comments were responsive to other RFIs. 2 were solely responsive to other RFIs, while 17 were responsive to this RFI as well as other RFIs.

<sup>114</sup> Comments are counted for this purpose by letter; these tallies do not reflect multiple signatories to particular letters. (Multiple signatories are noted below for representative sentiments, where relevant. The commenter totals reflected here are for substantive comments only; non-substantive comments were not included.)

<sup>115</sup> The numbers in parentheses reflect the number of additional substantive comments submitted on other RFIs that were referred to us as relevant for this RFI by commenters who had not also submitted comments on this RFI directly.

## RFI Topic Areas

	<b>Topic</b>	<b>Description</b>	<b>Number of Comments</b>
1	Small Entity Compliance Guides, Executive Summaries, Webinars, FAQs and Quick Reference Materials	<p>Comments addressed the timing, format, and delivery method of the Regulatory Implementation team's non-rule guidance materials:</p> <ul style="list-style-type: none"> <li>▪ Small Entity Compliance Guides and quick reference materials</li> <li>▪ Executive Summaries</li> <li>▪ Webinars</li> <li>▪ FAQs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Small Entity Compliance Guides and quick reference materials: 19</li> <li>▪ Executive Summaries: 6</li> <li>▪ Webinars: 10</li> <li>▪ FAQs: 15</li> </ul>
2	Disclaimers	<p>Commenters addressed the appropriateness of the Bureau's use of disclaimers on its non-rule guidance materials which indicate guidance is non-binding, is not the regulation or law itself, and is only for illustrative or explanatory purposes. Commenters identified when disclaimers could be appropriate, how to make them more uniform and tailored, and when disclaimers were not appropriate.</p>	12
3	Advisory Opinion or No Action Letter Programs	<p>Commenters addressed whether the Bureau should consider more formal avenues of written guidance that are not interpretive rules, such as an advisory opinion program as part of its current guidance avenues or expansion of the current no-action letter program. Comments generally discussed the reasons for and against having an advisory opinion program or no-action letter program, suggested programs the Bureau might model based on other agencies, and requested more inclusion of safe harbors.</p>	10
4	Official Interpretations for Guidance	<p>Comments addressed the Bureau's use of Official Interpretations to provide guidance, and also the desire to see more guidance formalized in notice and comment</p>	11

	<b>Topic</b>	<b>Description</b>	<b>Number of Comments</b>
		rulemaking to be placed in the commentary, in a program like the Federal Reserve Board’s method of memorializing their FAQs in the Official interpretations.	
5	Regulatory Inquiries	Comments on the Bureau’s Regulatory Inquiries Function discussed whether to continue oral guidance to individual callers, the usefulness of written responses, the timing of initial and substantive responses, and whether and how answers should be publicized.	17
6	SEFL Guidance	Comments on the timing, content and scope of SEFL Guidance materials such Examination Procedures and Compliance Bulletins, and including Supervisory Highlights <sup>116</sup> . Comments addressed the effectiveness of SEFL Guidance, specifically use of examples and lack of safe harbor.	17

## Representative Sentiments

	<b>Topic</b>	<b>Representative Sentiments</b>
		<b>Small Entity Compliance Guides and quick reference materials:</b> “[Small Entity Compliance Guides and materials like that from the Bureau are] extremely helpful. ... It is clear that there is an open door at the Bureau to receive our input for future changes to that informal guidance and we thank you for that.” – American Escrow Association (-0042) <sup>117</sup>

<sup>116</sup> Although Supervisory Highlights were excluded from coverage of the Guidance RFI, commenters included discussion of these materials nonetheless, and because it was so prevalent they were not omitted from the sentiments section of this report.

<sup>117</sup> Comments quoted in this part 4 were submitted on the Guidance RFI docket (CFPB-2018-0013) unless otherwise noted.

and Quick  
Reference  
Materials

**Executive summaries:**

“We also encourage both comprehensive final rule summaries and short one-page summaries for final rules. Both summaries can be especially helpful for smaller lenders with limited compliance resources.” – THE Community Mortgage Lenders of America (-0032)

**Webinars:**

“The Bureau can add value by explaining the reasoning and foundation for the regulatory text and offering opportunities to respond to questions from listeners. New and different examples about how the statute or regulation should be applied are also helpful. ... Finally, published recordings and copies of the presentation materials and transcripts should be available after all webinars.” – ABA (-0024)

**FAQs:**

“[T]he Bureau should aggregate and periodically publish the questions received through the regulatory inquiries function. This information—both questions and answers—should provide the source material for additional Bureau guidance in the form of Frequently Asked Questions (FAQs). ... [T]hey should not be issued with a disclaimer. These FAQs should be regularly updated so as to reflect current concerns. The timing of FAQ updates should vary with the volume of regulatory inquiries received ... perhaps monthly ... [o]therwise, quarterly. ... Over time, the guidance contained in these FAQs should be memorialized in more formal guidance.” – MBA (-0035)

Disclaimers

“The value of Bureau guidance materials lies in their reliability. Unfortunately, the Bureau’s practice of using disclaimers to make guidance non-binding on the Bureau erodes much of its reliability. Regulated entities must be able to rely on guidance to ensure they are operating within the rules. ... [U]se disclaimers only when absolutely necessary and provide the rationale for doing so.” – MBA (-0035)

Advisory Opinion  
or No Action  
Letter Programs

“[The] ABA encourages the Bureau to consider [] the interpretive letters. ... Such advisory letters offer two advantages for the agency: (1) they allow the agency to consider and discuss carefully the specific facts and arrive at a careful interpretation; and (2) they set a precedent that can be used for future decisions, ensuring consistency across the agency and for other institutions if the guidance is published on the agency website, similar to the format used by the OCC. ... Another useful tool is the ‘no-action’ letter process ... , but we urge the Bureau to consider the approach taken by the [SEC] staff.” – ABA (-0024)

“We oppose the Bureau adopting an advisory opinion program. We believe that such a program would be duplicative and that the Bureau can communicate its policy positions and interpretations better through other means. The Bureau already operates a No Action Letter program and has a Trial Disclosure Waiver Policy. Both allow for individual exemptions from supervisory or enforcement actions. These programs, combined with [SEFL] guidance materials such as compliance bulletins, policy statements, and statements on supervisory practices are more than adequate to address questions of

CFPB supervision and enforcement policy.” – Financial Regulation and Consumer Protection Scholars (-0040)<sup>118</sup>

Official Interpretations for Guidance	“The Bureau should establish a process to formally memorialize Bureau interpretations conveyed in various advisory opinions and other standalone guidance documents in the Bureau’s Official Interpretations. … [T]he Bureau should establish a procedure for the Bureau’s commentary on rules and regulations to be updated on a regular basis.” – CBA (-0036)
Regulatory Inquiries	“The Bureau should accept inquiries regarding compliance with its regulations and guidance by telephone, email, or through its website. Responses to inquiries should be provided by Bureau staff within 24-48 hours of receiving the inquiry. For questions that require additional research, we strongly encourage Bureau staff to provide an initial response at least within the 24-48-hour timeframe. []The Bureau should track questions it receives from the industry. These questions should be used by Bureau staff to make annual adjustments to regulations or commentaries to address ambiguities. []If there are questions the Bureau receives frequently, we encourage it to also publish written guidance or Frequently Asked Questions (FAQs) with written interpretations to assist industry stakeholders on regulatory implementation.” – CUNA (-0009)
SEFL Guidance	<p><b>Use of Guidance in Supervision:</b></p> <p>“Properly train examiners so that they fully understand that guidance does not serve as the basis for formal supervisory criticism or enforcement action.” – Consumer Mortgage Coalition (-0041)</p> <p><b>Use of Guidance in Enforcement:</b></p> <p>“If, and when, the BCFP issues non-rule related interpretations or guidance, it should not take the position that such guidance takes on the force of a rule and that if industry members do not follow such guidance, they will be outside of compliance with the rule. …” – National Reverse Mortgage Lenders Association (-0030)</p> <p><b>Bulletins:</b></p> <p>“[M]erely announcing an enforcement stance and posture[] is counter-productive. … [I]f the bulletin states it is non-binding, the Bureau] should not use such a bulletin to support or undertake enforcement action … [before a] more consultative supervision … [or] formal rulemaking. …” – National Reverse Mortgage Lenders Association (-0030)</p> <p><b>Supervisory Highlights:</b></p> <p>“Of the dozen or more <i>Supervisory Highlights</i> published by the Bureau, only one publication noted proper and appropriate conduct [as opposed to incorrect conduct]. … [How to correctly comply] is helpful information. …” – ACA International (-0025)</p>

<sup>118</sup> Comment letter submitted by Adam Levitin on behalf of a group of scholars. The full list of signatories to this comment letter can be found in the Additional Notes section for this RFI.

## Additional Notes

1. The following individuals were signatories to the letter submitted by Adam Levitin on behalf of a group of scholars, identified above as from “Financial Regulation and Consumer Protection Scholars” (-oo4o):<sup>119</sup>

*Primary Drafter:*

- Adam Levitin, Agnes N. Williams Research Professor and Professor of Law, Georgetown University Law Center

*Drafting Committee:*

- Prentiss Cox, Associate Professor of Law, University of Minnesota Law School
- Kathleen Engel, Research Professor, Suffolk University Law School
- Judith Fox, Clinical Professor, Notre Dame Law School
- Dalié Jiménez, Professor of Law, University of California, Irvine School of Law
- Patricia A. McCoy, Professor of Law, Boston College Law School, [Former Assistant Director, Mortgage Markets, Consumer Financial Protection Bureau]
- Cathy Lesser Mansfield, Professor of Law, Drake University Law School
- Christopher Peterson, John J. Flynn Endowed Professor of Law, University of Utah College of Law
- Additional Signatories:
- William Black, Associate Professor of Economics and Law, University of Missouri-Kansas City

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<sup>119</sup> Names, titles, and affiliations are listed as they appear in the letter. This same general group also submitted comments quoted in other parts of this report, though some signatories vary and the titles and affiliations for those listed are not consistent across all letters.

- Susan Block-Lieb, Cooper Family Professor of Urban Legal Issues, Fordham University, School of Law
- Andrea Boyack, Professor, Washburn University School of Law
- Mark Budnitz, Professor of Law Emeritus, Georgia State University College of Law
- Stephen Calkins, Professor, Wayne State University Law School
- Susan DeJarnatt, Professor of Law, Temple University Beasley School of Law
- Rashmi Dyal-Chand, Professor of Law, Northeastern University
- Kurt Eggert, Professor of Law, Chapman University Fowler School of Law
- Kate Elengold, Clinical Associate Professor of Law, University of North Carolina School of Law
- Anne Fleming, Associate Professor [of] Law, Georgetown University Law Center
- Pamela Foohey, Associate Professor, Indiana University Maurer School of Law
- Anna Gelpern, Professor of Law, Georgetown University Law Center
- Jeffrey Gentes, Visiting Clinical Lecturer and Supervising Attorney, Yale Law School
- Robert Hockett, Edward Cornell Professor of Law, Cornell Law School
- Melissa Jacoby, Law Professor, University of North Carolina at Chapel Hill
- Dennis Keating, Emeritus Professor, Cleveland State University
- Angela Littwin, Professor, University of Texas School of Law
- Kent Markus, General Counsel, Cordray for Ohio
- James Nehf, Professor of Law and Cleon H. Foust Fellow, Indiana University McKinney School of Law
- Christopher Odinet, Horatio C. Thompson Assistant Professor of Law, Southern University Law Center

- Gary Pieples, Teaching Professor, Director Securities Arbitration and Consumer Clinic, Syracuse University
- David Reiss, Professor of Law, Brooklyn Law School
- Jacob Hale Russell, Assistant Professor of Law, Rutgers, The State University of New Jersey
- Norman I. Silber, Professor of Law/Senior Research Scholar, Hofstra Law School/Yale Law School
- Jeff Sovern, Professor of Law, St. John's University School of Law
- Winnie Taylor, Professor of Law, Brooklyn Law School
- Karen Tokarz, Professor of Law, Washington University in St. Louis
- Lauren Willis, Professor of Law, Loyola Law School, Los Angeles
- Arthur Wilmarth, Professor of Law, George Washington University Law School

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# 3. Consumer Education and Engagement & External Affairs

## Background

This chapter represents the culmination of this initiative and presents a summary overview of the comments received on four RFIs issued in the Call for Evidence that cover the work of the Consumer Education and Engagement Division and the External Affairs Division. Topics covered in these RFIs include Bureau financial education programs, public reporting practices of consumer complaints information, consumer complaint and inquiry handling processes, and external engagements.

If you have any questions regarding this report, please do not hesitate to contact:

- Kate Fulton, Deputy Chief of Staff;
- Davida Farrar, Counsel, CEE;
- Tim Jakubowski, Senior Advisor, Consumer Response; or
- David Pope, Senior Policy Advisor, External Affairs.

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## 3.1 Financial Education Programs

### Background

Numerous provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) authorize or direct the Bureau to engage in financial education.<sup>120</sup> For example, the Act lists “conducting financial education programs” as one of six primary functions of the Bureau.<sup>121</sup> The Bureau’s financial education covers a range of financial topics, including mortgages, credit reporting, student loans, debt collection and bank accounts, and includes information for specific audiences, including older Americans, students, servicemembers, and traditionally underserved consumers. The Bureau’s financial education programs include a focus on financial steps that can prevent later problems, budgeting, and saving and on the development of financial skills that can be useful to people across a range of financial decisions. The Bureau offers financial education directly to consumers through the Bureau’s website and social media channels (Facebook and Twitter), through print publications that are free to download or order, and indirectly through community channels such as libraries and social services agencies. The Bureau provides financial educators with tools, research, training, and tips for delivering financial education. The Bureau developed an evidence-based scale that financial educators and researchers can use to measure financial well-being as an outcome of financial education programs.

To assess the effectiveness and efficiency of its financial education programs, the Bureau issued a request for information that sought comment on various aspects of the programs, including topics, delivery channels, and collaboration with other federal agencies.

### Comment Summary

**Total Comments:** 132

**Substantive comments responsive to this RFI:** 112

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<sup>120</sup> See e.g. 12 U.S.C. 5493(d), (e), (g); 5511(b)(1).

<sup>121</sup> 12 U.S.C. 5511(c)(1).

**Substantive comments responsive to other RFIs: 14**

Comments received from:						
Individual Entities			Government			
Individual Consumers	Bank/Credit Union/Industry	Non-Depository Institutions	Trade Groups	Consumer Groups	(e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, financial educators, faith-based organizations, etc.)
8	11	0	23	19	6	45

**RFI Topic Areas**

Topic	Description
1 Topics covered by financial education programs	What topics and specific consumer populations, in addition to the general population, the Bureau's financial education programs should cover.
2 Delivery channels for financial education	What delivery channels the Bureau should use to provide financial education, including the role of technology and contractors.
3 Measuring effectiveness of financial education programs	What methods the Bureau can use to measure financial education effectiveness and outcomes, and feedback on the Bureau's financial well-being scale.
4 Coordination with other federal agencies	The Bureau's coordination with other federal agencies, including similarity to other agencies' programs.
5 Other perspectives	Other perspectives that can inform the Bureau's financial education work.

## Representative Sentiments

1. Whether the Bureau's financial education programs are covering the right topics and focusing on the right consumer populations.

Commenter Type	Representative Sentiments
	<p>"NAFCU commends the Bureau for building extensive materials through its website and printed publications to educate consumers on a variety of financial topics, such as mortgages, auto loans, and student loans [and] applauds the Bureau for creating guides to support consumers through important financial decisions, including "Buying a House," "Getting an Auto Loan," and "Paying for College." As the Bureau's educational materials cover a breadth of financial topics, NAFCU does not have any recommendations for new topics that need to be addressed." – National Association of Federally-Insured Credit Unions (NAFCU)</p>
Trade groups	<p>"Consumers deserve more financial education about the dangers of wire transfer fraud stemming from business email compromise." – American Land Title Association (ALTA)</p> <p>"The Bureau should use the complaint database to best ascertain the areas where consumers need the most education. For these reasons, we urge the Bureau to focus on education about savings and the importance of emergency savings, planning/budgeting, debt relief/consolidation, and building credit." – U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (Chamber of Commerce)</p>
	<p>"To the extent that there are concerns that consumers may not adequately understand or use their arbitration rights, the Bureau has the power to improve consumer awareness. ... In addition to addressing [data aggregation issues] by regulation and supervision, the Bureau should develop and disseminate educational materials so that consumers better understand how their data are used and stored, any choices they may have in that usage and storage, related security and privacy risks, and potential liability for unauthorized transactions. ... [W]e recommend that the Bureau focus on financial education research, including conducting, supporting, and sharing research, surveys, demonstrations, program evaluations, and successful practices for financial education, financial stability, and wealth building. ... In addition, the Bureau should leverage its research capacity to provide reliable and objective data and analysis on financial education, which should inform the FLEC's cross-agency policy deliberations on financial education. ... The</p>

BCFP should offer more information about PLUS loans to help potential borrowers, including parents, understand these risks. The Bureau should inform users of [identity theft risks posed by social media and online sharing] as [these schemes] proliferate on the web.” – American Bankers Association (ABA)

“ICBA encourages the Bureau to increase its efforts to combat the misconception that un- and under-banked populations would not be approved for credit products. … Although community banks offer and provide their customers with responsible financial services, there are many un- and under-regulated entities that offer usurious and predatory products that can cause significant financial harm for consumers. There are also many products that are not predatory, per se, but are designed for certain segments of the population that are not suitable for all. Financial education can help consumers avoid these products, or at very least, help consumers with remediation.” – Independent Community Bankers Association (ICBA)

“Overall the Bureau’s choice of the topics seems appropriate. However, ACA would like to see the Bureau pair with industry groups, especially ACA, when developing programs that target areas where industry may have a subject matter expertise.... For example, the Bureau has never reached out to ACA when adopting initiatives on debt collection. This collaboration would be vitally important to fully educate consumers not only about how to identify bad actors in the debt collection industry but to educate consumers on legitimate debt collection. The sooner that a consumer addresses an outstanding debt, the better off they are. Accordingly, ACA would like to see the Bureau develop programs to encourage consumers to communicate with debt collectors in order to resolve legitimate debts that are due and owing. … Basic personal finances and budgeting should be the foundation of the Bureau’s activities. From that base, the Bureau could expand to specific financial products and services, like understanding credit scores, buying a car, or a house, and financing a college education.” – Association of Credit and Collection Professionals (ACA)

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Financial Educators “AFCPE solicited input from members to assist in responding the Request for Information. Members suggested the Bureau address topics including: Predatory Practices, Financial Education/Literacy, Credit, Debt, Student loans, Identity theft, Retirement planning, Home buying, Motivations, Efficacy, Finances throughout the lifecycle, Trends for consumers to be aware of.” – Association for Financial Counseling & Planning Education (AFCPE)

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“I work on a senior help line for a county in California. We use your resources to help educate and assist seniors in their battle against fraud. Your resources are easy to read with very relevant information.” – Individual Financial Educator, Docket #: CFPB-2018-0015-0008

“CFPB financial education publications are top notch! They are concise, accurate, and relevant. They are the standard for financial education publications. I would like to see the publications continue unchanged. As a financial counselor and educator, I use them regularly with clients. I would like to see a better management system for them since, even though I know they are there, I sometimes can't find what I'm looking for amidst all the information.” – Individual Financial Educator, Docket #: CFPB-2018-0015-0007

“[Topics the Bureau should address]: What is a payday loan, what are their interest rates, and why should they be avoided? What is a credit report? What is a credit score? What are the names of scoring agencies and reporting agencies? What does loan or installment mean? What does revolving, line of credit, or credit card mean? What is a mortgage? How long do they last, why do they charge interest, can they be paid off faster? What is a down payment? What is a bank account? What is a savings account? [Which populations should the Bureau's financial education work focus on?] [S]chool age children before they have their own borrowing power but as they are starting to see commercials and make decisions on purchases, from grades 6-8 (middle school).” – Individual Credit/Housing Counselor, Docket #: CFPB-2018-0015-0033

“A few of my colleagues and I were trained by the CFPB on how to facilitate Your Money Your Goal train-the-trainers 1-day training. In the last 2-years, we have trained over 200 financial coaches in Illinois and Michigan. … During this financial coaching sessions our financial coaches depend on the tools created by the CFPB such as “Behind on Bills?,” and “Debt getting in your way,? We like this [sic] portable tools since they are easy to transport to the communities we serve. The participants love the tools because they are easy to understand and help them get organized and serve as a reminder of the tasks they need to complete before the next financial coaching meeting. … The CFPB Financial education programs have focused on the right topics; topics such as consumer rights, how to prioritize items in your budget, how to financially prepare to pay for a colleague [sic], etc. These areas are all needed by the community we serve. Low-income families that have no formal financial training are currently drowning in debt and trying to make ends meets earning minimum wage.” – Heartland Human Care Services, Inc.

“[The Bureau's] consumer financial education programs are an important piece of the overall consumer financial education system. … [The Bureau's] financial education materials cover a

range of important topics such as mortgages, student loans, debt collection and credit reporting. ... CAFÉ Montgomery MD and its partners use [the Bureau's] materials to complement the more individualized financial education that is taught by financial and HUD-approved housing counseling organizations.” – CAFÉ Montgomery MD

“The Tax Time Savings Initiative was a very positive experience for my organization. The tools and training are very effective and helped us achieve our goals. We will expand the exposure of this initiative to more VITA volunteers in 2019. With the tax law changing our organization will use the opportunity to present the CFPB savings initiative to staff and volunteers at necessary training.” – Cleveland Housing Network

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“Servicemembers, veterans, their families, and survivors are targets for consumer fraud by predatory financial companies and often lack access to resources that help them make well-informed decisions. The educational information the CFPB offers is necessary information that helps them make responsible decisions about significant financial transactions. Because those we represent are often targeted by predatory payday lenders, unscrupulous car dealers, predatory colleges, student loan companies, and other bad actors, the financial education programs provided by CFPB are invaluable.” – Veterans Education Success

Consumer groups

“We at Georgia Watch have utilized many of the materials offered by the CFPB in educating consumers. Georgia Watch organized a five-module curriculum on financial literacy which has been disseminated to over 80 organizations and has educated over 1100 Georgia consumers. The CFPB materials used in the module are as follows: [listed 17 brochures and publications]. ... Our program would not have been as effective and perhaps not even possible without the materials offered by the CFPB. The Bureau should not only continue to provide consumers with timely and understandable information to make responsible decisions about financial transactions but also increase its effort in providing the most comprehensive and intuitive financial education information possible.” – Georgia Watch

“The Your Money, Your Goals – Focus on Reentry Toolkit is a critical support to organizations serving individuals who were formerly incarcerated. In Illinois, one clear example of the success of this toolkit is in a program at the Peoria County Jail. With the help of the CFPB’s toolkit, incarcerated individuals learned critical money management skills that set them up for a successful return to the community. A collaboration between IABG partner Navicore Solutions and the Jobs Partnership, the Re-Entry Program addressed the holistic needs of individuals incarcerated in the Peoria County Jail. Classes were conducted every Tuesday and Wednesday afternoon for seven weeks, and included financial education and money management

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workshops using the toolkit. The participants enjoyed the workshops and every participant indicated they had gained valuable knowledge about money management and credit reports. We encourage the CFPB to maintain the Focus on Reentry toolkit, disseminate it widely, and to continue to develop tools that address the specific needs of different populations that tend to have low financial capability.” – Illinois Asset Building Group (IABG)

“[The Bureau] should … expand the Bureau’s materials and information so that they are available in additional languages commonly spoken by LEP consumers. [T]he glossary of financial terms should be made available in additional languages commonly spoken by people with limited English proficiency, starting with the six other languages currently reflected on the CFPB’s website. … [The Bureau’s] online Find a Housing Counselor tool is a significant improvement over the existing HUD tool. … However, consumers with limited English proficiency are not able to search by which languages are spoken at the agency, despite the fact that languages spoken is a data field in the directory. … To address this, CFPB should add the ability to search the database both by zip code and by languages spoken and provide the tool in different languages … The [Bureau] should consider including the following communities in its financial education work: Immigrants; Parents and caregivers; Information and guides for people who rent a home; students in middle school and high school; information and guides that are specific to communities of color; family members and caregivers of people with mental and physical disabilities.” – Comment letter from 162 organizations, including 21 national organizations and 141 state and local organizations.<sup>122</sup>

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Industry - Individual  
Individual

“There needs to be greater focus on behavior instead of knowledge. Most people know what they need to do with money, they just don’t match behaviors that act on this knowledge. People like to see success stories of ordinary people who have made smart choices with money to inspire them to follow their example. Why not share a daily success story? . . . If CFPB doesn’t make an emotional connection with its material, it is not going to attract attention.” – Don Milne,

Zions Bank

“I’ve read some of [the Bureau educational tools] -- primarily the FAQs. They’re fine; there is always room for improvement. I think we’re missing the much larger picture, though. People may go looking for information once they’ve got a problem, and it’s great that the Bureau can be a trusted source. But . . . if each successive generation could be taught about things like

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<sup>122</sup> A full list of signatories to joint letters can be found in the *Additional Notes* section following each RFI summary.

budgeting, loans, credit, etc. wouldn't that help many more people be financially healthier and more stable throughout their lives? . . . The scale required of such an education initiative can't possibly be achieved solely with carefully written, lawyer-approved, hard-to-find advice buried on a government website . . . [M]illions of Americans - including kids and adults - who need it will only get it if you make it painless (easy) and entertaining . . . Funds and effort should be devoted to bringing the material to life, and to getting it in front of people where they are. And it also takes relationships. Use the powerful position held by the BCFP to engage pop stars, social media influencers, and others to contribute to the content. Leave the government brand in the background." – Stephanie Eidelman, The iA Institute

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"More resources should be available for lower-income populations and the services they use. While there are FAQs and some documents regarding debt collection and payday loans, there are no "how to" documents on the costs and benefits of payday loans regarding how to decide when to use a payday loan. There is also little information on building credit. Further, the "Money As You Grow" products do not always apply to children from low-income families. Building more formal "How-To" documents that are directly relevant for heterogeneous populations would be beneficial. . . . Key audiences include: people moving out of incarceration, people paying or receiving child support, the unbanked, people with disabilities, people moving out of Medicaid coverage into non-subsidized health insurance markets, and people in underserved rural areas."

– Financial Regulation and Consumer Protection Scholars

Academic/  
Specialty  
Groups

"Tax time saving should continue to be a priority for the CFPB. . . . [T]he CFPB's Tax Time Savings Initiative to convene cohorts of VITA programs plays an invaluable role in harnessing the best practices in the field and scaling saving at tax time to reach more financially vulnerable consumers. . . . Our consumer research shows that deficits in financial capability around financing higher education can lead to students deciding not to continue their education paying too much for an education, taking on crippling debt to finance their education, and/or choosing an ill-matched school. . . . The CFPB's efforts to proactively address money management, financial aid, and student debt through the Paying for College guide and other online resources complement our work and provide additional tools for engagement. [P]roviding guidance on navigating the military financial lifecycle should continue to be part of the CFPB's consumer financial education offerings. . . . We encourage the CFPB to consider . . . leveraging games and gamification [and] building out savings and wealth building resources under the "Consumer Tools" webpage to provide more guidance on these topic." – Commonwealth

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2. What delivery channels the Bureau should use to provide financial education, including the role of technology and contractors.

Commenter Type	Representative Sentiments
Consumer Groups	<p>“The CFPB should consider additional ways to deliver financial education tools, guide and information, including: Develop an application (an online or mobile platform) that includes all those resources.” – UnidosUS</p> <p>“CFPB’s financial education programs should include aggressive efforts to direct consumers who can benefit from more individualized financial education to appropriate resources, especially HUD-approved housing counseling agencies. Whereas financial and housing counseling agencies that are not HUD-approved may not be required to meet any quality or consumer protection standards, HUD-approved housing counseling agencies are well-regulated, including certification and continuing education requirements. This makes HUD-approved counseling agencies (and any other similarly regulated non-profit agencies) the ideal providers of financial counseling and education for those consumers who need more personalized financial education needs.” – Comment letter from 162 organizations, including 21 national organizations and 141 state and local organizations</p> <p>“The CFPB’s website delivers information in a clear, concise, and effective manner that addresses challenges service members and their families face from the time they enter military service through transition. In its current state, the information is easily accessible no matter where the individual is stationed and can be accessed at all hours, which is important for those who are working during the day. We strongly recommend CFPB maintain this program. Moreover, it should continue to expand the types of resources offered online such as short video clips, simple one-page printable PDFs addressing areas to watch out for, and updated webinars.” – Veterans Education Success</p>
Trade groups	<p>“CBA strongly encourages the Bureau to partner with community-based organizations in its consumer education efforts. These organizations provide a vital lifeline to many of [sic] U.S. consumers that would benefit from improved financial education. These groups are often trusted neighborhood organizations (i.e. churches, youth centers, etc.) that provide other valuable resources and relief such as food, child development and medical care. These channels can be</p>

leveraged as conduits for financial education. … Most importantly, CBA strongly urges the Bureau to focus more attention on youth-based education opportunities. … We encourage the Bureau to focus more resources on schools and to help train and encourage teachers and parents to provide financial education for children and youth in order to equip the next generation with better knowledge and skills to make effective and responsible choices and decisions.” – CBA

“As noted above, the Bureau’s program addresses many useful and important topics for consumers. However, the delivery channels for these topics has generally been limited to on-line and downloadable print resources. … [T]here are other delivery channels that could be used in addition to the on-line channel, which would ensure a more robust and far-reaching delivery of these important consumer tools [including] recorded (downloadable) sessions [and] in-person (or classroom-type) methods or community educational events. The Bureau should find ways to advertise the availability of these financial literacy educational programs, as well as the available delivery channels to consumers. … A robust awareness campaign, as well as a wider avenue of delivering the programs would certainly promote more informed/educated mortgage borrowers, resulting in higher rates of completed mortgage applications and lower rates of early payment delinquency or default. … Finally, the Bureau should consider partnering with housing counseling agencies that have been working on helping consumers navigate and understand the intricacies and complexities of being a prudent borrower/homeowner.” – MBA

“The Bureau should partner with local community organizations to reach consumers who may not be comfortable going into a bank or reaching out to a government agency. For some consumers, his or her local charity organization, community outreach institution, or place of worship is the trusted organization where they receive their information. It would be helpful to these organizations if the federal government could provide the standardized, vetted materials discussed above.” – Chamber of Commerce

“Importantly, the Bureau should assist high schools—or perhaps junior high schools or middle schools—by providing materials directly to the school systems for inclusion in their educational materials.” – American Financial Services Association (AFSA)

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Financial  
Educators/  
Nonprofit/  
Faith-based

“The emphasis that the CFPB gives to educating front-line human service staff has been very helpful in building the capacity of local agency staff to reach individuals and families before a financial crisis. The tools and resources provided in Your Money, Your Goals, and other

educational tools developed by CFPB have supported agency staff to better assist with budgeting, debt negotiation and financial services.” – Catholic Charities USA

“In addition to webinars and conference calls the Bureau should employ in person training like the convening for Tax Time Savings held in St. Louis. … [The Bureau should use the following technologies]: Web based training, and power point delivered by trainers.” – Cleveland Housing Network

“From our extensive consumer research, we discovered that many consumers would like to receive, and would be responsive to, financial advice through their employer. We urge the CFPB to consider employers as a delivery channel for consumer financial education resources.” – Commonwealth

“There is an opportunity for the Bureau to formalize new networks with [organizations, associations, foundations, academic institutions, state and local governments and nonprofits dedicated to improving Americans’ financial knowledge and capability.] . . . [In addition] mobile financial services (MFS), can extend the delivery of financial education to those who cannot be reached with traditional financial services. … Contractors can augment the Bureau’s work by assisting the Bureau in building and adapting new and existing technology for other applications.” – National Endowment for Financial Education (NEFE)

“I would love to see the CFPB start funding or writing lesson plans/brochures on credit in public school curriculums during the middle school years, grades 6-8. Students already learn basic information on budgeting during those years, and this would be a perfect time to start introducing students to what credit is as well. And those ages are when students might start earning allowances and look to make their own purchases (toys, book fairs, etc, but not yet old enough to get their own credit cards without being educated first.” – Individual Credit/Housing Counselor, Docket #: CFPB-2018-0015-0033

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“I am surprised that [the Bureau] is not being more effective in social media. I don’t see any YouTube channel or Pinterest page. CFPB should be able to create messages similar to this celebrity filled public service announcement in Great Britain:

Banks <https://www.youtube.com/watch?v=YCoQwZ9BQ9Q>. Why not create financial literacy themed memes that could attract attention and shares on social media? Does CFPB have a regular education email to consumers or practitioners with links to topics of interest? If so, I am not aware … I’d like to see financial education public service announcements. If they are engaging, they will find an audience that will share it with friends and family. … Your well-being scale

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needs to have a higher profile. I, for one, was not aware of it. It should be presented like a fun Facebook quiz that people with share, not buried on a blog post.” – Don Milne, Zions Bank

### 3. Methods the Bureau can use to measure financial education effectiveness and outcomes, and feedback on the Bureau’s financial well-being scale

Commenter	Representative Sentiments
Type	
Trade groups	<p>“[The 2015 Financial Well-being Report] observations continue to serve as a guide for all providers of financial education and reinforce the notion that resources need to be well-placed, accessible and user-friendly.” – CBA</p> <p>“The Bureau should monitor usage, reach, impact measured over time, confidence and attitudinal/intent indicators from consumers.” – Chamber of Commerce</p> <p>“[O]ur support of financial education programs does not prevent us from pointing out that researchers have raised issues as to the long-term efficacy of many such programs. … While the Bureau poses useful questions, absent an academic review, the answer to a query as to outcomes and success will not be informed by open-ended questions in an RFI. The answer is simply: “It depends.” To the extent that the Bureau produces useful content that is understandable, informative, and appropriate for the target audience, it will have at least a moderately successful outcome.” – AFSA</p> <p>“Financial education programs should be measured by how often they are used by consumers. This can be easily accomplished if the delivery of the education is through an app or other modern technology … the focus of effectiveness depends on the consumer. The Bureau must be careful to tailor its programs for the consumers it is trying to reach. Because program delivery will be different for different types of consumers, one standard metric would not be appropriate.” – ACA</p>
Consumer groups	<p>“The CFPB’s financial well-being questionnaire provides a tool for individuals to evaluate progress towards their financial goals and financial capability. Many direct serve [sic] providers throughout Illinois use this tool in their work. We urge the CFPB to disseminate the financial</p>

well-being evaluation tool more broadly by making it available through a phone application in addition to online.” – IABG

“As practitioners, UnidosUS affiliates offered the tools and methods they use to evaluate their own financial education work that can help inform how the CFPB can better measure the efficacy of its financial education work. The tools and methods include: (1) Using logic models, hiring an outside evaluator, and basing performance on the success stories of clients; (2) Collecting feedback from individuals and families through pre-tests and post-tests, to measure clients’ progress since beginning the program; (3) Using surveys and follow-up with clients after they complete the program to collect information about financial improvements such as opening a savings accounts, improvement in credit score and building an asset; (4) Basing performance on the achievements of clients, and on the positive feedback received from clients; and (5) Measuring clients’ progress using defined measures of improvement, well-being, and other financial indicators.” – UnidosUS

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“One AFCPE member’s viewpoint is that the Bureau’s “research into financial well-being has [made] a significant contribution to the thinking and development of the personal finance education and counseling field. … AFCPE believes the Bureau should primarily measure the benefit of its financial education work through objective, relevant data… However, qualitative measures should be considered, as appropriate, particularly where data measures may not necessarily provide an accurate or comprehensive assessment of the program.” – AFCPE

Financial  
Educators

“The CFPB should focus on the widespread distribution of financial education materials and not focus on ROI. … [T]he CFPB should simply push the information out to the public in as many different modes as possible. Consumers should be encouraged to create an account with a user name and password that is unique to them. Consumers could then take the well-being scale across their life cycle and see how their lives have changed according to changing life circumstances, including using the CFPB financial education materials.” – Dragonfly Financial Solutions

“Measuring large-scale distribution of information is difficult. Measuring the number of groups using the materials would show success because practitioners are not going to waste precious time using materials that don’t work for their clients. … Our partners include agencies that work with youth agencies that work with the individuals experiencing homelessness and a wide range of others. There isn’t one metric that could be tracked across this diverse groups, but the clients’

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personal wellbeing can. And, really how you feel about your situation is in many ways much more important.” – United Way of the River Cities in Huntington, WV

Academic/  
Research

“The Bureau developed a measure of Financial Wellbeing (FWB) that has become a standard in the field. The FWB is useful for practitioners and academics as they design and test financial education interventions. FWB is a measure that goes beyond income or account balances to understand how Americans subjectively assess their financial situations. This measure could become a benchmark for financial wellbeing across communities and over time, especially when assessing at-risk populations.” – Financial Regulation and Consumer Protection Scholars

4. The Bureau’s coordination with other federal agencies, including similarity with other agencies’ programs.

Commenter Type	Representative Sentiments
Consumer groups	“Setting a course for a national financial education strategy is challenging and complicated. We applaud the openness and collaborative approach the agency has taken: to build on the foundations of previous federal work in this area; work with diverse stakeholders in the financial education field to develop its strategies; and share information and resources with others working engaged in financial education initiatives and programs at the federal, state and local level. These efforts should continue.” – Consumers Union
Trade groups	“Based on its unique approach among federal agencies to educate consumers and help improve consumers’ financial capabilities, the CFPB should continue its current approach. The resources that CFPB has developed and provide are effective and efficient as a result of the ways that they have been created to be easily aligned and adapted to the work that community-level organizations are doing. These are vital partners in the delivery of financial education to the community, and the high applicability and utility of the CFPB materials to these partners is valuable.” – UnidosUS
	“When the BCFP was created in 2010, Congress amended the structure of the FLEC to add the Bureau’s Director as Vice Chair. In this role, the Bureau should take on more responsibility to provide top-level coordination of financial literacy advocacy efforts, including helping to identify

goals for financial education and benchmarking financial education from early childhood through adulthood. The BCFP, in its role on the FLEC, could take on the task of supporting and elevating initiatives such as Project Groundswell, which aims for a 25% increase in the number of U.S. elementary, middle, and high school students receiving classroom-based financial education by 2025. BCFP leadership in this area could also include advocacy for Community Reinvestment Act reforms that recognize and promote financial education work by financial institutions.” – American Bankers Association

“Although the Bureau's financial education resources overlap somewhat with FLEC and other federal regulators, this overlap does not reduce the importance of the Bureau's financial education efforts. The Bureau fills the critical role of providing consumers with the top-level information they need to make responsible choices about various financial products, whereas other federal agencies do not provide a comprehensive equivalent. NAFCU urges the Bureau to leverage the existing financial education resources developed by other federal agencies by linking to pertinent resources on the Bureau's financial topic pages.” – NAFCU

“While much of this material is useful, opportunities exist to reduce redundancies at each agency and collaborate to produce one, unified framework. Additionally, the FLEC meetings are sporadic without regard to a routine schedule, such as quarterly or semiannually. ICBA recommends that the Bureau work with other FLEC members to make the meetings more routine.” – ICBA

“Through partnerships with the U.S. Department of Education and local organizations, the Bureau could build programs that will boost financial literacy starting with children as early as preschool.” – CBA

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Financial  
Educators

“Several federal agencies provide consumer protection info, e.g. FTC, FDIC, SEC. The Bureau's particular focus on financial well-being & effective education approaches makes its materials & programs far more effective to financial counseling & coaching practitioners as well as educators. ... The Bureau could collaborate with other agencies to offer webinars and other program content that taps into the deep knowledge or specialization of other agencies. The Bureau could also develop a working group of agencies that are all focused on consumer education & protection. This group could leverage the respective strengths of each participating agency.” Individual financial educator, Docket #: CFPB-2018-0015-0043

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"If there are [duplicative programs] I don't know them. To me the CFPB is the gold standard to producing national-level financial education. Other federal agencies should align themselves behind the CFPB with the CFPB as the lead." – Dragonfly Financial Solutions

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Government

"The Bureau should preserve the ability of consumers and service providers to access the Bureau's existing financial education resources, and should add to its current suite of financial programs without fear of duplicating other, similar offerings. The Bureau occupies a unique position of trust and, as a federal agency, has nationwide reach. While other actors in the field, including DCA, seek to educate consumers, there is no substitute for the Bureau." – NYC Department of Consumer Affairs

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Academic/  
Research

"Overall, the Bureau's financial education materials are the clearest Federal agency documents designed to help consumers obtain the basic skills they need as they face financial decisions over their lifecycles. ... [I]n coordination with the Financial Literacy and Education Commission (FLEC), the Bureau must brand itself as the leader of financial education within the federal government, allowing financial educators across the country in a wide variety of fields (homeownership, retirement, tax savings, student borrowing, 529 accounts, etc.) to easily access materials. At first, it may not be obvious that the Bureau would provide financial education materials on these topics, as other agencies may specialize in each of these issues (Housing and Urban Development, for example, may seem to have more resources on homeownership and the Social Security Administration may seem like a better resource for financial education around retirement, for example.) However, the resources the Bureau provides span many areas and are accessible for all consumers. Since only the Bureau is offering these important financial education initiatives, it is important that it brand itself as a "hub" within the federal government of information provision directly to consumers and consumer educators." – Financial Regulation and Consumer Protection Scholars

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## 5. Other perspectives that can inform the Bureau’s financial education work.

Commenter Type	Representative Sentiments
	<p>“To promote the Bureau’s overall goals in financial literacy, Congress created several Bureau offices to address demographic groups with special needs for financial literacy, including U.S. military service members, students, and older Americans. The Bureau should strengthen its coordination and collaboration with industry experts and other workers engaged with these specific demographic groups. We recommend that the Bureau consult externally as appropriate to develop its strategies and initiatives designed to address the financial literacy needs of these groups, as well as consumers in general. For example, the Bureau’s recent guidebooks on fiduciary duties, developed in consultation with the American Bar Association, are an example of the strong work that arises when the Bureau collaborates with outside parties. We hope to see further collaborations with private sector experts as the Bureau continues to expand its work in financial education.” – American Bankers Association</p>
Trade Groups	<p>“Although community banks offer and provide their customers with responsible financial services, there are many un- and under-regulated entities that offer usurious and predatory products that can cause significant financial harm for consumers. There are also many products that are not predatory, <i>per se</i>, but are designed for certain segments of the population that are not suitable for all. Financial education can help consumers avoid these products, or at very least, help consumers with remediation.” – ICBA</p>
	<p>“CBA believes financial education for consumers, coupled with clear rules for financial service providers, are the best sources of consumer financial health and well-being.” – CBA.</p> <p>“MBA appreciates recent improvements to the Explore Interest Rates tool that removed some of the negative message about lenders and about other interest rate calculator sites. Despite these changes, however, there are still flaws in the BCFP rate checker [which] are also shortcomings of other rate calculators. ... Rather than a rate checker that is inherently limited, a better approach would be to provide consumers the ‘10 questions you should ask every lender when shopping for the best mortgages.’” – MBA</p>
Consumer groups	<p>“In order to bolster financial education, CFPB should provide funds that it receives in the form of Consumer Relief settlements to HUD-approved housing counseling agencies. New and diverse</p>

funding sources are needed to ensure that HUD-approved counseling agencies are able to provide that one-on-one and group education services that are a critical component of a successful financial education regime for American consumers. This funding should be especially focused on preventative counseling and education that will help consumers identify and avoid dangerous financial products and bad actors such as those who are subject to CFPB enforcement actions.” – Comment letter from 162 organizations, including 21 national organizations and 141 state and local organizations

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Government

“Template sharing is also a practice SCDCA sees as beneficial in ensuring consumers receive the most comprehensive information. The Bureau produces excellent educational materials that align with the most prevalent issues consumers face in today's ever-changing marketplace and serve to compliment materials created at the state level. SCDCA has used such information when presenting to consumers across South Carolina.” – South Carolina Department of Consumer Affairs

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Consumer-Individual

“Based on the Website and technologies the Bureau uses, the Bureau's approach must change. As noted elsewhere, the Website and other Bureau technologies are passive and somewhat boring--large blocks of text filled with jargon and lots of defined terms. The Website in particular forces the viewer to work hard to understand the Bureau's messages and to put together these messages into a coherent lesson. Therefore the Bureau should develop presentations that are more visual, graphic and interactive. It should incorporate videos, questions and answers and brief projects that invite the audience to engage in active learning.” – Individual Consumer, Docket #: CFPB-2018-0015-0122-A2

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Financial Educators

“I am the director of the Financial Stability Partnership, an initiative of United Way of the River Cities in Huntington, WV. Our coalition has three facets: free tax preparation, financial literacy education and advocacy. The materials and support provided by the Bureau's Financial Education Programs are the backbone of my agency's work. The unbiased and relevant educational materials provided by the Bureau are my first choice when working with clients and partners. They are designed to help us deliver information that aids the end user in making the decisions that are best for them and their families.” – United Way of the River Cities in Huntington, WV

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## Additional Notes

1. The following organizations were signatories to the comment submitted by Matthew Goodro, On Behalf of 162 Consumer Protection, Civil Rights, and Housing Advocacy Organizations (CFPB-2018-0015-0105-A1):

### National Organizations

*Allied Progress*  
*Americans for Financial Reform*  
*Cambridge Credit Counseling*  
*Community Reinvestment Solutions, Inc.*  
*Consumer Action*  
*Consumer Credit and Budget Counseling*  
*Consumer Federation of America*  
*eHome America*  
*Guidewell Financial Solutions*  
*HomeFree-USA*  
*National Caucus and Center for Community Economic Development*  
*National Coalition for Asian Pacific American Community Development*  
*National Community Reinvestment Coalition*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Fair Housing Alliance*  
*National Housing Resource Center*  
*National NeighborWorks Association*  
*Navicore Solutions*  
*UnidosUS*  
*U.S. PIRG*  
*Woodstock Institute*

### State and local organizations

*ACT Lawrence*  
*Affordable Housing Partnership of the Capital Region*  
*AGORA Community Services Corporation*  
*Allston Brighton Community Development Corporation*  
*Arizona Community Action Association*  
*Arizona PIRG Education Fund*  
*Asian Services In Action, Inc.*

*Avenue CDC*  
*BCL of Texas*  
*Blackstone Valley Community Action Program*  
*Bridgeport Neighborhood Trust Inc.*  
*Bucks County Housing Group*  
*Buffalo Urban League*  
*Campesinos Sin Fronteras*  
*Catholic Charities Chemung/Schuylerville*  
*CCCS of Buffalo*  
*Center for Economic Integrity*  
*Center for NYC Neighborhoods*  
*Centre for Homeownership & Economic Development Corporation*  
*CFORM/Covenant Community Development Corp.*  
*Chautauqua Home Rehabilitation & Improvement Corporation*  
*Chestnut Credit Counseling Services*  
*Chicago Urban League*  
*Chicanos Por La Causa*  
*Church Community Housing*  
*Citizens' Housing and Planning Association*  
*Clarifi*  
*Coastal Enterprises Inc.*  
*Consumer Credit Counseling Service of Northern Illinois, Inc.*  
*Desire Community Housing Corporation*  
*Douglas County Housing Partnership*  
*Durham Regional Financial Center*  
*Eastside Community Development Corporation*  
*El Centro de la Raza*  
*Empire Justice Center*  
*Empire State Consumer Project*  
*Empowering and Strengthening Ohio's People*  
*Fair Housing Council of Northern NJ*  
*Fair Housing Resource Center, Inc.*  
*Family Housing Advisory Services*  
*Fifth Ward Community Redevelopment Corporation*  
*Florida Alliance for Consumer Protection*

*Fort Wayne Urban league*  
*Four Directions Development Corporation*  
*Frontier Housing, Inc.*  
*Good Neighbor Foundation-Homeownership Center*  
*Goldenrule Housing & Community Development Corp., Inc.*  
*Greater Kansas City Housing Information Center*  
*Greater Phoenix Urban League*  
*Green Forest CDC*  
*GS Community Ventures*  
*Haven Neighborhood Services*  
*Heartland Alliance for Human Needs & Human Rights*  
*Holmes Unlimited, LLC*  
*HOME, Inc.*  
*HomeOwnership Center, Inc.*  
*Home Ownership Resource Center of Lee County, Inc.*  
*Homes on the Hill, CDC*  
*HomesFund*  
*HomeSmart NY*  
*HomeSource East Tennessee*  
*Horizons, A Family Service Alliance*  
*Housing Action Illinois*  
*Housing Assistance Program of Essex County, Inc.*  
*Housing Channel*  
*Housing Options & Planning Enterprises, Inc.*  
*Housing Partnership*  
*Housing Resources of Western Colorado*  
*Inland Fair Housing and Mediation Board*  
*Jersey Counselling & Housing Development, Inc.*  
*Kennebec Valley Community Action Program*  
*La Casa de Don Pedro*  
*La Fuerza Unida*  
*Latino Economic Development Center*  
*Lawrence CommunityWorks, Inc.*  
*Legal Services NYC*  
*Lifelines Counseling Services*

*LifeStyles of Maryland Foundation, Inc.*  
*Little Haiti Housing Association, Inc. d.b.a HACDC*  
*Long Island Housing Services, Inc.*  
*Lorain County Urban League*  
*Louisville Urban League*  
*Margert Community Corporation*  
*Massachusetts Affordable Housing Alliance*  
*Massachusetts Association of CDCs*  
*Merrimack Valley Housing Partnership*  
*Minneapolis Urban League*  
*Mobilization for Justice, Inc.*  
*Monroe Union County CDC*  
*Montana Organizing Project*  
*Montebello Housing Development Corporation*  
*Morningstar Urban Development, Inc.*  
*National Council on Agricultural Life & Labor Research Fund, Inc. (NCALL)*  
*North Carolina Housing Coalition*  
*Neighborhood Economic Development Corporation*  
*Neighborhood House, Inc.*  
*Neighborhood Housing Services of Chicago*  
*Neighborhood Housing Services of Greater Cleveland*  
*Neighborhood Housing Services of Staten Island*  
*Neighborhood Nonprofit Housing Corporation*  
*Neighborhood Housing Services of the Inland Empire*  
*Neighborhood Partnership Housing Services, Inc.*  
*NeighborWorks Salt Lake*  
*NeighborWorks Southern New Hampshire*  
*Neighborhood of Affordable Housing*  
*Nevada Partners*  
*New Economics for Women*  
*New Jersey Citizen Action*  
*New Level CDC*  
*New York Mortgage Coalition*  
*New Yorkers for Responsible Lending (NYRL)*  
*Newtown Community Development Corporation*

*Northwest Side Housing Center  
Opportunities Credit Union  
Our Casas Resident Council, Inc.  
Parkview Services  
Pro Home, Inc.  
Rockaway Development & Revitalization Corporation  
Safeguard Credit Counseling  
Sconiers Homeless Preventive Organization, Inc.  
Shalom Center for T.R.E.E. of Life  
South Carolina Appleseed Legal Justice Center  
South Suburban Housing Center  
Take Charge America, Inc.  
Tennessee Citizen Action  
Texas Legal Services Center  
The Development Corporation  
The Fair Housing Council of Riverside County  
The HomeOwnership Center  
Trinity Empowerment Consortium  
USNAP BAC NON PROFIT HOUSING CORP.  
Urban League of Greater Pittsburgh  
Urban League of Metropolitan Seattle  
Urban League of San Diego County  
Urban League of Union County  
Ventura County Community Development Corporation  
Vermont Affordable Housing Coalition  
Virginia Citizens Consumer Council  
Willamette Neighborhood Housings Services  
Working In Neighborhoods  
WSOS Community Action Commission*

2. The following individuals were signatories to the letter submitted by Kathleen Engel on behalf of a group of financial regulation and consumer protection scholars, and former regulators (CFPB-2018-0015-0119-A1):

- Carly Urban, Associate Professor, Montana State University, Fellow, Center for Financial Security
- J. Michael Collins, Fetzer Family Chair in Consumer and Personal Finance, University of Wisconsin-Madison, Director, Center for Financial Security
- Stephanie Moulton, Associate Professor, Ohio State University, Fellow, Center for Financial Security
- Richard Alderman, Professor Emeritus and Director, Center for Consumer Law, University of Houston Law Center
- William Black, Associate Professor of Economics and Law, University of Missouri-Kansas City
- Susan Block-Lieb, Cooper Family Professor in Urban Legal Studies, Fordham University, School of Law,
- Amelia Boss, Trustee Professor, Kline School if Law Drexel University
- Andrea Boyack, Professor, Washburn University School of Law
- Mark Budnitz, Professor of Law Emeritus, Georgia State University College of Law
- Daniel Carpenter, Allie S. Freed Professor of Government, Harvard University
- Prentiss Cox, Associate Professor of Law, University of Minnesota Law School
- W David East, Professor of Law, South Texas College of Law Houston
- Kurt Eggert, Professor of Law, Chapman University Fowler School of Law
- Ingrid Ellen, Professor, Wagner School, New York University
- Kathleen Engel, Research Professor of Law, Suffolk University Law School

- Thomas Eovaldi, Professor of Law Emeritus, Northwestern Pritzker School of Law
- Linda Fisher, Professor of Law, Seton Hall University School of Law
- Pamela Foohey, Associate Professor, Indiana University Maurer School of Law
- Judith Fox, Clinical Professor, Notre Dame Law School
- Jeffrey Gentes, Visiting Clinical Lecturer and Supervising Attorney, Yale Law School
- Brian Gilmore, Associate Professor and Director, Michigan State University - College of Law
- Robert Hockett, Edward Cornell Professor of Law, Cornell Law School
- Wayne Lewis, Professor Emeritus, DePaul University College of Law
- Angela Littwin, Professor, University of Texas School of Law
- Patricia McCoy, Professor of Law, Boston College Law School
- Christopher Odinet, Horatio C. Thompson Assistant Professor of Law, Southern University Law Center,
- Gary Pieples, Teaching Professor, Clinic Director, Syracuse University
- Carolina Reid, Assistant Professor, UC Berkeley
- David Reiss, Professor of Law, Brooklyn Law School
- Florence Roisman, William F. Harvey Professor of Law and Chancellor's Professor, Indiana University Robert H. McKinney School
- Jacob Hale Russell, Assistant Professor of Law, Rutgers, The State University of New Jersey
- Neil Sobol, Professor, Texas A&M University School of Law
- Gregory Squires, Professor of Sociology and Public Policy & Public Administration, George Washington University
- Justin Steil, Assistant Professor, MIT

- Mark Steiner, Professor of Law, South Texas College of Law Houston
- William Yukowich, Professor of Law, Georgetown University
- Lauren Willis, Professor of Law, Loyola Law School, Los Angeles
- Eric Wright, Professor of Law, Santa Clara University School of Law

3. The following four U.S. Senators were signatories to one comment letter (CFPB-2018-0015-0100):

- Senator Catherine Cortez Masto, Nevada
- Senator Tammy Duckworth, Illinois
- Senator Jack Reed, Rhode Island
- Senator Elizabeth Warren, Massachusetts

## 3.2 Public Reporting Practices of Consumer Complaint Information

### Background

An important aspect of the Bureau’s mission is hearing directly from the American public about their experiences in the consumer financial marketplace. Pursuant to 12 U.S.C. 5511(c)(2), “collecting, investigating, and responding to consumer complaints” is one of the six statutory “primary functions” of the Bureau. Since it began collecting complaints in July 2011, the Bureau has published a variety of reports analyzing complaints and responses. Some of these reports are specifically required by the Act (e.g., annual report to Congress on information and analysis about complaint numbers, types, and, where applicable, resolution). Others are intended to meet the Bureau’s objective of ensuring “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation” (e.g., monthly complaint reports, special edition complaint reports). The Bureau also publishes a redacted subset of information collected during the complaint process in a public Consumer Complaint Database.

To assess the effectiveness of its existing public reporting practices of consumer complaint information, the Bureau issued a request for information that sought public input regarding potential changes to the Bureau’s public reporting practices of consumer complaint information, consistent with law, and to consider whether any changes to the practices would be appropriate.

The Bureau sought feedback on all aspects of its complaint reporting and publication practices.

### Comment Summary

**Total Comments:** 25,314

**Substantive comments responsive to this RFI:** 25,144<sup>123</sup>

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<sup>123</sup> Additional information on comment submissions, including details about coordinated submissions, can be found in the *Additional Notes* section following the RFI summary.

**Substantive comments responsive to other RFIs: 29**

Comments received from:						
Individual Consumers	Individual Entities			Consumer Groups	Government (e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, non-consumer advocacy groups, faith-based organizations, etc.)
	Depository Institutions	Non-Depository Institutions	Trade Groups			
25,234	4	7	20	28	7	14

**RFI Topic Areas**

Topic	Description
1 Database Access	Whether the Bureau should limit public access to the Consumer Complaint Database.
2 Data Fields	Whether the Bureau should alter the data fields currently provided in the Consumer Complaint Database.
3 Company Narratives	Whether the Bureau should publish a public company response narrative in the Consumer Complaint Database.
4 Reporting Schedule	Whether the Bureau should alter its complaint reporting schedule.
5 Normalization	Whether the Bureau should provide information regarding product or service market size and company share to interpret complaint information.

## Representative Sentiments

1. Database Access: Whether the Bureau should limit public access to the Consumer Complaint Database.

Commenter Type	Representative Sentiments
Individual Consumers	<p>"I'm writing to ask that the Consumer Financial Protection Bureau continue hosting the public consumer complaint database, which is as an invaluable resource for consumers." – Consumer (CFPB-2018-0006-0120)<sup>124</sup></p> <p>"I am a consumer protection attorney in Florida. I see first-hand the abuses of the financial industry and others, and their significant negative effect on my clients. I often urge my clients and potential clients to submit their complaints to the CFPB. In some cases, simply filing the complaint results in the company doing the right thing, and fixing the issue. The public complaint database is a crucial resource for my clients and for me, as I assist my clients. I strongly urge you to keep the complaint database open and available to the public via online access." – Consumer (CFPB-2018-0006-1037)</p> <p>"I'm writing to ask that the Consumer Financial Protection Bureau DELETE the public consumer complaint database." – Consumer (CFPB-2018-0006-1212)</p>
Individual Entities	<p>"We suggest the Bureau operate the Database privately and share complaints data with consumers through other means that better provide understandable information from which consumers can make responsible decisions." – Discover Financial Services</p> <p>"SchoolsFirst FCU appreciates the role that the Bureau of Consumer Financial Protection (BCFP) and its consumer complaint database play in collecting and publishing consumer complaints ... We propose the information on the public Consumer Complaint Database be</p>

<sup>124</sup> Nearly all comments submitted by individuals expressed support for public access to the Consumer Complaint Database. Additional information on comment submissions, including example text of individual submissions, can be found in the *Additional Notes* section following the RFI summary.

removed when resolved after a set time period (3 – 5 years) so consumers are not overwhelmed by old or outdated issues that have been corrected.” – SchoolsFirst Credit Union

“NAFCU believes that the Bureau should not publish consumer complaint narratives on its website, or in any other format. There is no shortage of alternative channels through which consumers can comment on or critique the conduct of financial institutions.” – National Association of Federally-Insured Credit Unions (NAFCU)

Trade groups “RMA supports continued public access to the Bureau’s Database. RMA has found the Database to be a useful tool to demonstrate that RMA-certified businesses have significantly lower complaint rates than non-RMA-certified businesses. RMA also reviews the complaints against businesses as part of the RMCP initial application and renewal process as well as part of the recurring, independent third-party audits required by the RMCP.” – Receivables Management Association International (RMA)

“The public complaint database is a tool that empowers individuals to inform and protect themselves in the marketplace. It helps consumers evaluate a company’s practices as they decide where to take their business and creates incentives for companies to treat their customers fairly. It helps both consumers and businesses resolve problems when they arise and helps the market reward good products and services by providing consumers with the ability to publicly share their experiences. The complaint database also allows companies to identify and correct problems on their own without the impetus of a new rule or enforcement action.” – Joint letter from 72 Consumer Groups<sup>125</sup>

Consumer Groups “We urge you to maintain public access to the consumer complaint database. Should you decide to end public access to the information, we request an explanation of any proposed changes, a detailed accounting of your justification, and a copy of any analysis you undertook in support of your decision. The protection, education, and empowerment of consumers should be at the forefront of any changes and decisions made at the CFPB. None of these objectives can justify taking down the database.” – Joint letter from 35 U.S. Senators

“I encourage the Bureau to use the opportunity of its new leadership to expand the scope of the Consumer Complaint Database.” – Reinvestment Partners

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<sup>125</sup> A full list of signatories to joint letters can be found in the *Additional Notes* section following each RFI summary.

“While the database has proven an invaluable resource in our investigations, it has also proven useful to consumers at large, in a number of different ways. … [W]e urge the CFPB to maintain a public consumer complaint database, in the interest of the CFPB’s state law enforcement partners, and in the interest of the public at large.” – Joint letter from 16 State Attorneys General and Government Officials

Government

“[M]any states operate under strict confidentiality laws that prohibit public release of confidential information, including consumer complaint information, regardless of whether the consumer desires for the information to be made public. Thus, the Bureau’s public reporting of all consumer complaint information may unintentionally inhibit a more robust system of complaint information sharing between state regulators and the Bureau.” – Conference of State Bank Supervisors

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“The CFPB Consumer Complaint Database helps the CFPB process consumer complaints and provides useful information about the types of problems that borrowers face, and can be used to identify emerging issues faced by consumers.” – NERA Economic Consulting

Other

“We urge you not to curtail or cut back on the Bureau’s public reporting and not to curtail the level of access to complaint information currently available to external stakeholders and the public through the public consumer complaint database, including the ability to search complaints for specific types of abuses by specific financial companies.” – Joint letter from 15 Veterans and Military Service Organizations

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**2. Data Fields:** Whether the Bureau should alter the data fields currently provided in the Consumer Complaint Database.

Commenter Type	Representative Sentiments
Trade groups	“The ‘Closed with explanation,’ ‘Closed with monetary relief,’ and ‘Closed with non-monetary relief’ data fields should be replaced with the field ‘Closed.’ The other fields are subjective and reveal aspects of a transaction between a financial institution and its customer that should not be published.” – American Financial Services Association (AFSA)

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"We would also ask that the Bureau provide unique customer ID numbers so that servicers can reconcile complaints to our numbers. It has been confirmed by the BCFP that the Bureau's data and servicer data will never match. This makes it more difficult to research complaints, thereby causing extra time and work for servicers, and impairs the level of customer service." – Student Loan Servicing Alliance (SLSA)

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"The Bureau should make it possible for consumers to see how individual companies are handling the complaints they receive in the database. ... Resolutions should be broken down by monetary relief, including dollar amounts received, combined with the type of complaint filed and company name. Non-monetary relief should report the specific actions taken by a company, such as, 'Error removed from credit bureau records,' 'interest rate changed.'" – Joint letter from 72 Consumer Groups

Consumer Groups	"Listing complaints by the specific company the consumer complained about would enhance the utility of the database. Just listing complaints' by the parent company's name can obscure complaints from consumers looking for pertinent information; listing each complaint in the public database by the company name used by the consumer in the complaint would make the database considerably more user friendly." – Legal Services NYC (LS-NYC)
	"While it would be valuable to have additional qualitative input from companies, to do away with the current sub-categories would make it more difficult to parse the information." – Reinvestment Partners

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Government	"Despite contrary assertions from industry comments, DCA believes that clear and comprehensive database categories, such as the consumer dispute option, offer real insight into whether a company is committed to serving its consumers. ... We note this here to urge the Bureau to consider before it proceeds with eliminating additional categories from its database." – NYC Department of Consumer Affairs
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Other	"Continue collecting and reporting state and local data, including ZIP code data where appropriate – regional information can be useful for many reasons including targeting resources and supporting state and local action in addressing trends." – AARP
	"Based on our analysis of the CFPB complaints database, we recommend that the CFPB would include variables on the total number of borrowers serviced, borrowers' credit attributes and loan terms, among other factors, so that complaint rates against different servicers would be comparable." – NERA Economic Consulting

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**3. Company Narratives: Whether the Bureau should publish a public company response narrative in the Consumer Complaint Database.**

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Individual Entities	<p>"When a consumer files a complaint about a financial institution, I recommend that the financial institution be allowed to respond to the complaint and that response be published with the complaint to increase the legitimacy of the complaint." — The National Bank of Texas</p> <p>"[S]hould the Bureau retain public access to the database, we strongly recommend that company responses to complaints should not be available to the public and should continue to be restricted." — Navy Federal Credit Union</p>
Trade groups	<p>"The communications between a financial institution and its customer should not be published. These communications include proprietary information and private customer information that is confidential." — American Financial Services Association (AFSA)</p> <p>"Consumers accessing the database are not able to see the company's response; thus, a holistic representation is not available to the consumer..." — Ohio Credit Union League</p>
Consumer Groups	<p>"[W]e would support expansion of the company response options in the complaint process. Currently companies may only choose from nine standardized public responses to consumer complaints. We suggest expanding company responses to include corporate narratives, just as consumers are afforded that option." — Joint letter from 72 Consumer Groups</p> <p>"We urge the Bureau to expand the use of the complaint feedback process to include public access. The collection of feedback on the outcome of complaints would allow consumers to better understand how companies respond to complaints, and allow businesses to more accurately measure customer service performance." — National Consumer Law Center</p>
Government	<p>"Despite now including the narratives of consumers, a clear gap still remains with regard to company responses. Currently, company responses function as a variable, but lack narratives that can provide the full breadth of the response. It is in these instances when publicly available data lacks context that it is most susceptible to misinterpretation." — NYC Department of Consumer Affairs</p>

Other

"To increase transparency and enhance the marketplace benefits provided by the Database, the Bureau should make additional data fields public, particularly data about companies' specific responses to complaints. This information is vital to evaluating the complaint mechanism's role in resolving disputes between consumers and companies." – Joint letter from 56 Financial Regulation and Consumer Protection Scholars, and Former Regulators

"Complaint resolution details should be publicly reported. The Bureau should make it possible for consumers to see how individual companies are handling the complaints they receive in the database." – Student Debt Crisis

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4. Reporting Schedule: Whether the Bureau should alter its complaint reporting schedule.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Individual Entities	<p>“The Bureau should limit publication of complaint reports to the minimum type and number required by law. … The Dodd-Frank Act requires the Bureau to provide Congress two reports which specifically address complaint data: the Semi-Annual Report and the Consumer Response Annual Report. Although the Bureau is required to submit other reports to Congress, the Bureau should only include complaint information in these two reports in which it is statutorily mandated.” – Navy Federal Credit Union</p>
Trade groups	<p>“We also urge the Bureau to discontinue permanently the ‘Monthly Complaint Reports’ that it published between July 2015 and October 2017. These reports are mentioned nowhere in the Dodd-Frank Act, provide no meaningful context for the information presented, and impose unjustified reputational harm on the companies listed in the reports, without any evidence that the reports propagate accurate information or provide utility to consumers.” – American Bankers Association (ABA)</p>
Consumer Groups	<p>“Quarterly or even annual reviews would be sufficient. Not only would this be more efficient, but it would also reduce the risk of ascribing special significance to monthly changes that are merely the product of normal variation. If new trends or patterns emerged in the interim between reports, a Special Edition Complaint Report could be published.” – Receivables Management Association International (RMA)</p>
Government	<p>“… CFPB should take steps to expand the public’s access to this information. As of November, 2017, CFPB no longer publishes monthly complaint reports. These monthly reports had been a valuable tool for consumers, researchers, and advocates to understand the consumer complaint information that was being reported and the Bureau should reinstate the practice of publishing monthly reports.” – National Housing Resource Center</p>
	<p>“The Bureau should continue or resume other public reporting practices of consumer complaint information as well. The Bureau’s special reports and monthly complaint reports reveal trends and problems not otherwise easily captured or aired. The topics highlighted by the monthly complaint reports—such as servicemember complaints or complaints from older Americans—</p>

are often those not routinely covered by the Bureau's other reporting requirements.” – New York State Department of Financial Services

“I strongly urge the agency to continue or expand the detail of the complaint reports and maintain or expand the level of access to complaint information available to external stakeholders. I also request the agency continue maintaining or increasing the frequency of complaint reports, expanding content of the reports, and maintaining or increasing state and local complaint trend data.” – Senator Catherine Cortez Masto, Nevada

Commenter Type	Representative Sentiments
Other	“In accordance with the [Dodd-Frank] Act, the CFPB should continue to collect consumer complaints and report to Congress on an annual and semiannual basis. Such reporting should align with the CFPB’s statutory mandate and include information and analysis about complaint numbers, types, and resolution.” – Auriema Consulting Group

5. Normalization: Whether the Bureau should provide information regarding product or service market size and company share to interpret complaint information.

Commenter Type	Representative Sentiments
Individual Entities	“In an effort to improve the value of the Bureau’s reports, we believe that the Bureau should place less emphasis on raw numbers of submissions and, instead, place those numbers in proper context. … This could provide the public with more meaningful insight into the differences among servicers, the functions they perform, and the programs they service.” – Pennsylvania Higher Education Assistance Agency (PHEAA)
Consumer groups	“We would suggest that the complaint data is reframed from how many complaints there are to how few complaints there are considering how many Americans have an account in collections.” – Encore Capital Group

so as not to undermine the primary consumer protection and educational purposes of the database.” – Better Markets

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“ACA members overwhelmingly support efforts to provide better context regarding complaint information including the product complained of and the company's share of the market. For instance, healthcare debt has a larger share of the market than utilities or municipal debt. The Bureau needs to inform consumers and the public of the true nature of the debt collection marketplace in order for the consumer complaint data to have useful meaning.” – The Association of Credit and Collection Professionals (ACA International)

Trade groups

“The skewed nature of the Database create harm for consumers as the information contained within the system is not normalized and gives the consumer no real basis to make an informed decision. … CBA maintains there are many challenges with normalization that must be considered when establishing a formal procedure. Even with thoughtful analysis from industry and market experts, we assert there is no perfect way to normalize data.” – Consumer Bankers Association

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Other

“[T]o provide more context for the company names and resolution information in the Database, the Bureau should consider adding fields that detail the market size for the subject product or service and the share of the market held by the subject company. These data points will allow consumers, researchers, and others to place consumers' complaints in the context of the broader marketplace, which will increase transparency about the prevalence of complaints about particular companies.” – Joint letter from 56 Financial Regulation and Consumer Protection Scholars, and Former Regulators

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## Additional Notes

Some commenters submitted letters signed by multiple parties. Some signatories to these letters submitted an additional letter and either adopted the language of the joint submission in whole or provided additional information for the Bureau to consider.

1. The following 35 U.S. Senators were signatories to one comment letter (CFPB-2018-0006-0035):

- Senator Tammy Baldwin, Wisconsin

- Senator Michael F. Bennet, Colorado
- Senator Richard Blumenthal, Connecticut
- Senator Cory A. Booker, New Jersey
- Senator Sherrod Brown, Ohio
- Senator Benjamin L. Cardin, Maryland
- Senator Robert P. Casey, Jr., Pennsylvania
- Senator Catherine Cortez Masto, Nevada
- Senator Tammy Duckworth, Illinois
- Senator Richard J. Durbin, Illinois
- Senator Dianne Feinstein, California
- Senator Kirsten Gillibrand, New York
- Senator Kamala D. Harris, California
- Senator Mazie K. Hirono, Hawaii
- Senator Patrick Leahy, Vermont
- Senator Edward J. Markey, Massachusetts
- Senator Robert Mendendez, New Jersey
- Senator Jeffery A. Merkley, Oregon
- Senator Chistopher S. Murphy, Connecticut
- Senator Patty Murray, Washington
- Senator Bill Nelson, Florida
- Senator Gary C. Peters, Michigan
- Senator Jack Reed, Rhode Island

- Senator Bernard Sanders, Vermont
- Senator Brian Schatz, Hawaii
- Senator Jeanne Shaheen, New Hampshire
- Senator Tina Smith, Minnesota
- Senator Debbie Stabenow, Michigan
- Senator Tom Udall, New Mexico
- Senator Chris Van Hollen, Maryland
- Senator Mark R. Warner, Virginia
- Senator Elizabeth Warren, Massachusetts
- Senator Sheldon Whitehouse, Rhode Island
- Senator Margaret Wood Hassan, New Hampshire
- Senator Ron Wyden, Oregon

2. The following 16 State Attorneys General and government officials were signatories to one comment letter (CFPB-2018-0006-0232):

- Attorney General Xavier Becerra, California
- Attorney General Thomas J. Donovan, Jr., Vermont
- Attorney General Bob Ferguson, Washington State
- Attorney General Brian E. Frosh, Maryland
- Attorney General Maura Healey, Massachusetts
- Stephen H. Levins, Executive Director, Office of Consumer Protection, Hawaii
- Attorney General Lisa Madigan, Illinois

- Attorney General Tom Miller, Iowa
- Attorney General Matthew P. Denn, Delaware
- Attorney General Ellen F. Rosenblum, Oregon
- Attorney General Josh Shapiro, Pennsylvania
- Attorney General Joshua H. Stein, North Carolina
- Attorney General Russell A. Suzuki, Hawaii
- Attorney General Lori Swanson, Minnesota
- Attorney General Barbara D. Underwood, New York
- Ellen Seidman, Former Director, Office of Thrift Supervision

3. The following 56 individuals were signatories to the letter submitted by Kathleen Engel on behalf of a group of financial regulation and consumer protection scholars, and former regulators (CFPB-2018-0006-0187):

- William Black, Associate Professor of Economics and Law, University of Missouri-Kansas City
- Susan Block-Lieb, Cooper Family Professor in Urban Legal Studies, Fordham University School of Law
- Matthew Bruckner, Associate Professor of Law, Howard University School of Law
- Mark Budnitz, Professor of Law Emeritus, Georgia State University College of Law
- Stephen Calkins, Professor, Wayne State University Law School
- Daniel Carpenter, Allie S. Freed Professor of Government and Director of Social Sciences, Harvard University
- Prentiss Cox, Associate Professor of Law, University of Minnesota
- Brenda Cude, Professor, University of Georgia

- Andrew Dawson, Professor of Law, University of Miami
- Susan L. DeJarnatt, Professor of Law, Temple University Beasley School of Law
- Lynn Drysdale, Esquire, Jacksonville Area Legal Aid, Inc.
- Benjamin Edwards, Associate Professor of Law, University of Nevada, Las Vegas William S. Boyd School of Law
- Kate Elengold, Clinical Associate Professor of Law, University of North Carolina School of Law
- Kathleen Engel, Research Professor of Law, Suffolk University Law School
- Linda Fisher, Professor of Law, Seton Hall Law School
- Anne Fleming, Associate Professor of Law, Georgetown University Law Center
- Pamela Foohey, Associate Professor of Law, Indiana University Maurer School of Law
- Judith Fox, Clinical Professor of Law, University of Notre Dame Law School
- Anna Gelpern, Professor of Law, Georgetown
- Jim Hawkins, Professor, University of Houston Law Center
- Robert Hockett, Edward Cornell Professor of Law, Cornell Law School
- Edward Janger, David M. Barse Professor, Brooklyn Law School
- Dalié Jiménez, Professor of Law, University of California, Irvine School of Law
- Daniela Kraiem, Practitioner in Residence, American University Washington College of Law
- Cathy Lesser Mansfield, Professor of Law, Drake University Law School
- Angela Littwin, Ronald D. Krist Professor in Law, University of Texas at Austin School of Law
- Patricia McCoy, Professor of Law, Boston College Law School

- Jonathan Morduch, Professor of Public Policy and Economics, New York University
- Christopher Odinet, Horatio C. Thompson Assistant Professor of Law, Southern University Law Center
- Chrystin Ondersma, Professor of Law, Rutgers Law School
- Sarah Orr, Director, University of Wisconsin Law School
- Christopher Peterson, John J. Flynn Endowed Professor of Law, University of Utah, S.J. Quinney College of Law
- David Reiss, Professor of Law, Brooklyn Law School
- Ira Rheingold, Executive Director, National Association of Consumer Advocates
- Florence Roisman, William F. Harvey Professor of Law and Chancellor's Professor, Indiana University Robert H. McKinney School of Law
- Jacob Rugh, Associate Professor of Sociology, Brigham Young University
- Jacob Russell, Assistant Professor of Law Rutgers, The State University of New Jersey
- Amy J. Schmitz, Elwood L. Thomas Missouri Endowed Professor of Law, University of Missouri School of Law
- Ellen Seidman, Former Director, Office of Thrift Supervision
- Ann Shalleck, Professor of Law and Carrington Shields Scholar, Washington College of Law
- Alexandra Sickler, Associate Professor of Law, University of North Dakota School of Law
- Jeff Sovern, Professor of Law, St. John's University School of Law
- Mary Spector, Professor of Law, SMU Dedman School of Law
- Gregory Squires, Professor of Sociology and Public Policy & Public Administration, George Washington University
- Debra Stark, Professor of Law, The John Marshall Law School

- Mark E. Steiner, Professor of Law, South Texas College of Law Houston
- Corey Stone, Senior Advisor, Oliver Wyman
- Peter Strauss, Betts Professor of Law Emeritus, Columbia Law School
- Jennifer Taub, Professor, Vermont Law School
- William Vukowich, Professor of Law, Georgetown
- Amy Widman, Associate Professor, NIU College of Law
- Lauren Willis, Professor of Law, Loyola Law School Los Angeles
- Arthur Wilmarth, Professor of Law, George Washington University Law School
- Eric Wright, Professor, Santa Clara University School of Law

4. The following 72 consumer groups were signatories to one comment letter (CFPB-2018-0006-0207):

*Alaska Public Interest Research Group  
Allied Progress  
American Federation of Teachers  
Americans for Financial Reform  
Arizona PIRG Education Fund  
Association for Neighborhood and Housing Development  
Atlanta Legal Aid Society Inc.  
California Reinvestment Coalition  
CALPIRG  
Center for Digital Democracy  
Center for NYC Neighborhoods  
Center for Responsible Lending  
Community Legal Services of Philadelphia  
Connecticut Fair Housing Center  
ConnPIRG  
Consumer Action*

*Consumer Federation of America*  
*Consumers for Auto Reliability and Safety*  
*COPIRG*  
*Demos*  
*Florida PIRG*  
*Generation Progress*  
*Georgia PIRG*  
*Georgia Watch*  
*Heartland Alliance for Human Needs & Human Rights*  
*Higher Ed, Not Debt*  
*Howard County Office of Consumer Protection*  
*Illinois PIRG*  
*Indiana Institute for Working Families*  
*Indiana PIRG*  
*Interfaith Center on Corporate Responsibility*  
*Iowa PIRG*  
*Legal Aid Society of the District of Columbia*  
*Main Street Alliance*  
*Maryland PIRG*  
*MASSPIRG*  
*Missouri PIRG*  
*Montana Organizing Project*  
*NAACP*  
*National Association of Consumer Advocates*  
*National Coalition for Asian Pacific American Community Development*  
*National Community Reinvestment Coalition*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Consumers League*  
*National Fair Housing Alliance*  
*National Housing Resource Center*  
*National Urban League*  
*New York Legal Assistance Group*  
*New Yorkers for Responsible Lending*  
*NJPIRG*  
*NMPIRG*

*Ohio PIRG*  
*Oregon PIRG*  
*PennPIRG*  
*PIRG in Michigan*  
*Privacy Rights Clearinghouse*  
*Privacy Times*  
*Public Citizen*  
*Public Justice Center*  
*Public Law Center*  
*RIPIRG*  
*Student Debt Crisis*  
*Tennessee Citizen Action*  
*The Institute for College Access & Success*  
*TexPIRG*  
*Tzedek DC*  
*UnidosUS*  
*U.S. PIRG*  
*WASHPIRG*  
*WISPIRG*  
*Woodstock Institute*  
*World Privacy Forum*

5. The following 15 veterans and military service organizations were signatories to one comment letter (CFPB-2018-0006-0237):

*AMVETS*  
*Military Order of the Purple Heart*  
*High Ground Veterans Advocacy*  
*National Association of Veterans' Program Administrators*  
*Veterans for Common Sense*  
*The Retired Enlisted Association*  
*MVPVets*  
*University of San Diego Veterans Legal Clinic*  
*Ivy League Veterans Council*  
*National Military Family Association*  
*U.S. Coast Guard Chief Petty Officers Association & Enlisted Association*

*Blue Star Families  
Vietnam Veterans of America  
Service Women's Action Network  
Veterans Education Success*

6. The following 5 Georgia-based groups and persons were signatories to one comment letter (CFPB-2018-0006-0215):

*1st Choice Credit Union  
Georgia Watch  
Green Forest Community Development Corporation  
Step Up Savannah  
Brenda Cude, Professor, University of Georgia*

7. The Bureau received over 25,000 comment letters from individuals in response to this RFI.

Some individuals wrote unique comments. Some individuals (more than 1,800) used an email-based template, adopting the templated text, and adding their name, address, and email. Most individuals (more than 22,100) used templated text originating from what we believe is Consumer Reports. Many of these individuals (more than 500) adopted the text and either added language to the beginning, added language to the end, or embedded the text.

The text used by approximately 90% of individuals expressed support for the public Consumer Complaint Database:

*I'm writing to ask that the Consumer Financial Protection Bureau continue hosting the public consumer complaint database which is as an invaluable resource for consumers. Over 1.4 million complaints have been filed and the Consumer Bureau works with consumers to get resolution. The simple fact that complaints are made available publicly along with the company's response encourages companies to be more responsive. Americans should know when financial institutions are mistreating consumers in the marketplace. Keeping this database public helps us hold banks and other financial institutions accountable to consumers. Please don't take it offline!*

## 3.3 Consumer Complaint and Inquiry Handling Processes

### Background

An important aspect of the Bureau’s mission is hearing directly from the American public about their experiences in the consumer financial marketplace. Pursuant to 12 U.S.C. 5511(c)(2), “collecting, investigating, and responding to consumer complaints” is one of the six statutory “primary functions” of the Bureau. In addition, ensuring that “consumers are provided with timely and understandable information to make responsible decisions about financial transactions” is one of its six enumerated objectives. Although the Bureau is required to establish reasonable procedures to provide timely responses to consumer complaints and consumer inquiries, certain aspects of the complaint and inquiry handling processes were developed in furtherance of those statutory requirements but are not directly mandated by statute. Mindful of the Bureau’s statutory objective to provide consumers with timely and understandable information about consumer financial products and services so they can make responsible decisions, as well as its statutory obligations to (1) establish reasonable procedures to provide consumers with timely responses and (2) centralize the collection of consumer complaints about consumer financial products or services, the Bureau has used feedback from a variety of stakeholders to establish and refine its processes over time to improve stakeholders’ experience, handle large volumes of complaints and inquiries, and increase overall efficiency.

To assess the effectiveness of its existing consumer complaint and inquiry handling processes, the Bureau issued a request for information that sought public input regarding potential changes that can be implemented to the Bureau’s consumer complaint and inquiry handling processes, consistent with law, and to consider whether any changes to the practices would be appropriate.

The Bureau sought feedback on all aspects of its complaint and inquiry processes.

### Comment Summary

**Total Comments:** 1,043

**Substantive comments responsive to this RFI:** 780

**Substantive comments responsive to other RFIs: 836**

Comments received from:						
Individual Consumers	Individual Entities			Consumer Groups	Government (e.g., other federal agencies, state and local governments, law enforcement, etc.)	Other (e.g., academia, non-consumer advocacy groups, faith-based organizations, etc.)
	Depository Institutions	Non-Depository Institutions	Trade Groups			
981	5	4	21	19	2	9

**RFI Topic Areas**

Topic	Description
1 Complaint Submission	Whether the Bureau should change how complaints can be submitted to the Bureau.
2 Complaint process	Whether the Bureau should make changes to any of the stages of the complaint process after submission (review and route, company response, consumer review).
3 Classification	Whether the consumer, Bureau, or company should classify a consumer's submission as a complaint or inquiry.
4 Determination	Whether the Bureau should determine the validity of consumer submissions or company responses.
5 Inquiries	Whether the Bureau should create a process for companies to respond to inquiries, alter the channels over which they should be submitted, and publish inquiries.

## Representative Sentiments

1. Complaint Submission: Whether the Bureau should change how complaints can be submitted to the Bureau.

Commenter Type	Representative Sentiments
Individual Consumers	<p>“The CFPB should not change its consumer complaint process in any way to withhold any more inquiries by the public than is prudent and necessary.” – Consumer (CFPB-2018-0014-0013)</p> <p>“Do not end this service! It serves the public good and is an effective tool.” – Consumer (CFPB-2018-0014-0023)</p> <p>“It is essential that the Bureau maintain its willingness to have consumers’ credit and housing counselors, attorneys and other representatives assist individuals in filing a financial complaint ... The Bureau accepts questions, complaints and comments regarding financial products and services in more than 180 languages ... This vital service for LEP [Limited English Proficiency] consumers should be maintained.” – Consumer (CFPB-2018-0014-DRAFT-0992-A1)</p>
Individual Entities	<p>“Why can’t CFPB complaint process have the member type in the name of their financial institution to verify if they are regulated by CFPB. [sic] If not, provide the complainant the appropriate link to the proper regulatory website.” – Texas Dow Employees Credit Union</p> <p>“...Navy Federal suggests that the Bureau remove the ability for third-parties to file complaints on a consumer’s behalf.” – Navy Federal Credit Union</p> <p>“Given the decreased use of fax machines, this method should be removed ... We encourage the CFPB to require a power of attorney to demonstrate authorization to submit a complaint on a consumer’s behalf.” – AlaskaUSA Federal Credit Union</p>
Consumer Groups	<p>“We call on the Bureau to focus on response and resolution to consumer inquiries and complaints. Any changes to existing practices would not be appropriate or helpful in delivering on its duty to provide consumers with timely and understandable information about consumer financial products and services, and to protect consumers from harm.” – Consumer Advocates Against Reverse Mortgage Abuse</p>

"The CFPB should modify the consumer complaint system to receive complaints about small businesses loans." – Joint letter submitted by the Woodstock Institute and 9 Consumer Groups

Government "Provide clarity around the ability of a third party to file a complaint on behalf of a consumer. State regulators continue to be concerned about the potential inability of the consumer to control their complaint information..." – Conference of State Bank Supervisors

"The Bureau should maintain the ability of authorized third parties to submit complaints on behalf of consumers; however, the Bureau should implement appropriate processes to verify the proper consent and authorization for a company to communicate with the third party about the consumer's private information is [sic]included with the complaint." – Educational Credit Management Corporation

Other "The Bureau should not alter its procedures in ways that reduce its collection of complaints or frustrate its ability to engage in one of its primary responsibilities. We recommend that the Bureau continue to accept complaints from the following six channels: website, referral from Federal and State entities/agencies, telephone, mail, fax, and email. We are, however, reluctant to endorse webchat as a means of receiving consumer complaints because of uncertainty regarding the ability to maintain accurate records of complaints received in this way ... The Bureau should not restrict or limit the ability of "agents, trustees, or representatives acting on behalf of an individual" to submit complaints..." – Joint letter from 38 Financial Regulation and Consumer Protection Scholars, and Former Regulators

2. Complaint process: Whether the Bureau should make changes to any of the steps of the complaint process after submission (review and route, company response, consumer review).

Commenter Type	Representative Sentiments
Individual Consumers	"There needs to be more clarity as to what is going on when you file a complaint. Also an option to keep negotiating with the company. It also would be nice if there was an actual investigation into a company after so many complaints with either a written or email notice letting the consumer know and if there was anything to add for the investigation." – Consumer (CFPB-2018-0014-0012)

Individual Entities	<p>"Navy Federal believes the Bureau should give financial institutions greater leeway to return repetitive complaints when a financial institution has already provided a formal written response to the consumer through the Bureau's complaints portal. ... Accordingly, we suggest the Bureau amend the complaints portal instructions to allow financial institutions to return substantially similar consumer complaints filed with multiple agencies ... We believe the Bureau should amend the complaints procedures to provide financial institutions greater flexibility to return complaints where: (1) the information submitted does not provide a complaint about a product or service offered by our financial institution; (2) the complaint fails to provide adequate information for the financial institution to identify the consumer, product, or service at issue; (3) the complaint asks for a remedy that the financial institution is not authorized to provide, such as a request that we change the law or regulation; or (4) the complaint, itself, is against a company other than Navy Federal." – Navy Federal Credit Union</p>
	<p>"At minimum, the Bureau should encourage consumers to attempt to resolve the issue with the company. This approach benefits both the consumer and company. Directly contacting the company provides the consumer with the best chance for a prompt, satisfactory resolution." – Mortgage Bankers Association (MBA)</p>
	<p>"The Bureau should also make the following additional improvements to Portal operations: The Bureau should establish a process for institutions to notify the Bureau that the complaint does not concern the institution's product or service ... The Bureau should state more clearly to consumers that the Bureau's role in its complaint resolution process is to facilitate an institution's response to the consumer's complaint, not to require the institution to provide a particular form of relief." – American Bankers Association (ABA)</p>
Trade groups	<p>"AFSA member companies offer the following suggestions to help improve the manner in which the Bureau handles consumer complaints [:] The Bureau should engage in educational outreach to assist customers in articulating complaints that are complete and actionable ... the current forms lead to generation of inaccurate complaints, and the Bureau should revise them to be neutral ... The Bureau's consumer complaint intake processes should be revised to improve complaint routing to the appropriate party ... The Bureau's consumer complaint intake portal should be enhanced to allow additional text formatting ... Companies named in consumer complaints should have the ability to revise the categorization of consumer complaints for accuracy ... Companies named in consumer complaints should have additional time to respond to consumer complaints ... After a company named in a consumer complaint has provided a response, the Bureau should indicate on the complaint record whether the Bureau considers the complaint closed." – American Financial Services Association</p>

Consumer Groups	"The Bureau should require all companies supervised by the CFPB to adequately respond to and attempt to resolve consumer complaints within the 15 and 60-day time frames. If a company is too reliant on a boilerplate, standardized response to customers, the CFPB should review its response history during supervisory examinations." – Joint letter from 70 Consumer Groups
Other	"The Bureau should also develop a method for consumers to re-open an old complaint or to somehow tie multiple submissions into one complaint." – Educational Credit Management Corporation

3. Classification: Whether the consumer, Bureau, or company should classify the consumer's submission as a complaint or inquiry

Commenter Type	Representative Sentiments
Individual Consumers	"The Bureau may PERMIT consumers to classify their submission affirmatively as a consumer complaint or inquiry prior to submission ... The Bureau SHOULD NOT PERMIT companies to reclassify consumers' submissions." – Consumer (CFPB-2018-0014-0053)
Individual Entities	"Consumers should not be required to classify a submission whatsoever ... Companies must absolutely not be permitted to unilaterally reclassify consumer submissions. Doing so would be a violation of consumers' first amendment rights. A similar argument holds for the Government." – Consumer (CFPB-2018-0014-0109)
Alaska USA Federal Credit Union	"Alaska USA believes that the CFPB should require consumers to identify their submission as a consumer complaint or inquiry at the point of submission ... Similarly, the CFPB should develop a process for companies to reclassify consumers' submissions... The CFPB should control the final reclassification in light of the potential that a reclassification could be erroneous." – AlaskaUSA Federal Credit Union
Check Into Cash	"Respectfully, we have yet to receive a submission from a consumer that is designated as an "inquiry" ... Nevertheless, we would welcome the opportunity to reclassify complaint submissions or present to the Bureau information regarding why the incorrect categorization of a complaint submission should be changed." – Check Into Cash

Trade groups	<p>"ACA members overwhelming support an improved process for classifying consumer submissions to the Bureau. On this specific point, 100% of the ACA members who responded to a recent survey state they would like to see the Bureau require consumers to classify their submissions affirmatively as a complaint or inquiry prior to submission ... Of the ACA members polled, 80% of ACA agree that the Bureau should develop a process for companies to reclassify consumer complaints. This can only be accomplished if the Bureau develops a clear definition of complaints and inquiries." – Association of Credit and Collection Professionals</p>
	<p>"The Bureau should require consumers to classify their submission affirmatively as a consumer complaint or inquiry prior to submission ... The Bureau should be clear at the start of what a complaint is and consumers should be guided by a series of prompts that lead the consumer to understand if their issue is in fact a complaint or matter of inquiry ... CBA believes the Bureau should develop a process for financial institutions to reclassify consumers' submissions." – Consumer Bankers Association</p>
Consumer Groups	<p>"...the consumer should be the one to reclassify her complaint as an inquiry if appropriate, but the focus of the Bureau's attention should be on response and resolution to the consumer rather than what category to classify their communication." – Joint letter from 70 Consumer Groups</p>
Government	<p>"If the Bureau first formally adopts a definition for "consumer inquiry," the Department supports requiring consumers to classify submissions ... The Bureau should clearly define and differentiate between consumer inquiries and consumer complaints, and should ultimately determine whether submissions require reclassification." – South Carolina Department of Consumer Affairs</p>
Other	<p>"The bureau should classify appropriately after exploring the complaint received ... For consistency and to avoid consumer confusion, the bureau should take responsibility to classify the consumer communication after exploring the communication to verify what it is ... Companies should be concerned about receiving and reviewing communications and exploring them, and not concerned about the nature of the classification." – Housing and Economic Rights Advocates</p>

4. Determination: Whether the Bureau should determine the validity of consumer submissions or company responses.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Individual Consumers	"People file complaints with the CFPB. The CFPB then sends the consumer's complaint to the company the complaint has been made against. The company responds to the complaint, usually in an almost automated generic response with no real facts or evidence to even remotely refute the complaint ... If the CFPB is going to automatically close out the complaint after the company responds, what is the purpose of the CFPB?" – Consumer (CFPB-2018-0014-0004)
Individual Entities	"There is no limit on consumers' ability to make claims, regardless of whether there is any factual basis for those claims. Consumers are free to make any claim whatsoever and the Bureau makes no effort to determine if complaints are valid." – PRA Group
Trade groups	"We urge the Bureau to perform a meaningful review of incoming complaints and exclude clearly inaccurate or irrelevant information." – US Chamber of Commerce
Other	"There should be a method by which companies can flag complaints as baseless or without merit." – Habematolel Pomo of Upper Lake

5. Inquiries: Whether the Bureau should create a process for companies to respond to inquiries, alter the channels over which they should be submitted, and publish inquiries.

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Individual Consumers	"I suggest the Bureau add email as a channel for accepting inquiries ... I suggest the Bureau invest in a web chat function ... While the Bureau's process for receiving timely responses to consumer complaints from companies is very valuable, I suggest the Bureau does not expand this to consumer inquiries. Consumers should submit inquiries directly to the company. ... Without knowing what type of inquiries are submitted to the Bureau, it is difficult to comment on

whether publishing this information is valuable to the public. However, transparency in government is always beneficial. If inquiries may be published without violating consumer privacy, I suggest publishing this information.” – Consumer (CFPB-2018-0014-0113)

“The Bureau should continue to accept consumer inquiries via telephone and mail. The Bureau should consider adding the ability to inquire via its website via a chat application, fax, and email ... The Bureau should develop web chat systems to support consumers' submission of inquiries ... The Bureau should develop a process for companies to provide timely responses to consumer inquiries sent to them by the Bureau...The Bureau MUST publish data about consumer inquiries and complaints.” – Consumer (CFPB-2018-0014-0053)

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Individual Entities

“The Bureau should continue to accept inquiries [sic] via telephone and mail ... The Bureau should not develop a web chat system. Please wait for more time to monitor the security of providing this system to the public ... The Bureau should expand on the same current process for consumers to provide a complaint. Again, leave to the companies to determine whether the consumer is making a complaint or inquiry rather than having the consumer make that determination ... The Bureau should not publish data about consumer inquiries, at this time.

Continue to provide data or analyses about consumer complaints, but not inquiries.” – Midcountry Bank

“Inquiry topics can vary in subject matter, including questions about financial products and services in general, or those provided by certain companies. Publishing this data doesn't follow the purpose of the complaint database, which is to assist the public to learn from other consumer experiences and company responses. In addition, it is possible that publication could encourage inappropriate data-mining of the inquiries for sales purposes.” – AlaskaUSA Federal Credit Union

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Trade groups

“The Bureau should take precautionary steps to ensure companies receive consumer inquiries and complaints in a timely fashion, but should not require companies to provide responses to consumer inquiries on a mandated timeline. ... The Bureau should not publish individual consumer inquiries, but should continue to publish responses to frequently asked consumer questions about financial products via ‘Ask CFPB.’” – National Association of Federally-Insured Credit Unions

“... [W]e recommend trying to move toward real-time identification and resolution of consumer concerns. Web chat has significant potential in such an effort ... Questions from consumers concerning legal rights and obligations, regardless of association to a specific company, should be answered by the Bureau who would then provide guidance without publication in the CCDB

	<p>or reports. Consumers requesting special information, such as the consumer wants to offer to settle an account or claims hardship, should be dealt with the company if they are named, and the Bureau if no company is named. Neither of these scenarios should be published ... Inquiry data might provide useful insight into the types of issues that might warrant additional consumer education efforts or drive the Bureau to enhance existing guidance. This data might also have value in the Bureau's publications." – Receivables Management Association International</p> <p>"We urge the Bureau to continue its current practice of providing a response directly to a consumer who submits an inquiry to the Bureau and not impose this responsibility on financial institutions (except where an inquiry clearly concerns only one institution's product or service)." – American Bankers Association</p>
Consumer Groups	<p>"A CFPB record should be kept registering the type of financial product or service a consumer has called to inquire about, as well as detailed categories of topics raised. The CFPB should track the topics inquired about. If the Bureau's Division of Consumer Education and Engagement has not already addressed the most requested topics in its publications it should create new financial education materials or additions to the Ask CFPB section of its website. Names of companies should also be logged along with a note as to whether the consumer's inquiry has been addressed." – Joint letter from 70 Consumer Groups</p>
Other	<p>"If webchats are then reduced to written responses that the consumer can access, and if it speeds response time to consumers, that might be a concept worth piloting, and then tracking carefully and seeking consumer response on its utility...The current [complaint and inquiry process] standards in use balance those concerns adequately. ...Yes [the Bureau should publish Inquiry data]. It helps industry, consumer, advocates and policy makers know and understand concerns and abuses, which can make for speedier improvements to industry practices." – Housing and Economic Rights Advocates</p> <p>"The FTC information is easy to navigate and is streamlined in ways that enable consumers to quickly find answers to their questions. We urge the CFPB to revise 'Ask CFPB' to parallel the approach on the FTC site. This would not only help consumers, but would also likely reduce the number of inquiries to the CFPB ... The CFPB should forward company-specific consumer inquiries to the proper companies and require that the companies respond within 30 days of receipt ... The financial services industry and consumers would benefit from the CFPB making public the topics and number of inquiries. The data should include the frequency with which and the timing in which firms respond to consumer inquiries. Like with consumer complaint data, the inquiries should be grouped according to product and reported in absolute numbers and by</p>

market share.” – Joint letter from 38 Financial Regulation and Consumer Protection Scholars, and Former Regulators

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## Additional Notes

Some commenters submitted letters signed by multiple parties. Some signatories to these letters submitted an additional letter and either adopted the language of the joint submission in whole or provided additional information for the Bureau to consider.

1. The following 38 individuals were signatories to the letter submitted by Kathleen Engel on behalf of a group of financial regulation and consumer protection scholars, and former regulators (CFPB-2018-0014-0315-A1):
  - Marianne Artusio, Assoc. Professor of Law, Retired, Touro Law Center
  - William Black, Associate Professor of Economics and Law, University of Missouri-Kansas City
  - Susan Block-Lieb, Cooper Family Professor in Urban Legal Studies, Fordham University School of Law
  - Daniel Carpenter, Allie S. Freed Professor of Government and Director of Social Sciences, Harvard University
  - Prentiss Cox, Associate Professor of Law, University of Minnesota
  - Rashmi Dyal-Chand, Professor, Northeastern University Law School
  - Kathleen Engel, Research Professor of Law, Suffolk University Law School
  - Linda Fisher, Professor of Law, Seton Hall Law School
  - Anne Fleming, Associate Professor of Law, Georgetown University Law Center
  - Pamela Foohey, Associate Professor of Law, Indiana University Maurer School of Law
  - Alexa Freeman, Visiting Professor of Law & Director SJD Program, Georgetown University

- Anna Gelpern, Professor of Law, Georgetown
- Jacob Hale, Russell Assistant Professor of Law, Rutgers, The State University of New Jersey
- Robert Hockett, Edward Cornell Professor of Law, Cornell Law School
- Dalie Jimenez, Professor of Law, University of California, Irvine School of Law
- Creola Johnson, Professor of Law, The Ohio State Univ. Moritz College of Law
- Kathleen Keest, Retired, Formerly Office of Iowa AG, *inter alia*
- Peter Kochenburger, Associate Clinical Professor of Law, University of Connecticut School of Law
- Adam Levitin, Agnes N. Williams Research Professor and Professor of Law, Georgetown University Law Center
- Cathy Lesser Mansfield, Professor of Law, Drake University Law School
- Kent Markus, General Counsel, Cordray for Ohio
- Patricia McCoy, Professor of Law, Boston College Law School
- Christopher Odinet, Horatio C. Thompson Assistant Professor of Law, Southern University Law Center
- Gary Pieples, Teaching Professor, Director Securities Arbitration and Consumer Clinic, Syracuse University
- David Reiss, Professor of Law, Brooklyn Law School
- Ellen Seidman, Former Director, Office of Thrift Supervision
- Norman Silber, Professor of Law, Hofstra Law School
- Marcella Silverman, Clinical Associate Professor of Law, Fordham University
- Neil Sobol, Professor, Texas A&M University School of Law
- Jeff Sovern, Professor of Law, St. John's University School of Law

- Mary Spector, Associate Dean for Clinics, Director of the Civil/Consumer Clinic, and Professor of Law, Southern Methodist University
- Gregory Squires, Professor of Sociology and Public Policy & Public Administration, George Washington University
- Mark E. Steiner, Professor of Law, South Texas College of Law Houston
- David Vladeck, A.B. Chettle, Jr. Professor of Law, Georgetown University Law Center
- Amy Widman, Associate Professor, Northern Illinois University College of Law
- Lauren Willis, Professor of Law, Loyola Law School, Los Angeles
- Arthur Wilmarth, Professor of Law, George Washington University Law School
- Eric Wright, Professor, Santa Clara University School of Law

2. The following 70 consumer groups were signatories to one comment letter (CFPB-2018-0014-0253):

*Allied Progress*  
*Americans for Financial Reform*  
*Arizona PIRG*  
*Association for Neighborhood and Housing Development*  
*Atlanta Legal Aid Society Inc.*  
*Bronx Legal Services*  
*Brooklyn Legal Services*  
*California Reinvestment Coalition*  
*CALPIRG*  
*Center for Digital Democracy*  
*Center for Economic Integrity*  
*Center for NYC Neighborhoods*  
*Center for Responsible Lending*  
*Community Legal Services of Philadelphia*  
*Connecticut Fair Housing Center*  
*ConnPIRG*  
*Consumer Action*

*Consumer Federation of America*  
*Consumers Union*  
*Demos*  
*Florida PIRG*  
*Georgia PIRG*  
*HomeSmart NY*  
*Illinois PIRG*  
*Indiana PIRG*  
*Interfaith Center on Corporate Responsibility*  
*Iowa PIRG*  
*Legal Services NYC*  
*Main Street Alliance*  
*Manhattan Legal Services*  
*Maryland PIRG*  
*MASSPIRG*  
*MoPIRG*  
*Mobilization for Justice*  
*National Association of Consumer Advocates*  
*National Association of Consumer Bankruptcy Attorneys*  
*National CAPACD*  
*National Community Reinvestment Coalition*  
*National Consumer Law Center (on behalf of its low income clients)*  
*National Consumers League*  
*National Fair Housing Alliance*  
*National Housing Resource Center*  
*National Urban League*  
*New Yorkers for Responsible Lending*  
*NCPIRG*  
*NHPIRG*  
*NJPIRG*  
*NMPIRG*  
*Ohio PIRG*  
*Oregon PIRG*  
*PennPIRG*  
*PIRG in Michigan*

*Privacy Rights Clearinghouse*  
*Privacy Times*  
*Public Citizen*  
*Public Justice*  
*Public Law Center*  
*Queens Legal Services*  
*RIPIRG*  
*Staten Island Legal Services*  
*Student Debt Crisis*  
*The Institute for College Access & Success*  
*Tennessee Citizen Action*  
*TexPIRG*  
*UnidosUS*  
*U.S. PIRG*  
*WASHPIRG*  
*WISPIRG*  
*Woodstock Institute*  
*World Privacy Forum*

3. The following nine consumer groups were additional signatories to one comment letter submitted by the Woodstock Institute (CFPB-2018-0014-0296-A1):

*Chicago Urban League*  
*Community Organizing and Family Issues – Power PAC*  
*Heartland Alliance for Human Needs & Human Rights*  
*Housing Action Illinois*  
*Illinois Asset Building Group*  
*Illinois PIRG*  
*Jane Addams Resource Corporation*  
*Northwest Side Housing Center*  
*Sargent Shriver National Center on Poverty Law*

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## 3.4 External Affairs

### Background

To ensure that the Bureau hears regularly from diverse external stakeholders, it conducts public and non-public meetings, including field hearings, town halls, roundtables, and meetings of its Advisory Board and Councils, as described below.

#### **Field Hearings**

The Bureau’s field hearings are organized around a specific topic and take place in geographically diverse locations throughout the United States. Field hearings are announced on the Bureau’s website, are open to the public, and are livestreamed on the Bureau’s website. The hearings typically begin with introductory remarks by a Bureau staff member, state or local officials, the CFPB Director, followed by a panel discussion with industry representatives, nonprofit organizations, academics, or other subject matter experts. After the panel discussion, a CFPB staff member invites audience input about the specific topic and/or discussion.

Participation is open to all field hearing attendees. Field hearings are available to view as archived videos on the Bureau’s website at <https://www.consumerfinance.gov/about-us/events/archive-past-events/>.

#### **Town Halls**

Town halls may be open to the public or invitation-only and are sometimes co-hosted by another organization. They are historically organized around a specific topic or financial education. Town halls typically include remarks by the CFPB Director or a CFPB staff person, followed by an audience comment period. Sometimes town halls will include a small discussion panel made up of the CFPB Director or CFPB staff and an external stakeholder, such as an industry representative or a member of a nonprofit organization. To date, the Bureau has held 33 field hearings and 15 town halls in over 40 cities.

#### **Roundtables**

Roundtables are invitation-only events with the CFPB Director or CFPB staff to discuss particular issues. Roundtables have historically included industry representatives, nonprofit organizations, academics, or other interested parties.

### **Advisory Board and Councils**

The Bureau has organized four formal advisory groups (Advisory Board and Councils): The Consumer Advisory Board (CAB); The Community Bank Advisory Council (CBAC); The Credit Union Advisory Council (CUAC); and The Academic Research Council (ARC).

The CAB is required by section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The purpose of the CAB is “to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.” 12 U.S.C. 5494(a). The CAB is a source of market intelligence and expertise for the agency; the CAB also advises and consults with Bureau staff about various aspects of the Bureau’s work. The Bureau has established three other advisory groups. The CBAC advises the Bureau about the effects of regulating consumer financial products or services from the unique perspectives of community banks, and the CUAC does the same from the unique perspectives of credit unions. The ARC advises the Bureau about research methodologies, data collection, and analytic strategies and provides feedback about research and strategic planning.

Since their establishment in 2012, the Bureau’s advisory groups have convened in-person and via conference call to fulfill their designated purpose. In addition to service on the full advisory group, members also typically serve on a subcommittee that is focused on particular issues. Advisory group meetings can take place during one day or a series of days, depending on the meeting objectives. The meeting structure typically includes remarks by the CFPB Director and discussions among members and Bureau subject matter experts. At meetings of the CAB, there are also presentations from CAB members about consumer finance trends and themes. In addition, when advisory group meetings are held outside of Washington, DC, they have historically included a segment where members of the public may provide comment on issues that they care about. Advisory group meetings are announced to the public via the Federal Register and the Bureau’s website. They are also livestreamed, and a summary of the meeting is published. Each advisory group produces an annual report to the Director about its activities for the fiscal year. To date, the Bureau has conducted 47 public meetings of its advisory groups.

The Bureau aims to conduct engagements in locations throughout the United States in order to engage with the public and inform its work. The Bureau expects that entities that have engaged with the Bureau are likely to have useful information and perspectives about Bureau

engagements. The Bureau is especially interested in better understanding how it may improve or revise its engagements to better achieve the Bureau's statutory objectives.

## Comment Summary

**Total Comments:** 88

**Substantive comments responsive to this RFI:** 67

Comments received from:					
	Individual Entities			Other (e.g., academia, non-consumer advocacy groups, faith-based organizations, etc.)	
Individual Consumers	Depository Institutions	Non-Depository Institutions	Trade Groups	Consumer Groups <sup>126</sup>	
	2	14	0	18	9
					6

## RFI Topic Areas

	Topic	Description
1	Strategies for Seeking Public and Private Feedback and Structures for Convening Diverse External Stakeholders and the Public	The Bureau sought feedback on all aspects of conducting future external engagements, including strategies for seeking public and private feedback from diverse external stakeholders on the Bureau's work. It also sought feedback structures for convening diverse external stakeholders and the public to discuss Bureau work in ways that maximize public participation and constructive input, including but not limited to structures utilized by the

<sup>126</sup> One national consumer group submitted a coalition letter representing over 50 nonprofit and community-based organizations.

Topic	Description
	Bureau to date, such as field hearings, town halls, roundtables, and meetings of the advisory groups.
2 Processes for Transparency in Determining Elements of Public and Private Events and Strategies for Promoting Transparency	The Bureau sought information on the processes for transparency in determining topics, locations, timing, frequency, participants, and other important elements of both public and private events. It also asked for feedback on strategies for promoting transparency of external engagements, including Advisory Board and Council meetings, while protecting confidential business information and encouraging frank dialogue.
3 Strategies and Channels for Distributing Information to Maximize Awareness and Participation and Vehicles for Soliciting Public and Private Perspectives from Outside Washington, DC	The Bureau sought information on strategies and channels for distributing information about external engagements to maximize awareness and participation and on vehicles for soliciting public and private perspectives from outside of Washington, DC on the Bureau's work.
4 Other Approaches, Methods, or Practices Not Currently Utilized by the Bureau	The Bureau sought feedback other approaches, methods, or practices not currently utilized by the Bureau that would elicit constructive input on its work.

## Representative Sentiments

### 1. Strategies for Seeking Public and Private Feedback and Structures for Convening Diverse External Stakeholders and the Public

Commenter	Representative Sentiments
Type	
Depository Institutions	<p>“There have been several instances where the Director has, in response to concerns expressed by the CBAC in these meetings, directed his staff to make helpful changes to BCFP regulation or guidance, after having been alerted to practical problems that negatively affected consumers. Often this was feedback that industry had already expressed in other ways, but for whatever reason was either not conveyed to the Director, or he did not feel it necessary to take any action, until the CBAC expressed the concerns...For these reasons, I respectfully recommend that the BCFP continue to seek feedback from the CBAC using in-person meetings.” (CFPB-2018-0005-0023, People’s Intermountain Bank)</p>
Trade Groups	<p>“We recommend that the Bureau improve its engagement with external stakeholders by (1) conducting outreach that is timely and reflects a genuine desire to learn about industry practices and concerns about potential unintended consequences, and (2) communicating in a manner that is fair, balanced, and builds trust—even when the involved parties do not agree...We recommend that policymakers give priority to accepting invitations to visit community banks...Conduct field hearings and related events early on—when the Bureau is in early stages of thinking about a problem; structure the forums to be educational by including participants with various perspectives; use forums to solicit input prior to releasing reports; release white papers or reports after incorporating information and feedback received at these events; and provide participants sufficient time to speak.” (CFPB-2018-0005-0013-A1, American Bankers Association)</p>
	<p>“The roundtables hosted by the Bureau also afford a platform for industry and consumer groups to join together with Bureau staff, to dialogue on particular policy issues, explain strategies for compliance, and create recommendations for actions to further specific goals. These cross sector meetings have been a great tool for constructive input from both sides of the table, while offering vital transparency into the priorities of the various representatives.” (CFPB-2018-0005-0025-A1, National Association of Realtors)</p>

"AFSA finds the roundtables very valuable. They have been a good forum to provide feedback on issues. Our only comment is that the roundtables should not be a "check the box" exercise....AFSA has three suggestions for the CAB. First, the Bureau should involve the CAB and its members at the beginning of rulemakings. CAB input should be considered throughout the rulemaking process so that it can be meaningful. Second, some parts of CAB meetings should be non-public. While we believe the CAB should be transparent, having all CAB meetings public limits meaningful discourse. Third, the CAB should have a better balance of representatives. AFSA asks that the CAB be made up of equal numbers of industry and consumer advocates." (CFPB-2018-0005-0029-A1, American Financial Services Association)

"The Bureau's field hearing process has generally been a great disappointment...these meetings were backward-looking in that the Bureau would issue a report, policy guidance, or proposed regulation on the same day or shortly thereafter." (CFPB-2018-0005-0012-A1, International Bancshares Corporation)

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"The CFPB has used technology for public outreach and engagement. We urge the CFPB to continue to build upon its commitment to using technology as an efficient and useful tool for enhancing public engagement." (CFPB-2018-0005-0014-A1, Consumers Union)

Consumer Groups      "We strongly support and encourage further use of town halls, field hearings and roundtables to engage the public. We particularly urge the CFPB to maintain the transparency of these mechanisms, to continue including senior CFPB staff, including associate directors, in these events, and to continue holding them in locations across the country to provide a diverse range of consumers and other interested members of the public to attend and participate in person." (CFPB-2018-0005-0028-A1, Americans for Financial Reform coalition letter)

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Other      "The Bureau's outreach and engagement efforts with affected constituencies have been appropriate and robust in the past, and that the resulting regulations, supervisory activities, enforcement actions, educational efforts, and other work of the Bureau reflect a balanced, responsive, and inclusive approach by the Bureau. We encourage the Bureau to continue to engage with and listen to all affected constituencies." (CFPB-2018-0005-0024-A1, Professors of law via Cathy Mansfield)

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## 2. Processes for Transparency in Determining Elements of Public and Private Events and Strategies for Promoting Transparency

Commenter Type	Representative Sentiments
Trade Groups	<p>"ACA suggests that the Bureau consider publishing a monthly list that documents the meetings it has had and who attended those meetings. ACA does not believe that greater transparency forecloses opportunities to gather diverse input." (CFPB-2018-0005-0018-A1, ACA International)</p> <p>"ICBA is an avid supporter of the CBAC and strongly urges the Bureau to continue the CBAC. The CBAC shares valuable market information, analysis, and recommendations to better inform the Bureau as it undertakes policy development, rulemaking, and engagement work. ICBA urges the Bureau to remember its purpose for creating the councils by consistently seeking input from CBAC members. ICBA encourages the Bureau to implement a process wherein Council members would have the ability to provide ongoing "real-time" feedback regarding matters that are of concern and impact the day-to-day ability of a community bank to serve their customers. ICBA applauds the Bureau's desire to ensure openness and transparency and encourages it to continue in this regard. ICBA urges the Bureau to consider implementing general rules of engagement if they are not already in place when tapping the CBAC's expertise. ICBA recommends the Bureau increase the number of CBAC members and expand the diversity criteria to include a minority bank representative and various community bank market characteristics. ICBA recommends the Bureau reimburse Council members for all travel costs." (CFPB-2018-0005-0035-A1, Independent Community Bankers of America)</p>
Consumer Groups	<p>"We strongly support the continued transparency of the advisory group meetings. Meetings should continue to be advertised and summarized publicly, and broadcast in full whenever possible." (CFPB-2018-0005-0028-A1, Americans for Financial Reform coalition letter)</p>

**3. Strategies and Channels for Distributing Information to Maximize Awareness and Participation and Vehicles for Soliciting Public and Private Perspectives from Outside Washington, DC**

<b>Commenter Type</b>	<b>Representative Sentiments</b>
Depository Institutions	<p>“Accept public comment on the content of the field hearings for at least sixty days following the hearing.” (CFPB-2018-0005-0050-A2, Belco Community Credit Union)</p>
Trade Groups	<p>“We strongly recommend the Bureau announce and promote town halls and field hearings at least 60 days in advance. From community bankers’ perspective, this reasonable notice would allow adequate time for bankers to plan to be away from their banks, sufficient time to make less expensive travel arrangements and if necessary, appropriate preparation time to support their robust participation.” (CFPB-2018-0005-0035-A1, Independent Community Bankers of America)</p>
	<p>“We encourage the Bureau to look at speaking opportunities and attendance at industry events as an opportunity to engage industry in a non-adversarial manner.” (CFPB-2018-0005-0042-A1, National Independent Automobile Dealers Association)</p>
Consumer Groups	<p>“We recommend that the CFPB increase the frequency of their meetings, and convene meetings for each advisory group at least three times per year to ensure that conversations and dialogue can address the most current and pressing issues. Further, we strongly support the continued transparency of the advisory group meetings. Meetings should continue to be advertised and summarized publicly, and broadcast in full whenever possible. Additionally, we recommend that at least one of these meetings for each of these groups take place outside of Washington.” (CFPB-2018-0005-0028-A1, Americans for Financial Reform coalition letter)</p>
	<p>“Explore new mechanisms to engage with individual consumers. For example, the CFPB could organize “listening sessions,” which would allow consumers to engage in open ended discussions about financial services concerns with senior CFPB staff.” (CFPB-2018-0005-0044-A2, Appleseed)</p>

#### 4. Other Approaches, Methods, or Practices Not Currently Utilized by the Bureau

Commenter Type	Representative Sentiments
	<p>“First, the Bureau should ask for comment on the studies it has completed before proceeding with rulemaking. Second, the Bureau should seek feedback on the methodologies it uses in enforcement and supervision. The Bureau should publish the methodologies that it intends to use, and should ask for comment prior to their use.” (CFPB-2018-0005-0029-A1, American Financial Services Association)</p>
Trade Groups	<p>“We have recommended, and supported efforts of others, for the Bureau to add a small business advocacy group for targeted roundtables.” (CFPB-2018-0005-0045-A2, American Escrow Association)</p> <p>“ACA...recommends that the Bureau consider having a nonbank advisory board since the Bureau already has broad supervision and examination authority over such entities. Nonbanks should not be overlooked in their ability to provide important feedback.” (CFPB-2018-0005-0018-A1, ACA International)</p>
Consumer Groups	<p>“We believe it is vital for the agency to sustain and extend the external engagement that has been a hallmark of its first six years. Robust external engagement ensures that the CFPB can share information with consumers, industry participants, and the wide range of other entities interested in and affected by the CFPB’s actions. Moreover, external engagement ensures that the CFPB’s policymakers, consumer educators, attorneys, examiners, and other staff have the information they need to understand and appropriately address consumers’ needs and experiences. Any engagement forum, from a one-on-one conversation to a large town-hall meeting to a social media exchange, can provide the CFPB with invaluable information about how the markets for consumer financial products and services operate and the risks that consumers may face, and this information is vital for the CFPB to develop and target its initiatives appropriately. Explore new mechanisms to engage with individual consumers. For example, the CFPB could organize “listening sessions,” which would allow consumers to engage in open ended discussions about financial services concerns with senior CFPB staff. The CFPB has some experience with events like these in the industry context. Through “Project Catalyst,” the CFPB has held four or five “office hours” annually in San Francisco, New York, and Austin,</p>

Texas to connect with financial technology practitioners. Similar opportunities for consumers could yield valuable insight and help consumers better understand how the CFPB works for them.” (CFPB-2018-0005-0028-A1, Americans for Financial Reform coalition letter)

“We would encourage the CFPB to expand its outreach further into culturally, linguistically and economically diverse areas, giving all consumers greater access and input into the one agency devoted to consumer financial protection.” (CFPB-2018-0005-0037-A1, Consumer Action)

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## APPENDIX A: INDEX OF COMMENTER ACRONYMS

Acronym	Definition
ABA	American Bankers Association
AFR	Americans for Financial Reform
AFSA	American Financial Services Association
CBA	Consumer Bankers Association
CCMC	U.S. Chamber of Commerce Center for Capital Markets Competitiveness
CDIA	Consumer Data Industry Association
CEI	Competitive Enterprise Institute
CFA	Consumer Federation of America
CMC	Consumer Mortgage Coalition
CRC	California Reinvestment Coalition
CRL	Center for Responsible Lending
CSBS	Conference of State Bank Supervisors
CUNA	Credit Union National Association
ETA	Electronic Transactions Association
FSR	Financial Services Roundtable
FTC	Federal Trade Commission
HPC	Housing Policy Council of the Financial Services Roundtable
ICBA	Independent Community Bankers of America

Acronym	Definition
MBA	Mortgage Bankers Association
MSBA	Money Services Business Association
NAFCU	National Association of Federally-Insured Credit Unions
NBPCA	Network Branded Prepaid Card Association
NCBA	National Creditors Bar Association
NCLC	National Consumer Law Center
NRMLA	National Reverse Mortgage Lenders Association
TCH	The Clearing House

# Taskforce Member Orientation

## **TAB 3 – BUREAU TRAINING: ETHICS, OFFICE OF CIVIL RIGHTS, RECORDS MANAGEMENT, FOIA, PRIVACY and TIMEKEEPING**



Consumer Financial  
Protection Bureau

# To Serve With Honor

A Guide on the Ethics Rules  
That Apply to Advisory Committee  
Members Serving as Special  
Government Employees



U.S. Office of Government Ethics  
[www.usoge.gov](http://www.usoge.gov)  
March 2008

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**P**ublic Service:  
“I don’t know  
what your destiny  
will be, but one thing I do  
know: The only ones  
among you who will be  
really happy are those who  
have sought and found how  
to serve.”

*Albert Schweitzer*

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## **Agency Ethics Points of Contact**

Name of Committee Official:

Telephone:

Name of Ethics Official:

Telephone:

You should obtain this information prior to beginning your committee work or shortly thereafter.

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# Contents

- 3 Government Employee Status
- 4 Screening for Conflicts of Interest
- 5 Financial Disclosure Reports
- 6 Financial Conflicts of Interest
- 6 Financial Conflicts of Interest—Imputed Interests
- 7 Resolving Financial Conflicts of Interest
- 7 Considering Appearance Issues
- 8 Outside Consulting Work
- 8 Standards of Ethical Conduct Rules
- 10 Other Ethics Rules
- 10 Post-Employment Laws
- 10 Some Final Thoughts
- 12 SGE Game Plan for Peak Ethical Performance



# To Serve With Honor

## A Game Plan for Success

### A Guide on the Ethics Rules That Apply to Advisory Committee Members Serving as Special Government Employees

Congratulations on becoming a member of the Government's advisory team! In your new committee position, you may be helping to shape public policy or making other contributions that impact important issues facing our country. Your service on the committee will be a rewarding experience. But, while your membership has its rewards, it also has its ethical obligations. Being a member of the Government's team means you'll have to learn to play by the Government's ethics rules. These ethics rules help promote public confidence and trust in our Government and in the recommendations that your committee will make to the Government. These rules will also help ensure that you serve the Government and your committee honorably.

In this summary, you will learn more about the ethics laws and rules that apply to your service as a member of a Federal advisory committee. We will highlight some of the ethics rules that are most likely to affect you during your Government service. After you've read this pamphlet, you may want to learn more about specific ethics rules. Agency ethics officials and committee management officials are there to answer any of your

questions or to point you in the right direction. They will help you even after your committee has finished its work and your Government service is done.

Whether your time on a committee is short or long, understanding these basic ethics rules will make your Government service more rewarding for you and for your fellow committee members.

## Government Employee Status

*I will be serving on a committee only for a few days a year. Am I a Government employee just because I am a member of an advisory committee?*

Not necessarily. However, if you have been given this pamphlet by the agency sponsoring your advisory committee, it's likely that you are serving as a special **Government employee (SGE)**<sup>1</sup> and are subject to the Government's ethics rules. An agency official should determine your employment status and then inform you whether you are serving on an advisory committee in an employee status.

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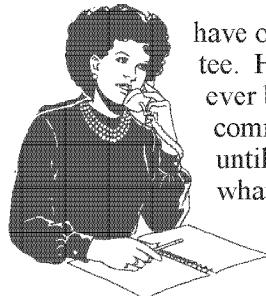
<sup>1</sup> An SGE is defined as an "officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. See Title 18, United States Code, Section 202(a).

In general, your status will depend upon what role you will be expected to have on the committee. It is very important for you and every member of your committee to understand your role on the committee before you even start your committee work. If you have not been told, you should ask a committee official or ethics official to explain your status so you will know whether you are subject to any of the Government's ethics rules.

If you are serving in an SGE status, you are considered a Government employee. Your role as an employee will be to provide your best judgment in committee matters that will be presented to you for discussion. As someone serving on a committee in an SGE status, you will be subject to most of the Government's ethics rules. Many of these rules will be discussed in this pamphlet.

Keep in mind that some committee members may be regular Government employees. Other members may not be serving as employees at all. These non-employee members may be serving as representatives of outside organizations. Representative members are not subject to the Government's ethics rules because they are only on a committee to provide the views of outside interest groups or stakeholders.

If you are ever unsure about your role or status on an advisory committee, talk to a committee or ethics official. In some cases, your committee appointment papers will say what your status is and/or the role you will

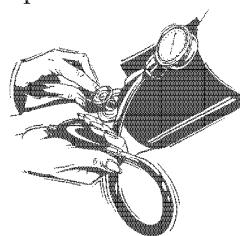


have on the committee. However, don't ever begin your committee work until you know what your status is going to be while serving on a committee.

## Screening for Conflicts of Interest

*Is there anything that I should be doing to comply with the Government ethics rules before I begin my committee service?*

**Y**es. You'll need to get an "ethics checkup" before you begin your committee's work. We've all read press stories about athletes having to pass a physical examination before they can start playing for a sports team. One reason that teams require athletes to pass such exams is to make sure they are able to perform to the very best of their ability. In much the same way, the Government wants to ensure that you will be able to perform to the best of your ability when you begin working on one of its advisory committee teams.



Your best service is possible only when you are not affected by conflicts of interests or appearances of conflicts of interest. Conflicts of interest can arise if you have extensive outside

activities and financial holdings or other interests that relate to the subject matter of your committee service. An “ethics checkup” or a conflict of interest screening helps the Government ensure that your committee work is done in a manner that will uphold the Government’s high ethical standards.

## Financial Disclosure Reports

*What does an “ethics checkup” involve? Is this exam a one-time event? How will I know if I have passed this ethics checkup?*

As with any physical exam, there is always a little bit of paperwork to fill out. In general, one of the first forms you have to complete prior to beginning your committee work is a financial disclosure report. This report collects information about you, your spouse, and dependent children. You will have to fill this report out before you give any advice to the agency and in no event later than your first committee meeting. You will have to complete this report annually if you are reappointed.

As you know, no exam is ever complete without some amount of probing by the doctor. In much the same way, ethics officials will probe and look closely at your report to see if any of your financial interests or affiliations may raise any ethical flags. In some cases, they may have to ask you additional questions about your finances. Keep in mind that this checkup will ultimately

benefit both you and your committee’s work. An ethics checkup will protect you from unintentionally violating ethics laws and rules. The ethics laws can sometimes carry very serious penalties and fines if you violate them by allowing your conflicts to go untreated. This exam will help the Government ensure that your advice is free from any actual or perceived conflicts of interest.

Your agency ethics official can tell you more about the financial disclosure report, including the type of report you will be required to fill out. Even after you have filed your report, you may want to sit down and talk to your ethics official about your report if you believe your committee is going to work on a matter that may affect one or more of your financial holdings. In some cases, a matter that would raise

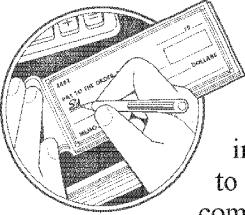


concerns may not have been apparent during your initial “ethics checkup.” You should immediately consult with an agency official about this matter. Remember, an ethics checkup is only as good as the information you provide to your agency.

## Financial Conflicts of Interest

*I work for a pharmaceutical company, and over the years have received a fair amount of stock in the company. What should I do if the work of my advisory committee will affect my employer?*

**G**enerally, you may not work on a committee matter that will affect your own, or your employer's, financial interest. For example, let's say you were serving on an advisory committee that is advising an agency on whether it should continue a health program that provides nutrition information and free vitamins to children. The Government purchases some of the vitamins it distributes from your company. It would be a conflict of interest for you to participate in committee matters relating to the distribution of the vitamins, because you both own stock in, and are employed by, a company that has a financial interest in the issue.



Whether you can be involved in committee matters that relate generally to the agency's nutrition program depends on how the program will affect your company. The agency's ethics official or committee management official will advise you on how to proceed.

## Financial Conflicts of Interest—Imputed Interests

*Would I still have a conflict of interest if I didn't work for the pharmaceutical company or own any stock, but my spouse owned stock in the company that she bought through her broker?*

**Y**es. The ethics laws treat the financial interests of the following as if they were your own financial interests:

- Your spouse;
- Your minor child;
- Your employer;
- Your general partner;
- An organization in which you serve as officer, director, trustee, or general partner; or
- A person with whom you are negotiating or have an arrangement for prospective employment.

So, if your spouse owned stock in the pharmaceutical company described above, you would still have the same conflict of interest concern described in the previous question.

Conflicts of interest concerns that are not addressed can penalize you and your committee's work. Ethics officials or committee officials will work with you to make sure that you can continue to do your committee work ethically and honorably.

## Resolving Financial Conflicts of Interests

*What steps should I take to avoid violating the Government's ethics rules if I have a conflict of interest?*

There are several ways to avoid a conflict of interest while working on a committee matter. The most common way is simply not to work on a particular committee matter if it raises a conflict of interest for you. For example, in the situations discussed above, to avoid what otherwise would be a conflict of interest because of your financial interest in the pharmaceutical company, you could simply not participate in those committee matters that would affect the financial interests of the company. We call this remedy a recusal.

If you have a conflict of interest, you should consult an ethics official because ethics regulations may resolve some of your conflicts of interests. For example, there are some exceptions that apply if the value of your stock is below a certain amount. Another exception may permit you to participate in matters affecting your non-Federal employer in certain cases.

## Considering Appearance Issues

*Am I required to do anything if I have an outside business relationship that is not a financial conflict of interest, but just looks bad for my committee?*

Because you serve the Government, you should always conduct yourself in a manner that is above ethical reproach. So, even if there is no financial conflict of interest, your outside relationships may at times raise questions in the public's mind about how fair you can be while working on a particular committee matter. For example, "appearance" concerns may arise when you are asked to work on a committee matter that you know may affect a member of your household or your former employer or client. In general, you should be alert for situations where—

- a former employer,
- a client of yours or your spouse,
- a person or organization with which you have some kind of business or contract relationship, or
- your spouse's employer



will be specifically affected by your committee's activities. In some cases, it may be appropriate for you not to work on a certain committee matter because of appearance concerns.

Because you are part of the Government's team, you are never alone in dealing with these kinds of appearance concerns. If you are not sure whether a potential situation could raise an appearance problem, you should stop your work on that committee matter and contact your agency's ethics official or committee official to discuss your concerns. These officials can help you address possible appearance problems.

## Outside Consulting Work

*I have an outside consulting business that requires me to represent clients before the Government. Is this O.K.?*

In general, you may not represent another person, whether or not you are compensated for the representation, before a Federal agency or court in connection with a matter that you have worked on as an SGE. The types of representational services covered include written and oral communications, as well as making physical appearances on behalf of someone else with the intent to influence or persuade the Government.

Once you have served more than 60 days as an SGE within the previous 365 days, you may not represent anyone on any matter pending in the agency where you serve. Remember,

you should always talk to an agency official if you are thinking about representing a client before the Government on a matter that involves the subject matter of your committee's work or the overall programs of the agency that is sponsoring your committee.

## Standards of Ethical Conduct Rules

*Are the conflict of interest laws the only ethics rules that I must know before I start my work as a committee member?*

There are a number of other important ethics rules that will guide your conduct while you are serving as an SGE. Most of these rules are part of "The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct)." As a committee member, you are expected to be aware of and follow these basic ethics rules while in Government service. Some of the rules you should know include:

**Don't accept improper gifts.**

Don't ask for or accept gifts that are given because of your committee position or that come from certain "prohibited sources." For example, a company that does business with, or is regulated by, the agency that sponsors your committee is a prohibited source.



There are many exceptions to this general rule. Find out more about these gift exceptions by talking to a committee or ethics official.

***Don't use public office for private gain.***

For example, you may not use your committee position, title or any authority associated with your advisory committee to coerce or induce a benefit for yourself or others.

***Don't misuse Government information.***

If you get information that has not been made available to the general public, don't use (or allow the improper use of) that nonpublic information to further any private interest, either your own or another's. Contact a committee official or agency ethics official if you have any questions about whether you may release certain types of information.

***Use Government property and time properly.***

Always use Government property only for authorized purposes. Government property includes office supplies, telephones, computers, copiers and any other thing purchased with Government funds. Also, be sure to use your official time to carry out committee work.

***Don't accept compensation for teaching, speaking, and writing related to your Government duties.***

This restriction applies in narrow circumstances to SGEs. It does not apply at all if the compensation is for teaching university courses. And it applies in very limited cases if you are an SGE who is expected to serve less than 60 days. If you intend to receive



compensation for teaching, speaking, and writing that is related to the subject of your committee's work, talk to an ethics official first so that you are sure the compensation is acceptable.

***Abide by expert witness rules.***

In general, you cannot be an expert witness in a judicial or administrative proceeding if you participated as a Government employee in the matter that is the subject of the proceeding. Moreover, if you are appointed by the President, serve on a commission established by statute, or have served or are expected to serve more than 60 days in a

period of 365 days, this bar applies to any proceeding in which your employing agency is a party or has a direct and substantial interest.

The rules that govern service as an expert witness can be very complex, so you should always get advice from an agency ethics official before you agree to serve as an expert.

## Other Ethics Rules

*Are there any ethics rules that may limit my political activities during my service on a committee?*

**Y**es, a law known as the Hatch Act limits certain political activities of Government employees, including SGEs when they are engaged in committee work. The law has been substantially amended to allow most Government employees to engage in many types of political activities. However, you should check with your agency ethics official to ensure your activities comply with these laws. You may also want to check the U.S. Office of Special Counsel's website (the agency responsible for enforcing this law) for more information and guidance at [www.osc.gov](http://www.osc.gov).

## Post-Employment Laws

*Do any ethics rules apply to me after my service on an advisory committee has ended?*

**Y**es. Post-employment laws may limit the types of communications you may make back to the Government on behalf of another person.

For example, you may be permanently barred by a criminal law from representing anyone else before a Federal agency or court on certain matters (such as a contract, grant or even an investigation) that you worked on while serving on an advisory committee.

There are some other restrictions that could apply to your post-Government activities, depending on your agency and the function you served in on a committee. Your agency's ethics official can help you to understand these and other post-employment rules, either before or after your committee service ends.

## Some Final Thoughts

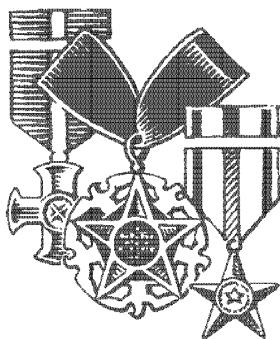
**T**he Government is very grateful for your dedicated service. Your commitment in upholding the integrity of Government service before and even after your committee

service ends is important and will help maintain public confidence in the Government's decision making and in the quality of your committee's work.

We hope this summary helps you to understand how some of the Federal ethics rules may apply to you as a Federal advisory committee member serving as an SGE. It is now up to you to ensure that you **serve with honor** by following this game plan for successful participation on the Government's advisory team.

In you need more information, please talk to a committee management official or your agency ethics official. Like a good coach, these individuals are there to help guide you into becoming the best committee member you can be — one that acts ethically and responsibly before and after his or her service ends. In this way, you can be proud of your service to the Government and to your advisory committee team.

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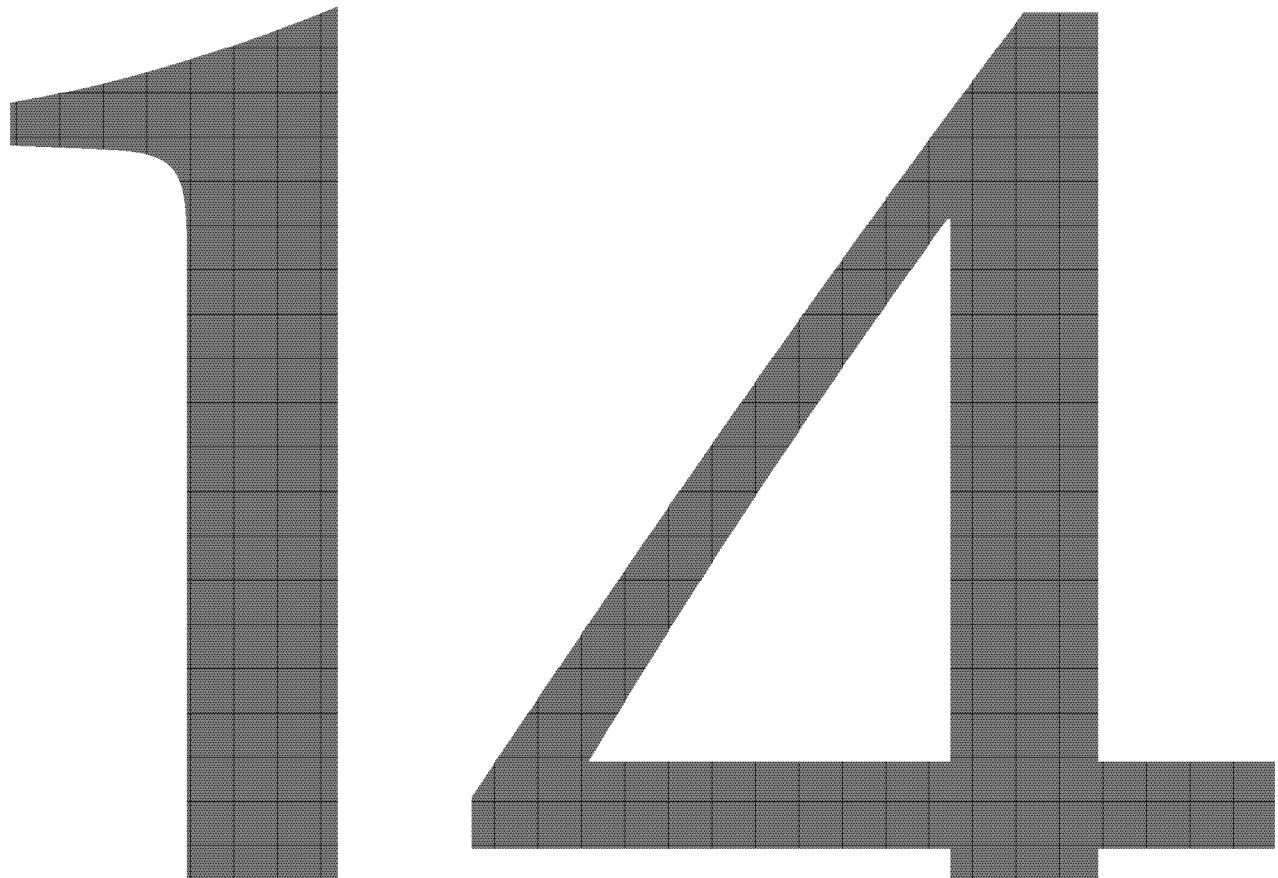
**U.S. Office of Government  
Ethics**

[www.usoge.gov](http://www.usoge.gov)

March 2008

# SGE Game Plan for Peak Ethical Performance

- 1** Don't ever begin your committee work until you know what your role or status is on a committee.
- 2** Always get an "ethics checkup" before you begin your committee work.
- 3** Don't work on a committee matter that will affect your financial interests, unless some exception allows you to do so.
- 4** Always check with an ethics official if you have any concerns about an appearance of a conflict of interest.
- 5** Improve "your game" by becoming more familiar with Government ethics rules, especially those that are found in the Standards of Conduct and in the Conflict of Interest laws.
- 6** Talk to your agency ethics official if you anticipate doing some teaching, speaking, or writing as an outside activity for compensation or engaging in representational activity before the Government.
- 7** Understand the post-employment rules either before or after your advisory committee service ends.
- 8** Remember that learning more about the Government's ethics rules will help ensure that you serve your committee honorably.



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## GENERAL PRINCIPLES

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# GENERAL PRINCIPLES

*The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.*

- 1.** Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- 2.** Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- 3.** Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- 4.** An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- 5.** Employees shall put forth honest effort in the performance of their duties.

6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

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## ETHICS GUIDANCE

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### Special Government Employees (SGE) – Counting Days of Service

This is general ethics guidance to Special Government Employees (SGE) serving at the Bureau, on how to count their days of service. We are committed to working together to achieve a standard of exemplary integrity here at the Bureau. Please contact the Ethics Office at [EthicsHelp@cfpb.gov](mailto:EthicsHelp@cfpb.gov) to receive specific ethics advice.

#### *Who is an SGE*

An SGE is an individual who performs temporary duties, with or without compensation, on either a full-time or intermittent basis, for the Bureau, usually as individual experts or consultants. In order to qualify to be designated as an SGE, the individual will perform duties for the Bureau for a number of days not exceed 130 days during the 365-day period following the start of service.

Individuals who the Bureau designates as SGEs are subject to less extensive restrictions than regular government employees, under certain criminal conflict of interest laws and the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). SGEs who the Bureau specifies or estimates will work 60 days or less during the 365-day period, have still fewer restrictions.<sup>1</sup>

#### *Number of Days of Performing Duties*

At the time of your initial appointment, the Bureau official supervising your activities either specified the number of days you would be performing duties for the Bureau within the 365 days following your appointment to the Bureau, or made an initial good faith estimate of the number of days. Based on this assessment, the Bureau designated you as an SGE.

You now are responsible for continuing to qualify as an SGE throughout your time at the Bureau. Be sure to plan your work time appropriately if the relaxed ethics restrictions applicable to SGEs are important to you or necessary to carry out your official duties lawfully.

#### *Counting Days of Service*

You must keep track of and count the days on which you perform duties for the Bureau. The CFPB Ethics Office offers these tips on how to count and track days of service:

- Use the Excel spreadsheet developed by the Ethics Office or some other tracking method to keep track of your days of service. Update it periodically so you can produce a relatively current record of days of service whenever the Bureau may request it for audit or otherwise.
- You are considered to have worked for a full day for CFPB if you worked for part of a day. In other words, hours of service are not counted; only days of service are counted.

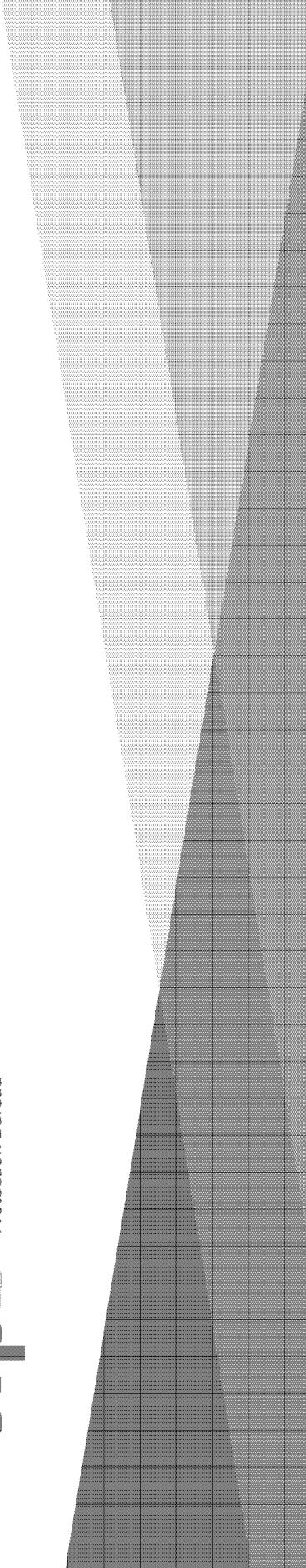
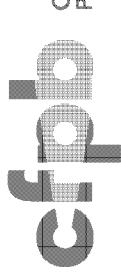
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<sup>1</sup> OGE provides a brief overview of the differences [here](#).

- A day on which you perform work for which you are compensated by CFPB is counted as a work day, regardless of the amount of time worked that day or the nature of the services. For example, if you submit a time sheet, voucher, or other request for payment for your services for a given day, you must count that day as a work day, even if the services you provided involve only administrative matters rather than the substantive matters for which you are responsible.
- Any day on which you are in official travel status for the Bureau counts as a work day.
- You do not need to count as a work day, days on which you engage in only uncompensated activities limited to administrative matters, such as completing personnel paperwork or scheduling meetings. For example, if you spend an hour one day at your private office completing security clearance paperwork, you do not need to count it.
- Uncompensated brief communications, even if they touch on substantive matters, are not sufficient to require that the entire day be counted. For example, if you spend five minutes composing and sending an email message to your supervisor about topics that should be covered at the next meeting, this level of activity is not sufficient to trigger the counting of that day. Apply a reasonableness standard here. If you engage in repeated communications on a given day, even where each communication considered alone is relatively insignificant, you should count the day. Please be aware that email records may be subject to review for purposes of audit.
- Uncompensated brief periods of reading or other preparation performed at your home, regular place of business, or other setting away from the CFPB workplace do not need to be counted. For example, if you find 15 minutes to read an article sent to you by your supervisor, you do not need to count that as a day of service. Apply a reasonableness standard here.

# Initial Ethics Training for Taskforce on Federal Consumer Financial Law

Office of General Law and Ethics



# Objectives

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- Explain our standard of exemplary integrity
- Review ethics laws and regulations for SGEs
- Complete initial ethics training requirement
- Provide Ethics Office contact information
- Provide ethics resources



NOT FOR EXTERNAL DISTRIBUTION

# SGE

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- You are a “Special Government Employee”
  - often referred to as an “SGE”
- Your service is not expected to exceed 130 days during the next 365 consecutive days



NOT FOR EXTERNAL DISTRIBUTION

# Counting Your Days

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- Count any day on which you are compensated to perform Bureau work – even weekends and holidays – regardless of the amount of time worked that day or the type of work performed
- But you need not count uncompensated:
  - administrative activities
  - brief communications
  - brief periods of reading or preparation away from the Bureau workplace



NOT FOR EXTERNAL DISTRIBUTION

# SGEs are Bureau Employees

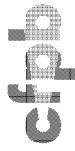
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- Although you are an SGE, you are an actual Bureau employee
- Ethics rules apply even on days when you perform no Bureau services
- Note that the CFPB Ethics Regulations, including the prohibited holdings list, do not apply to SGES



NOT FOR EXTERNAL DISTRIBUTION

# Public Service is a Public Trust



Consumer Financial  
Protection Bureau

NOT FOR EXTERNAL DISTRIBUTION

# Avoid the Appearance of a Conflict

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- Even the appearance of questionable conduct could be harmful to the Bureau
- Washington Post Test



NOT FOR EXTERNAL DISTRIBUTION

# Financial Disclosure

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The OGE Form 450 Confidential Financial Disclosure Report process helps protect the public's trust in Bureau employees

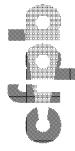


NOT FOR EXTERNAL DISTRIBUTION

# Caution

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- Ethics rules are not always intuitive
- Ask us before you act



NOT FOR EXTERNAL DISTRIBUTION

# Financial Conflicts of Interest

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18 U.S.C. 208, a federal criminal law, prohibits you from participating:

- Personally and substantially
- In any particular Bureau matter
- That will have a direct and predictable effect on
- Your financial interests or the financial interests of certain others whose interests are imputed to you



NOT FOR EXTERNAL DISTRIBUTION

# Financial Conflicts of Interest

---

- The financial interests of these other people and entities are imputed to you:
  - Spouse
  - Minor child
  - General partner
  - Organization in which you serve as officer, director, trustee, general partner, or employee
  - Person or organization with whom you are negotiating or have an arrangement concerning prospective employment



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# Financial Conflicts of Interest

---

Financial interests can arise in different ways, for example:

- Stocks and bonds
- Interests through ownership, partnership, limited liability corporations, etc.
- Consulting arrangements
- Employment
- Grants, contracts



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# Financial Conflicts of Interest

---

A “particular matter” includes deliberations, decisions, or actions that are focused upon the interests of specific persons or entities or an identifiable class of persons or entities

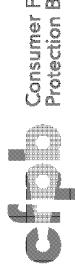


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# Financial Conflicts of Interest

---

A particular matter has a “direct and predictable effect” on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.



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# Representation Statute

18 U.S.C. 203

---

- Section 203 prohibits an SGE from soliciting or receiving compensation for representation services before any federal agency or court in connection with a particular matter involving specific parties in which the U.S. is a party or has an interest:**
1. In which the SGE has participated in personally and substantially as an SGE, or
  2. Which is pending at the Bureau if the SGE has served more than 60 days during the preceding 365 days

NOT FOR EXTERNAL DISTRIBUTION

# Representation Statute

18 U.S.C. 205

---

**Section 205 prohibits an SGE from personally representing a party before the Bureau, another federal agency, court, or commission in connection with a particular matter involving specific parties in which the U.S. is a party or has an interest:**

1. In which the SGE has participated in personally and substantially as an SGE, or
2. Which is pending at the Bureau if the SGE has served more than 60 days during the preceding 365 days

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# Representation Statutes

---

Even if the restrictions in Sections 203 and 205 regarding representation are inapplicable, please avoid any activity that creates an appearance of using your position as an SGE here at the Bureau to further any private interests

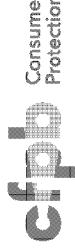


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# Misuse of Position

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Every employee, including an SGE, has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain



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## Misuse of Position

### Use of Nonpublic Information

---

You may not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further your own private interest or that of another, whether through advice or recommendation or knowing unauthorized disclosure



Consumer Financial  
Protection Bureau

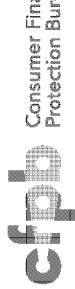
NOT FOR EXTERNAL DISTRIBUTION

## Misuse of Position

### Use of Nonpublic Information

---

“Nonpublic information” is any information that you receive because of your position on the Taskforce, that you know or reasonably should know has not been made available to the general public



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# Misuse of Position Endorsements

---

Generally, you must not use or permit use of your Government position, title, or any authority associated with your public office in a manner that could reasonably be construed to imply that the Bureau sanctions or endorses a fundraising or other type of activity of a private organization or cause, no matter how worthy.



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## Misuse of Position

### Use of Government Property

---

Employees have a duty to protect and conserve Bureau property and must not use such property, or allow its use, for other than authorized purposes



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# Misuse of Position Use of Official Time

---

**SGEs must use official time in an honest effort to perform official duties**

An SGE shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties



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# Outside Teaching, Speaking, or Writing

---

You are prohibited from receiving outside compensation for teaching, speaking or writing when the activity **relates to your official Bureau duties**



NOT FOR EXTERNAL DISTRIBUTION

# Outside Teaching, Speaking, or Writing

---

**Teaching, speaking, or writing is “related to your official duties” if:**

- It is performed as part of your official duties;
- The invitation to engage in the activity was extended primarily because of your official position rather than your expertise;
- The invitation to engage in the activity was extended by someone with interests that may be affected substantially by your duties;
- The information conveyed through the activity draws substantially on nonpublic information; or

# Outside Teaching, Speaking, or Writing

---

Teaching, speaking, or writing is “related to your official duties” if:

- You have served at the Bureau for more than 60 days and the subject of the activity deals in significant part with any matter to which you are presently assigned or were assigned during the previous one-year period; or
- You have served at the Bureau for 60 days or less and the subject of the activity deals in significant part with a particular matter involving specific parties in which you participated or are participating personally and substantially

# Emoluments Clause

---

The Emoluments Clause of the United States Constitution prohibits you from having any position in or receiving any payment from a foreign government. This may include foreign universities and entities partially owned or controlled by a federal government.



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# Ban on Gifts from Outside Sources

---

Federal employees, including SGEs, are prohibited from soliciting or accepting “gifts” from a “prohibited source” or given because of their official position

A “gift” is anything of value



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# Ban on Gifts from Outside Sources

## “Prohibited Sources”

---

A “prohibited source” is anyone who:

- Seeks official Bureau action
- Does or seeks to business before Bureau
- Is regulated by the Bureau
- Has interests that could be affected by your position on the Taskforce

*And organizations made up of the above*



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# Ban on Gifts from Outside Sources

## Appearances

---

Before you invoke an exception to the gift ban, consider whether a reasonable person would question your integrity/impartiality if you accept the gift. Relevant factors:

- Value of the gift
- Timing of the gift
- Identity of the donor
- Whether the gift provides significantly disproportionate access to the donor



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# Ban on Gifts from Between Employees

---

Government employees, including SGEs, generally are prohibited from giving gifts to an official superior and from accepting gifts from an employee receiving less pay, with some exceptions



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# Bribery

---

**Government employees, including SGEs, are subject to the criminal bribery and illegal gratuity statute, which prohibits seeking, accepting, or agreeing to receive anything of value in return for being influenced in the performance of an official act**



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# Political Activities

---

The Hatch Act restricts certain “political activities” of Government employees.

You are considered “less restricted” Government employees under the Hatch Act.

The Hatch Act restricts certain political activities of less restricted SGEs, but only when those SGEs are “on duty.”



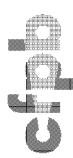
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# Political Activities

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“Political activity” is an activity directed toward the success or failure of a:

- Political party
- Candidate for partisan political office
- Partisan political group



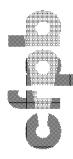
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# Political Activities

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“On duty” means:

- In a pay status other than certain forms of leave or excused absence
- While representing the Bureau in an official capacity



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# Political Activities - Prohibitions

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While on duty, do not:

- Engage in political activity
- Solicit or accept political contributions
- Actively campaign for office in partisan elections



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# Political Activities - Prohibitions

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**Note – you must not at any time (even when off duty) use your official authority or influence to interfere with or affect the result of an election**



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# Fundraising

---

SGEs may fundraise in their personal capacity with certain restrictions:

- No use of your official title, position, or authority
- No solicitation of subordinates
- No solicitation of persons whose interests may be affected substantially by the performance or nonperformance of your official Taskforce duties



Consumer Financial  
Protection Bureau

NOT FOR EXTERNAL DISTRIBUTION

# Expert Testimony

---

You must not, at any time during your appointment as an SGE on the Taskforce, serve as an expert witness in matters in which the Bureau is a party or has a direct and substantial interest.



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## Acting as a Foreign Agent

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An SGE must not act as an agent of a foreign principal or lobbyist on behalf of a foreign entity that is required to register under the Lobbying Disclosure Act

But - an SGE may be eligible for a special exemption from this prohibition if the Director certifies that your employment on the Taskforce is required in the national interest



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# Post Employment Restrictions

---

Because we expect you to work on particular matters of general applicability while you are on the Taskforce, we expect your post employment restrictions will be limited to:

- A one-year prohibition on representing, aiding, or advising about a trade or treaty negotiation on the basis of certain nonpublic information
- If you are a “senior” employee serving 60 or more days, a one-year cooling off period prohibiting you from representing anyone before the Bureau with the intent to influence a Bureau matter



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# Post Employment Restrictions

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Also, if you are a “senior” employee, you must not within one year of leaving the Bureau, represent, aid, or advise a foreign entity with the intent to influence a United States government decision.



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# CFPB Ethics Officials

Sonya A. White Deputy General Counsel for General Law and Ethics & Designated Agency Ethics Official Email: [Redacted] Phone: [Redacted]	Jarid A. Smith Assistant General Counsel for General Law and Ethics Email: [Redacted] Phone: [Redacted]
Amber B. Vail Senior Ethics Counsel & ADAEO Email: [Redacted] Phone: [Redacted]	Jeannine H. Turenne Senior Ethics Counsel Email: [Redacted] Phone: [Redacted]
Margaret H. Plank Senior Counsel Email: [Redacted] Phone: [Redacted]	Rich Grant Counsel & Ethics Program Manager Email: [Redacted] Phone: [Redacted]

Or contact  
**EthicsHelp@cfpb.gov**



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# Some Ethics Resources

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"To Serve with Honor" – A guide on the ethics rules that apply to advisory committee members serving as SGEs  
Standards of Ethical Conduct for Employees of the Executive Branch – Here are the actual standards of conduct which apply, with some exceptions, to SGEs  
Summary of the Standards of Ethical Conduct – more succinct information about the standards of conduct  
Summary of the Conflict of Interest Laws – these laws apply to SGEs, with some exceptions as described  
14 General Principles – these general principles apply to every Government employee, including SGEs



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# More Ethics Resources

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Bureau Ethics Guidance for SGEs on Counting Days of Service – detailed guidance on how to count your days

Bureau Excel Worksheet – to help count your days  
Website of the U.S. Office of Government Ethics – this website describes the executive branch ethics program and contains ethics information of interest to both Government employees and the general public  
Website of the U.S. Office of Special Counsel – this website contains detailed information about the Hatch Act

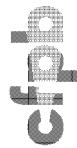


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Or contact  
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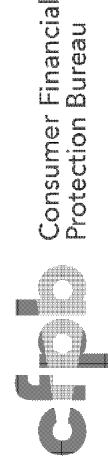


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# The Office of Civil Rights, Equal Employment Opportunity, and You:

## For New Employees

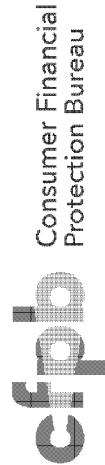
FY 2020 (rev. 01-13-20)



# Objectives

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- Understand OCR's place and role in the Bureau
- Learn what discrimination is and isn't
- Emphasize the Bureau's prohibition on all forms of discrimination – including harassment and retaliation and related "PPPs"
- Distinguish between OCR & OHC responsibilities regarding harassment
- Learn how to request "reasonable accommodations"
- Walk through the Federal-sector EEO process
- Discuss Alternative Dispute Resolution (ADR)
- Identify your legal rights and responsibilities
- Answer your questions

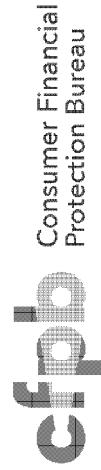


# Office of Equal Opportunity and Fairness (OEOF)

Althea Kirelis, OEOF Director

---

- Office of Civil Rights (OCR)  
Melissa Brand, Director
- Office of Minority and Women Inclusion (OMWI)  
Lora McCray, Director
- Disability and Accessibility Program (DAP)  
Nykeia Bolton, Disability Program Manager
- Office of Fair Lending (FL)  
Patrice Ficklin, Director
- OMWI + OCR + DAP + FL = OEOF  
OEOF = Part of the Director's Office



# Office of Civil Rights: Our Place in the Bureau

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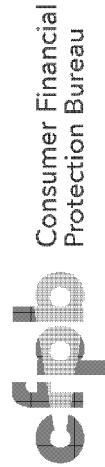
- OCR is the Bureau’s equal employment opportunity (“EEO”) office.
  - Required by law, OCR exists to safeguard civil rights at the Bureau.
  - We champion Bureau efforts to foster a fair and equitable workplace – one where employment decisions are based on individual merit, and where everyone has an equal chance to succeed as far as their talents will take them.
- OCR is **independent** of the Office of Human Capital (OHC), Legal Division, Ombuds, and IG.
- The OCR Director reports to the Bureau’s Director and to the OEOF Director.



# Office of Civil Rights: What We Do

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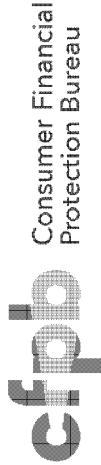
- We work to integrate EEO into the Bureau's everyday business by:
  - ✓ Proactively identifying and removing potential physical, institutional, or attitudinal barriers to EEO within the Bureau;
  - ✓ De-escalating specific workplace conflicts and resolving them, including through a robust alternative dispute prevention and resolution program;
  - ✓ Contributing subject-matter expertise to aid the Bureau pragmatically with strategic thinking, problem-solving, policy development, and workforce planning;



# Office of Civil Rights: What We Do

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- ✓ Providing technical assistance to internal stakeholders, such as Leadership, OMWI, DAP, OHC, the National Treasury Employees Union (NTEU), diversity councils, and employee resource groups to achieve a model workplace;
- ✓ Providing a neutral forum (outside the Legal Division and OHC) for the discussion, investigation, adjudication, and resolution of EEO matters; and
- ✓ Remedying violations of civil rights laws, including taking targeted steps to prevent repeat violations and making individual discrimination victims “whole” with appropriate damages.



# Protected Characteristics

---

Various laws, Executive Orders, and Bureau policies forbid workplace discrimination, harassment, and retaliation against **federal employees** because of certain protected characteristics:

- Race
- Color
- Religion
- Sex (including pregnancy, sexual orientation, and gender identity)
- National origin
- Disability
- Age (40 years or older)
- Genetic information
- Prior EEO activity
- *Parental status*
- Uniformed status\*
- Membership in a labor organization or union activity\*
- *Political affiliation*\*
- *Marital status*\*
- *Whistleblower activity*\*
- *Any other non-merit factor*\*

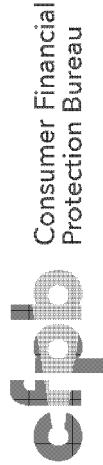
\* Handled outside OCR



# Why Do We Have Laws/Policies Against Discrimination?

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- Why “Equal Employment Opportunity”?
  - In FY 2018, about 37,000 federal workers or applicants filed requests for EEO counseling.
  - In FY 2018, over 16,500 filed formal EEO complaints.
- Golden/Kindergarten Rule
- But not every slight, annoyance, or insult at work is actionable discrimination!



# What Is Unlawful Discrimination?

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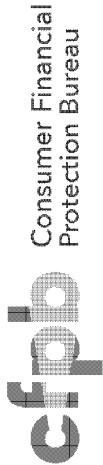
- Most Complaints/Claims:
  - Disparate Treatment (e.g., I refuse to hire mothers to be Examiners)
  - Disparate Impact (e.g., I only ever pick tall people to lead teams)
  - Harassment (e.g., I make jokes or send emails gossiping about a co-worker's hearing impairment, sexual orientation, or gender transition)
  - Retaliation (e.g., I tell colleagues about a co-worker's EEO complaint)
  - Failure to Provide Reasonable Accommodation (Disability and Religion)
- Other Unlawful Conduct:
  - Making prohibited disability-related inquiries (e.g., asking about medical conditions unless doing so is *necessary*)
  - Disclosing confidential medical information to anyone without a need-to-know it



# Harassment: What Is It?

---

- Both Bureau policy *and* federal law prohibit workplace harassment.
  - Bureau policy aims to prevent and correct harassment *before it becomes unlawful.*
- EEO laws establish civil rights and provide remedies for unlawful conduct only.
- Workplace harassment can be perpetrated on *any* protected basis; it's not just sex-based.
- Harassment must be “unwelcome” to violate Bureau policy and federal law but doesn't include every action one might find undesirable.
- Harassment can be perpetrated by Executives/managers/supervisors, co-workers, contractors, an/or other third parties (e.g., staff at institutions under examination).



# Harassment: Where Can I Report It?

---

- You can report possible harassment to:
  - ✓ The subject's immediate supervisor;
  - ✓ The supervisor of the person responsible for the alleged conduct;
  - ✓ Any management official with supervisory authority;
  - ✓ The OHC Office of Employee and Labor Relations (ELR), which can be reached at [CFPB\\_harassmentreferral@cfpb.gov](mailto:CFPB_harassmentreferral@cfpb.gov); and/or
  - ✓ The Office of Civil Rights (OCR), which can be reached at [CFPB\\_EEO@cfpb.gov](mailto:CFPB_EEO@cfpb.gov) or 202-435-9EEO, 1-855-233-0362, or 202-435-9742 (TRY).
- *Reporting harassment to OHC or a managerial/supervisory official does not toll the 45-day timeframe for initiating an informal EEO complaint.*



# Disability Accommodations and “PAS”

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- The Bureau has an Affirmative Action Plan for employees and applicants with disabilities, and a policy and procedures regarding disability-related reasonable accommodations.
- To request reasonable accommodation for a disability – or “Personal Assistance Services” for a “targeted disability” – contact [CFPB\\_ReasonableAccommodations@cfpb.gov](mailto:CFPB_ReasonableAccommodations@cfpb.gov).
- You will engage in an “interactive process” (if needed) to identify an appropriate accommodation or PAS.
- *Supervisors have critical role to play in recognizing and processing requests for reasonable accommodation.*
- Pregnancy-related accommodations may also be required under federal law.



# Religious Accommodations

---

- The Bureau also must accommodate religious observances, practices, and beliefs.
- Examples include:
  - ✓ Prayer space in the workplace
  - ✓ Leave requests or schedule changes for holy days
  - ✓ Travel restrictions
- To request a religious accommodation, contact your supervisor or OCR/OHC.



# Employee Rights in a Nutshell

---

- Employees have a right to a discrimination-free workplace. At CFPB, workplace discrimination, harassment, and retaliation are categorically prohibited; the Bureau takes all allegations seriously.
- Employees are to be **treated respectfully and fairly at all times** and with an appreciation and embracing of the diverse perspectives everyone brings to the Bureau.
- Employees have the right to engage in **protected EEO and whistleblower activity freely and without retribution.**
- Employees should feel **empowered** to report inappropriate conduct so that an appropriate investigation can occur and prompt, corrective action can be taken when warranted.



# Employee Responsibilities in a Nutshell

---

- Treating others respectfully and professionally in the workplace;
- Guarding against taking employment actions based on unconscious biases, stereotypes, or prejudices;
- Refraining from (**and reporting**) harassing conduct involving coworkers, contractors, or stakeholders;
- Complying with all EEO-related policies and procedures;
- Reading the Director's Annual EEO and Anti-Harassment Policy Statement and No FEAR Act and Whistleblower Protection/PPP Notice;
- Taking all mandatory EEO and diversity-and-inclusion trainings (including the online annual No FEAR Act and harassment-prevention training);
- Cooperating during anti-harassment and EEO investigations (and throughout the entire federal-sector EEO process as necessary);
- Considering voluntarily updating your demographic data (including race, national origin, and disability status) in HR Connect, as the data helps CFPB promote inclusion and monitor EEO compliance.
- Reporting fraud, waste, abuse to FRB OIG.



# Supervisor/Manager Responsibilities in a Nutshell

---

- ENSURE YOU AND YOUR STAFF ARE AWARE OF EEO RIGHTS AND RESPONSIBILITIES.
  - ✓ Adopt EEO best practices and champion EEO among your staff.
- SET THE RIGHT TONE.
  - ✓ Model EEO-compliant and inclusive behavior (e.g., by treating similarly situated people the same where appropriate and providing EEO to all). As Bureau leaders, what you say and do carries great weight.
  - ✓ De-escalate workplace conflicts early by working with the ADR Program.



# Supervisor/Manager Responsibilities in a Nutshell

---

- SPEAK UP AND ACT.
  - ✓ Read and know the Bureau's anti-harassment policy and procedures.
  - ✓ If you see something, say something. This is true for **all employees, but Supervisors/Managers must do so!**
  - ✓ Stop unprofessional conduct immediately and report inappropriate conduct and/or harassment allegations to OHCER/LR team.



## Supervisor/Manager Responsibilities in a Nutshell

---

- COOPERATE.
  - ✓ Don't ignore or complain about OHC or OCR investigations.
  - ✓ Respond promptly and cooperate fully in EEO-related counseling and investigations.
  - ✓ Grant limited official time to employees.



# Supervisor/Manager Responsibilities in a Nutshell

---

- **DON'T RETALIATE** (even by accident)! Almost half of all formal EEO complaints filed in FY 2018 alleged retaliation (the most commonly alleged basis of discrimination).
  - ✓ Read the EEOC report “Making It Personal.”
  - ✓ Remember the standard for retaliation is broad.
  - ✓ Keep EEO information – including the fact that someone filed an EEO complaint or was a witness in an EEO-related investigation – confidential.
  - ✓ **Remember whistleblower protections.**



# Supervisor/Manager Responsibilities in a Nutshell

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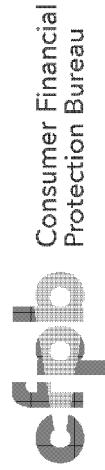
- RECOGNIZE AND ACT UPON ACCOMMODATION REQUESTS.
  - ✓ Read and know the Bureau's reasonable accommodation/PAS policy and procedures.
  - ✓ Learn to recognize requests for disability-related and religious reasonable accommodations and act upon them swiftly consistent with the policy/procedures.
  - ✓ Don't form subjective views about the "merits" of these requests; work with the DAP team in good faith to process them.
- ✓ Stay engaged in processing and resolution of requests as appropriate. It's part of your job!



Creating and maintaining a discriminate-free workplace starts with each of us!

---

- GUARD AGAINST UNCONSCIOUS BIASES. We all have them.
  - ✓ Take the Implicit Association Test (online).
- ASK YOURSELF EVERY DAY:
  - ✓ Am I inclusive enough?
  - ✓ Are my words and actions helping to make the workplace respectful and civil for everyone?
- ASK THE EXPERTS FOR HELP.



# Filing an EEO Claim

---

- If you suspect you have been subjected to unlawful prohibited discrimination, harassment, or retaliation you can pursue your civil rights without fear of retaliation for doing so.
- The procedures for filing a claim depend on the type of claim you wish to file.
- You generally must request EEO counseling from OCR within **45 calendar days** of the date of the act(s) you believe to be discriminatory.
- *Contact information for OCR to request EEO Counseling is on Slide 23 and on OCR wiki!*
- Check the OCR Wiki page for more detailed information:  
[https://team.cfpb.local/wiki/index.php/Equal\\_Employment\\_Opportunity](https://team.cfpb.local/wiki/index.php/Equal_Employment_Opportunity)



# Alternative Dispute Resolution (ADR)

- The Bureau's ADR program uses a series of techniques to help prevent and resolve workplace disputes.
  - Available Bureau-wide for EEO and non-EEO issues
  - Provides conflict resolution coaching and training to help minimize workplace disputes
  - Monitors trend analysis to help reduce workplace disputes
  - Supports Bureau culture-change initiatives
- Benefits of ADR include:
  - Potential quick and informal resolution
  - Licensed external third-party expert to assess realities
  - Can open dialogue and repair frayed relationships
- ADR Program Manager is Woody Anglade – Redacted



# Takeaways

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- Remember the “Three Things.” What are they?
  - OCR is **independent** from LD and OHC.
- You have **45 calendar days** to seek EEO counseling.
  - We all have a part to play in making this a discrimination-free workplace.
- Consider voluntarily providing demographic information on race, national origin, sex, and disability.
  - EEOC requires the Bureau to collect it and gives employees the right to self-identify.
    - This info is kept confidential and is crucial to EEO.
- Come to OCR with any questions.



# Key OCR Points of Contact

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- Melissa Brand, OCR Director – [REDACTED]  
Redacted
- General OCR Inbox – [CFPB\\_EEO@cfpb.gov](mailto:CFPB_EEO@cfpb.gov)
- General OCR Phone Line – (202) 435-9EEO or (855) 233-0362
- OCR TTY Phone Line – (202) 435-9742

*OCR staff are located in the West Wing of the Fourth Floor  
at 1700 G Street.*



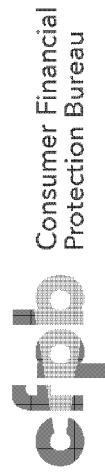
# Appendix



## Office of Civil Rights: Our Mission

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*To support the Bureau in complying with  
civil rights laws and in applying best practices to achieve  
equal opportunity in the workplace.*



## Office of Civil Rights: Our Vision

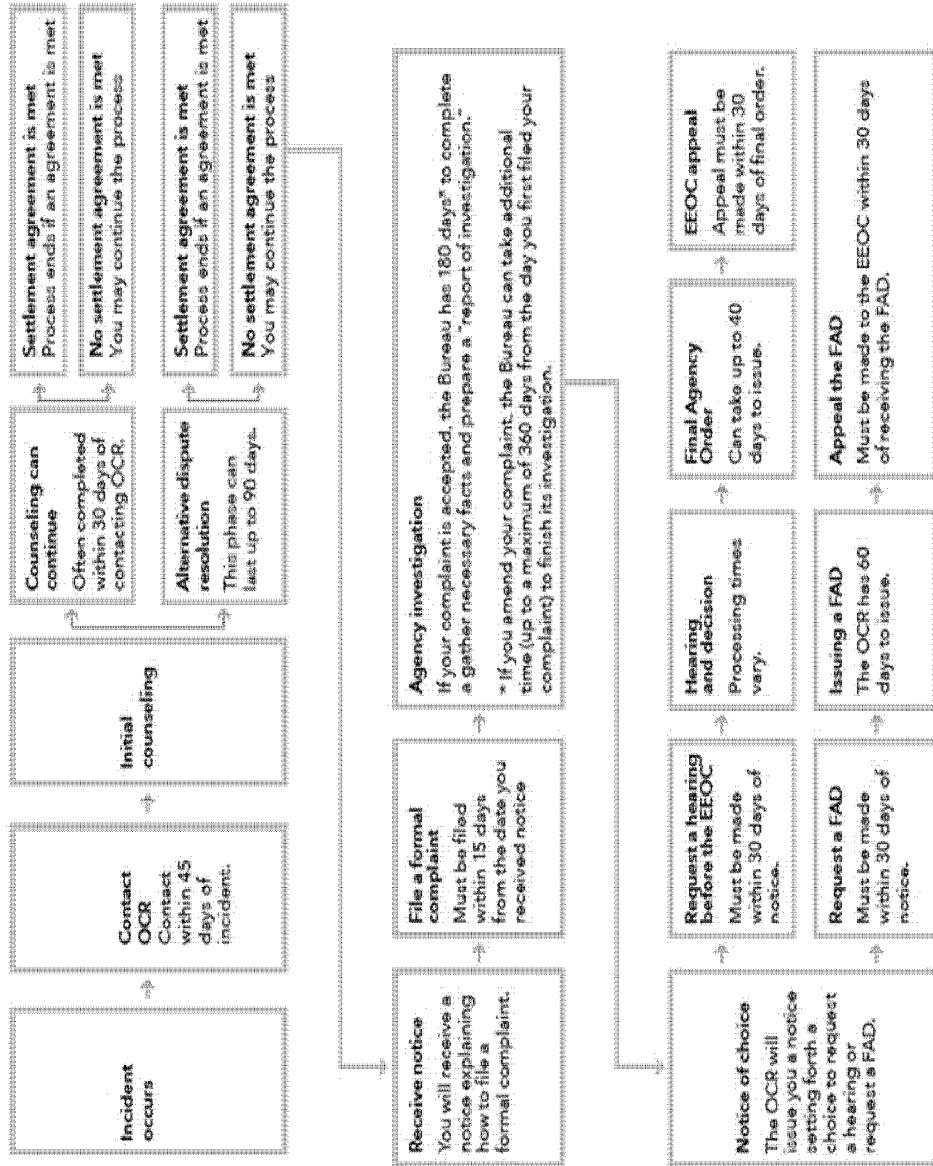
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*The Bureau as a model, fair, and discrimination-free workplace – with an engaged and empowered workforce energized to carry out Bureau leadership's priorities.*



## Filing a complaint flow chart

All complaint processing days referenced herein are calendar days, not business days.

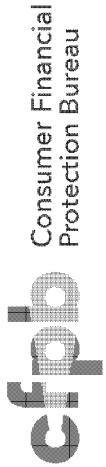


Consumer Financial  
Protection Bureau

## Protections Unique to Executive Branch and/or Handled Outside OCR

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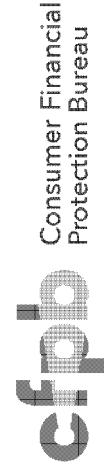
- Parental status (Exec. Order No. 13152) – OCR
- Uniformed status (USERRA) – DOL/VETS and OSC
- Membership in a Labor Organization or Union Activity (FSLMRS) – FLRA
- Political affiliation (CSRA) – OSC/MSPB
- Marital Status (CSRA) – OSC/MSPB
- Whistleblower activity (CSRA) – OSC/MSPB & IG
- Any other non-merit factor (CSRA) – OSC/MSPB



# Other Potential Avenues of Redress to Remember

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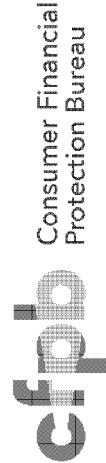
- U.S. Office of Special Counsel
- FRB Inspector General
- NTEU grievance process
  - Bargaining Unit Members Only
  - You must elect either this forum *or* formal EEO complaint process!
- Administrative grievance process
  - Non Bargaining Unit Members
- Office of Human Capital
  - Bureau's Anti-harassment policy and procedures
- Alternative Dispute Resolution Program.



# EEO-Related Policies

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- CFPB-NTEU Collective Bargaining Agreement Equal Employment Opportunity and Grievance Procedures Articles
- Administrative Grievance Policy
- Affirmative Action Plan for Individuals with Disabilities and Targeted Disabilities
- Alternative Dispute Resolution Policy
- Anti-Harassment Policy and Procedures
- Cooperation with the Office of Inspector General Policy
- Directive on Schedule A(u) Appointing Authority for Persons with Disabilities
- Employee Resource Group (ERG) Policy
- Equal Employment Opportunity and Non-Discrimination Policy
- Non-Discrimination and Inclusion Policy for Transgender Applicants and Employees
- Procedures for Processing Complaints Based on Sexual Orientation, Gender Identity, and/or Parental Status
- Reasonable Accommodation/Personal Assistance Services Policy, Procedures, and Forms



## Other EEO Resources

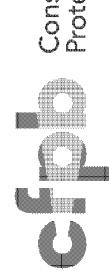
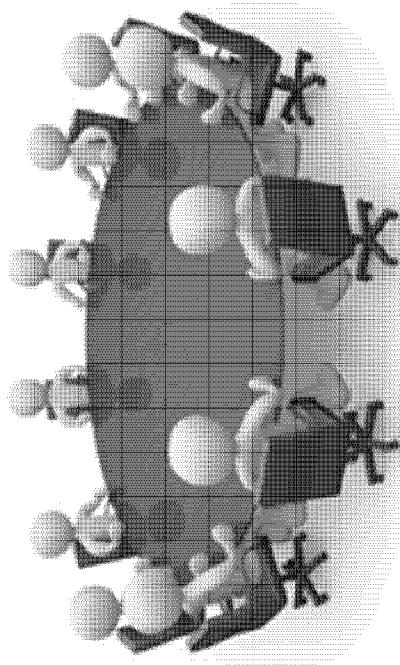
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- OCR & EEO Wiki
- Guide to EEO & OCR
- EEO Supervisor Handbook; EEO Counseling Guide
- FAQs about the Bureau's EEO Program and OCR
- Director's EEO and Anti-Harassment Policy Statement (Feb. 2019)
- Director's No FEAR Act and Whistleblower Protection/Prohibited Personnel Practices Notice (Feb. 2019)
- EEOC – Retaliation: Making It Personal
- ADR Policy & ADR FAQs
- ADR Program Brochure on Mediation



# Records and Information Management Overview

## Taskforce on Federal Consumer Financial Law Orientation

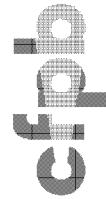


Consumer Financial  
Protection Bureau

# Agenda

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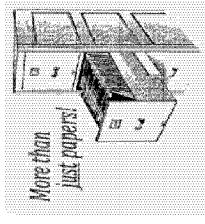
- What are Federal Records?
- Records Disposition Schedules and File Plans
- Capstone (Email Management)
- Questions?



# What are Federal records?

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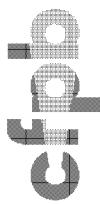
- The first step to meeting your basic obligations is to understand the definition of a federal record. The definition below means that a record can be anything that documents the government's activities or is used to conduct government business regardless of who created it or how the information was recorded.
- The Federal Records Act (FRA) as amended defines a record as:
  - “all recorded information regardless of form or characteristics, made or received by a Federal agency 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 United States Government or because of the informational value of data in them.”  
(44 U.S.C. 3301, Definition of Records)



# Permanent vs. Temporary Records

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- Permanent records are those records determined by the Archivist of the United States to have sufficient historical or other value to warrant continued preservation by the Federal Government.
  - In most cases, permanent records are maintained at the bureau for 15 years, then transferred to (NARA). Less than 5 percent of bureau records are permanent.
- Temporary record are those records determined by the Archivist of the United States to have insufficient value to warrant its preservation beyond a specific period of time.
  - In most cases, temporary records are transferred to the records management office for destruction, except for transitory & electronic records.



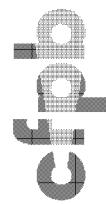
## Example of a File Plan

Record Name	Records Description	Records Disposition Instructions
7500.01  Records Created by Advisory Commissions, Committees, Councils, Boards and Other Groups.	<p>a. Files documenting the Boards, Commissions, Committees, Councils and other Groups establishment, membership, policy, organization, deliberation, findings, and recommendations.</p> <p>b. Files that relate to day-to-day Commission or other Groups activities and/or do not contain unique information of historical value.</p>	<p>Permanent. Cut off at end of calendar year and transfer a copy to the Records Management Office.</p> <p>Records Management Office will Transfer to NARA, in 5 years blocks, 15 years after cutoff. (N1-GRS-07-05)</p> <p>Temporary. Cut off files at the end of each calendar year in which recording are completed. Destroy/ delete 3 years after cutoff. (N1-GRS-07-1)</p>

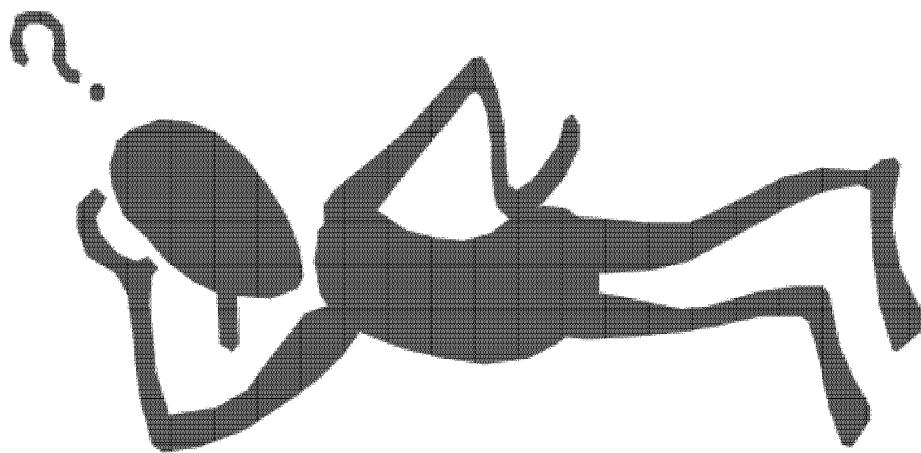
# “Capstone” Email Management

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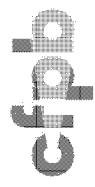
- What is Capstone?
  - New Approach to Managing Email Records.
  - Not a software application, it is an approach.
  - Management of email records, based on the role position and or responsibility of an email account user rather than on the content of the emails.
  - Email records will be managed at the group email account level.



Questions ??



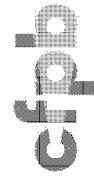
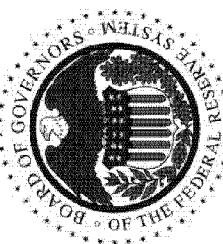
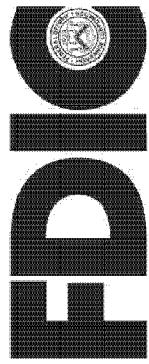
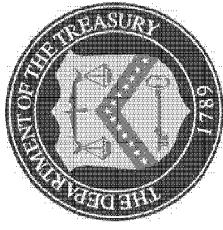
# Freedom of Information Act (FOIA) Training to Taskforce Members



# Taskforce FOIA Training

## Freedom or Information ACT

Establishes a  
statutory right  
for the public to access  
Executive Branch  
information and records  
upon request.

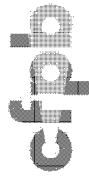
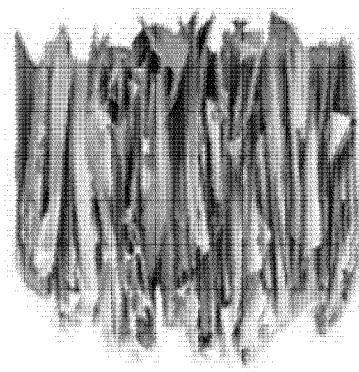


Consumer Financial  
Protection Bureau

# Taskforce FOIA Training

## Recommended Practices

- ✓ Be aware that all communications, including emails, with the CFPB are subject to the FOIA.
- ✓ When possible separate Board/Council business from other matters.
- ✓ Keep your communications with the CFPB professional in nature, embarrassing comments are not protected by a FOIA Exemption.



Consumer Financial  
Protection Bureau

# Taskforce FOIA Training

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## Most Applicable FOIA Exemptions

- (b)(4) - Trade secrets and confidential commercial information
- (b)(5) - Legal privileges and deliberative discussions
- (b)(6) - Unwarranted invasion of personal privacy
- (b)(7) - Law enforcement purposes
- (b)(8) - Financial institution examinations



# Contact Us:

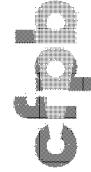
**FOIA Manager:** Danielle Adams  
[Redacted]

**FOIA Team Lead:** Ryan McDonald  
[Redacted]

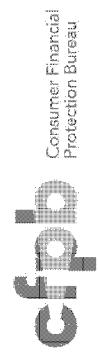
**FOIA Team Lead:** Kathleen Drohan  
[Redacted]

**FOIA Team Lead:** Holly Walter  
[Redacted]

**FOIA Inbox:** [FOIA@cfpb.gov](mailto:FOIA@cfpb.gov)



# Privacy Training Taskforce Members



# Agenda

In this training, you will learn about:

- What is personally identifiable information (PII)?
- How do you handle and safeguard PII?
- What is a breach?
- How do you report a breach?

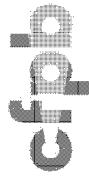
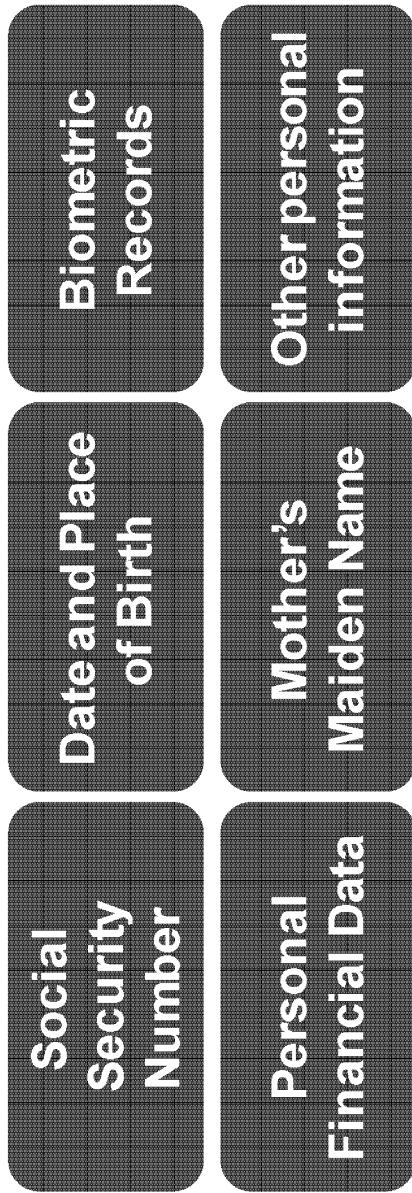


# Personally Identifiable Information (PII)

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According to the OMB Memorandum M-17-12 Personally Identifiable Information is:

“information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.”

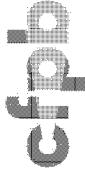


Consumer Financial  
Protection Bureau

# Protection of PII

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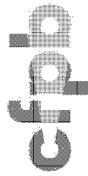
- **Do not access, discuss, or otherwise disclose PII for any purpose not related to your official duties.**
- **Don't create unnecessary copies of PII or sensitive business information.**
- **Do not use personal email accounts to conduct business related to your official CFPB duties.**
- **Do not forward PII to personal email accounts.**
- **Do not create new spreadsheets or databases that pull PII from multiple systems.**
- **Do not leave PII unattended on a desk, network printer, fax machine, or copier.**



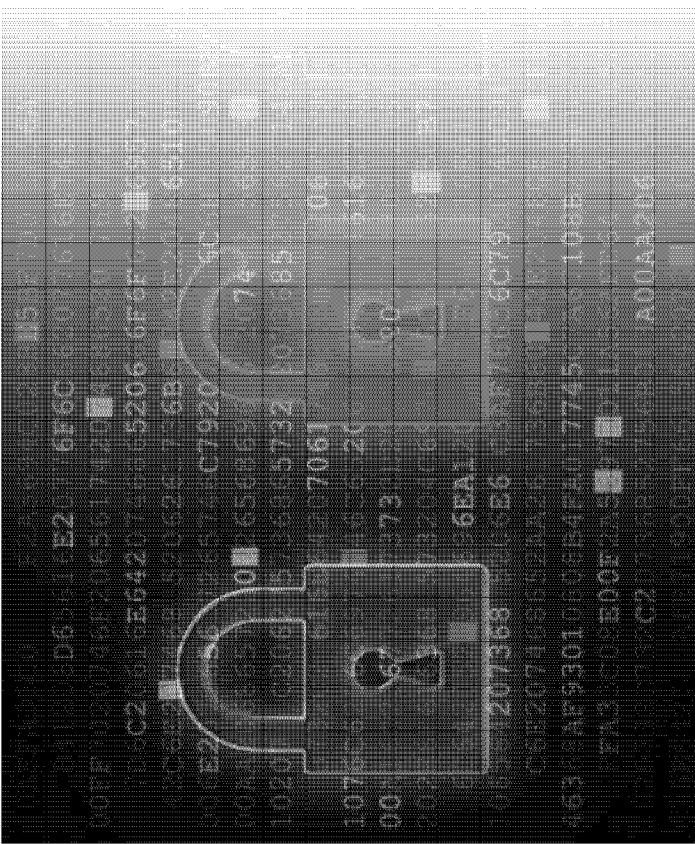
# Privacy Breaches

According to OMB Memorandum 17-12, a privacy breach is:

- The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term occurrence where (1) referring to situations where a persons other than an authorized users accesses or potentially accesses and for an other than authorized purpose have access or potential access to personally identifiable information, or (2) an authorized user accesses or potentially accesses personally identifiable information for an other than authorized purpose whether physical or electronic.
- The term applies to any suspected or confirmed breaches and does not distinguish between mode of transmission, oral, paper, or electronic.



# What if you suspect a breach?



- Lost device
- Lost papers containing personal information
- Email sent to the wrong person
- Overheard conversation including PII
- Having access to data you shouldn't see

**Call the Service Desk at (202) 435-7777 immediately!**

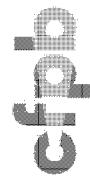
**cfpb**  
Consumer Financial  
Protection Bureau

# What are your responsibilities?

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- Know the sensitivity of the data you have
- Use information only for the purpose for which it was intended
- Report potential breaches to the Service Desk immediately

**Effective Privacy is everyone's responsibility**



# Contact Us:

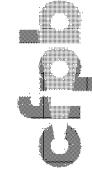
**Acting Chief Privacy Officer:** Tannaz Haddadi

[Redacted]  
Redacted

**Privacy Analyst:** Jennifer

[Redacted]  
Redacted

**Privacy Inbox:** [Privacy@cfpb.gov](mailto:Privacy@cfpb.gov)



## **Media Inquiry Policy**

### **Purpose**

To ensure that we respond to press inquiries in a timely and appropriate manner and provide the public with accurate and consistent information. In addition, to ensure that all media representatives understand the ground rules for any discussions.

### **Policy**

Below is the BCFP policy on media inquiries:

- All media requests and inquiries are coordinated by the BCFP Office of Communications.
- All media requests and inquiries shall be reported to Communications.
- BCFP staff is not permitted to speak with any media representative until they have approval to do so by the Office of Communications.

### **Guidelines**

As noted above, BCFP policy requires all media inquiries to be coordinated by and reported to BCFP's Office of Communications, and the policy prohibits BCFP staff from communicating with the media without prior approval from Communications. All such requests and inquiries should be directed to the BCFP Office of Communications ([press@consumerfinance.gov](mailto:press@consumerfinance.gov)). Below are some guidelines to follow:

- A “media representative” is anyone who is soliciting information for broad dissemination such as bloggers and trade association representatives or industry observers (as well as the traditional reporter).
- The policy covers inquiries from media representatives with whom you have an established relationship.
- The policy covers inquiries from media representatives who contact you for an “off the record” conversation.

- The policy covers any means in which a media representative communicates with you (for example, informal conversation, telephone call, email, text). Media representatives may also contact you through social media, such as Twitter or Facebook.
- The policy covers all media representatives regardless of where they work, including television networks, print newspapers, wire services, trade publications, blogs, and newsletters, amongst others. If a media representative approaches you after speaking on a panel open to the public, or calls you directly, you should politely decline the request and refer the person to Communications. In addition, you should report all such media inquiries to the Office of Communications.

Note that media representatives may not always identify themselves as members of the media and, therefore, you should always consult the Office of Communications when you receive any inquiry.

This policy applies to employees acting in their official capacity. Staff should seek advice from the Legal Division regarding limitations that apply when acting in their personal capacity.

## Questions

For more information, contact the Office of Communications at [press@consumerfinance.gov](mailto:press@consumerfinance.gov).

# Taskforce Member Orientation

## **TAB 4 – MEMBER INFORMATION**



Consumer Financial  
Protection Bureau

**Consumer Financial Protection Bureau**  
**Charter of the Bureau's Taskforce on Federal Consumer Financial Law**

**1. Official Designation (Title).**

Taskforce on Federal Consumer Financial Law.

**2. Authority.**

Pursuant to the executive and administrative powers conferred on the Consumer Financial Protection Bureau ("Bureau" or "CFPB") by Sections 1013(a) and 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the Director of the Consumer Financial Protection Bureau ("Director") establishes the Taskforce on Federal Consumer Financial Law ("Taskforce").

**3. Objective and Scope of Activities.**

The Taskforce will (1) examine the existing legal and regulatory environment facing consumers and financial services providers; and (2) report its recommendations for ways to improve and strengthen consumer financial laws and regulations, including recommendations for resolving conflicting requirements or inconsistencies, reducing unwarranted regulatory burdens in light of market or technological developments, improving consumer understanding of markets and products, and identifying gaps in knowledge that should be addressed through future Bureau research.

**4. Description of Duties.**

The duties of the Taskforce are to provide an objective and independent evaluation, in the form of one consensus final report to the Director, of the Bureau's current regulatory framework. The findings should identify where there may be gaps or where regulation should be simplified or modernized to help the Bureau more effectively carry out the mission of protecting consumers.

**5. Agency or Official to Whom the Taskforce Reports.**

The Taskforce shall report to the Director of the Consumer Financial Protection Bureau.

**6. Staff Director**

The Staff Director is a full-time employee who shall ensure that the Taskforce operates in accordance with the terms of the charter, in addition to other responsibilities delegated by the Director. The Staff Director for the Taskforce will be designated by the Director.

**7. Chair.**

The Director will also appoint a Taskforce chair ("Chair"), who will approve or call all Taskforce meetings, prepare and approve all meeting agendas, attend all Taskforce meetings, and adjourn any meeting when determined to be in the public interest. The Chair will have authority over the final report or recommendation content that will be presented to the Director for approval. The Chair will be required to perform all necessary actions to produce the final report, including mediation of intra-group conflicts, reconciliation of opposing views to reach majority

consensus, and seeking support in addressing dissent, as needed, from the Staff Director. The Director or the Staff Director may appoint a Chair pro tem who shall preside at a meeting of the Taskforce in the absence of the Chair.

**8. Support.**

The Bureau's Office of the Director will facilitate support of the Taskforce's activities to the extent permitted by law and subject to the availability of resources. The Staff Director shall select employees to support Taskforce operations. Employees who will support the Taskforce will be appointed through internal and external details or hires. In selecting employees for these positions, the Staff Director shall seek to meet Taskforce resource and skill needs. Employees who may be selected to support the Taskforce may include, but are not limited to, a Chief of Staff, attorneys, advisors, economists, analysts, and paralegals. Bureau employees assigned to support the Taskforce will work to support the Chair's overall direction and report to the Staff Director.

Taskforce communication and interaction with other Bureau staff and Bureau resources will be facilitated by the Staff Director.

**9. Estimated Number and Frequency of Meetings.**

In coordination with the Staff Director and Chair, the Taskforce shall meet as frequently as necessary to complete the report within the timeframe provided by the Director. The Taskforce will also facilitate a process to solicit public comment and engagement on its work.

**10. Duration.**

The Taskforce is expected to operate from January 2020 until the final report is delivered to the Director. The Taskforce is expected to deliver findings to the Director no later than January 2021. This Charter will expire 90 days after the final report is delivered to the Director, unless renewed by appropriate action.

**11. Memberships and Designation.**

The Director shall select the members of the Taskforce. In selecting members to the Taskforce, the Director shall seek to assemble members who are consumer financial law experts and academics with diverse points of view, such as attorneys and economists with significant experience researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and objectivity including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics; and experts from social sciences related to the Bureau's mission.

The Taskforce shall consist of approximately five members serving for the duration of the Taskforce. All members selected by the Director shall serve for the duration of Taskforce operation, unless extended by the Director. In the case of a Taskforce member's resignation or

removal from the Taskforce, the Director may select a replacement, in alignment with Section 11.

The Director will select Taskforce members to work for a temporary period of time using available non-competitive hiring authorities. Taskforce members will be expected to adhere to the conflict of interest statutes and Standards of Ethical Conduct for Employees of the Executive Branch, seek guidance from Bureau ethics officials when they perceive potential conflicts, and comply with Bureau confidentiality regulations.

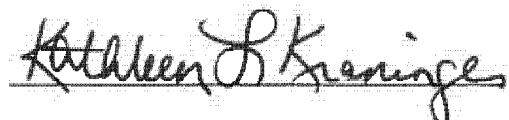
**12. Recordkeeping.**

The records created or received by the Taskforce will be maintained in accordance with the Bureau records retention policy.

**13. Authorization Date.**

The Taskforce is authorized to perform its duties upon signature by the Director.

Signed:



Date: 11/03/2020

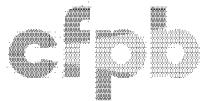
Kathleen L. Kraninger  
Director  
Consumer Financial Protection Bureau

CONSUMER FINANCIAL PROTECTION BUREAU | JANUARY 2020

# Taskforce on Federal Consumer Financial Law

Roles and Responsibilities

2020 - 2021



Consumer Financial  
Protection Bureau

## ***Who serves on the Taskforce?***

The Taskforce is a diverse group of experts in consumer financial protection. The Taskforce Charter provided specific considerations for the Director in selecting Taskforce members. In assembling the Taskforce, the Director looked for consumer financial law experts and academics with diverse points of view, significant experience in researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, the Director sought prominent experts who are recognized for their professional achievements and objectivity including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics; and experts from related social sciences related to the Bureau's mission.

The membership of the Taskforce on Federal Consumer Financial Law is:

- Dr. J. Howard Beales, III, Emeritus Professor of Strategic Management and Public Policy at the George Washington University and former Director of the Bureau of Consumer Protection at the Federal Trade Commission;
- Dr. Thomas Durkin, Senior Economist (Retired) at the Federal Reserve Board;
- L. Jean Noonan, Partner at Hudson Cook, former General Counsel at Farm Credit Administration, and former Associate Director the Bureau of Consumer Protection's Credit Practice at the Federal Trade Commission; and
- Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia School of Law, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center.

## ***What is the purpose of the Taskforce?***

The Taskforce will examine the existing legal and regulatory environment facing consumers and financial services providers; and report its recommendations for ways to improve and strengthen consumer financial laws and regulations, including recommendations for resolving conflicting requirements or inconsistencies, reducing unwarranted regulatory burdens in light of market or technological developments, improving consumer understanding of markets and products, and identifying gaps in knowledge that should be addressed through future Bureau research. The Taskforce will report its recommendations on ways to improve consumer financial laws and regulations to the Bureau Director.

The Taskforce may recommend that the Bureau take certain actions in the future, suggest studies or propose changes in a particular industry or market. While Taskforce discussions and any formal recommendations are very important to the Bureau, any decision to act in response to such recommendations rests solely with the Bureau Director.

***Does the Taskforce make decisions about Bureau functions such as regulation, supervision, enforcement, or any Bureau action?***

No. The Taskforce is an independent body that exists within the Bureau structure but operates outside of normal Bureau processes. It will recommend actions, through a final report, and those recommendations will be considered by the Director. Recommendations from the Taskforce do not bind the Bureau and all final decisions rest with the Director.

***How does the Taskforce interact with the Bureau?***

The Taskforce Charter provides that the Director shall designate a Staff Director, who shall ensure that the Taskforce operates in accordance with the terms of the charter, in addition to other responsibilities delegated by the Director. Taskforce communication and interaction with Bureau staff and resources will be facilitated by the Staff Director.

The Director or her designee will hold monthly check-in meetings with the Taskforce Chair and the Staff Director. At this meeting, the Chair will update senior leadership on progress and, as needed, seek support in addressing dissent. The Staff Director will provide direction on day-to-day Taskforce operations. The Staff Director will facilitate access to Bureau data and processes, receive resource requests and work with Bureau stakeholders to consider and respond to those requests, and provide project management support to help the Taskforce meet its expected report delivery date. A designee of the Staff Director will serve as timekeeper for Taskforce members. Following report completion, the Front Office and senior staff will have time to review report language, in line with procedures for clearing reports by quasi-independent Bureau offices.

***Will the Taskforce elect a Chair?***

No. The Director shall appoint a Chair from among the members of the Taskforce. The Chair shall call to order and preside at all meetings of the Taskforce. The Director or the Staff Director

may appoint a Chair pro tem who shall preside at a meeting of the Taskforce in the absence of the Chair.

The Chair will play a vital role in the success of Taskforce operations and the effectiveness of Taskforce output. The Chair will have authority over the final report or recommendation content that will be presented to the Director for review. The Chair will be required to perform all necessary actions to produce the final report, including mediation of intra-group conflicts, reconciliation of opposing views to reach consensus, and seeking support in addressing dissent, as needed, from the Staff Director. The Chair will provide input to the Front Office through the Staff Director on resource needs, including staff and data, following consideration of available resources and consultation with Taskforce members.

### ***When and where does the Taskforce meet?***

The Taskforce will meet in person regularly as frequently as necessary to complete the report within the span of Taskforce operation.

### ***Are Taskforce members paid?***

Taskforce members will receive compensation in accordance with the Bureau's compensation program and the hiring authority used to bring them into the Bureau; they may also be reimbursed for additional expenses as appropriate, consistent with Bureau policy.

### ***What are my responsibilities as a Taskforce member?***

Through the Charter, the Taskforce may identify unique responsibilities for members. In general, the Taskforce members' responsibilities include, but are not limited to:

- Provide information, analysis, and recommendations to the Bureau.
- Work in a team setting and be open to discussing and understanding differing viewpoints.
- Give everyone a chance to speak and withhold judgment on an idea presented by others until it has a chance to be developed.
- Work to reconcile dissenting opinions to reach consensus on final report and recommendations.

### ***How are meetings conducted?***

The Staff Director will work with the Chair to identify the specific methods or requirements by which meetings are run and consensus decisions are reached.

***How will the final report be drafted?***

The Staff Director will work with the Chair to identify the specific methods or requirements by which report language will be drafted. Taskforce members will be assigned chapters individually or in groups, with support from Taskforce staff. Final report language will be reviewed by the Taskforce as a whole, with adoption by consensus.

***How will the Taskforce navigate dissenting opinions?***

The Taskforce will produce one final report. As such, there will be no option for concurring or dissenting reports. The Chair will mediate intra-group conflicts and work the group towards compromise in case of dissenting viewpoints. Members are expected to work in good faith to reconcile disagreements to reach consensus on one final report. In case of irreconcilable differences, the Chair can seek support from the Staff Director.

***How long do members serve?***

As appropriate and considering the particular hiring authority used to hire the Taskforce members, Taskforce members will serve for the entire duration of Taskforce operation. The Taskforce will operate from January 2020 until the final report is delivered to the Director. The Taskforce is expected to deliver findings to the Director no later than January 2021.

***How long will the Taskforce last?***

The Taskforce is expected to deliver findings to the Director no later than January 2021.

***What is the Taskforce Charter?***

The charter is the document that officially identifies the membership, duties, meeting requirements and any special instructions for the Taskforce.

***Are Taskforce meetings open to the media and general public?***

No. Given the day-to-day nature of Taskforce work, it would not be feasible for all Taskforce meetings to be open to public observation. The Taskforce will also facilitate a process to solicit

public comment and engagement on its work through a variety of methods such as seeking input through Requests for Information.

***How can Taskforce members interact with the media and general public during Taskforce operation?***

Taskforce members are subject to the Bureau's Confidentiality Regulations, 12 C.F.R part 1070. These rules prohibit Taskforce members from disclosing non-public Bureau information without authorization. These rules will apply to the Taskforce members beyond the duration of the Taskforce. In other words, Taskforce members are not permitted to disclose non-public Bureau information without authorization even beyond the duration of the Taskforce members' terms. In addition, Taskforce members are subject to the Bureau's policies concerning external speaking engagements and media inquiries. Taskforce members are not permitted to interact with the media and general public about matters specific to the Taskforce outside of Bureau-sponsored engagements for the duration of the Taskforce.

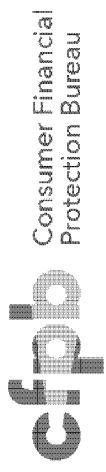


## **Oath of Office**

Please stand, raise your right hand and repeat after me.

- I, repeat your name.
- Do solemnly affirm that I will support and defend the Constitution of the United States against all enemies, foreign and domestic,
- that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion,
- and that I will and faithfully discharge the duties of the office on which I am about to enter so help me God.
- Welcome to the CFPB's Taskforce on Federal Consumer Financial Law.

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



Name	Title, Employer	Email	Work Phone	Cell Phone
Todd Zywicki, Chair	George Mason University Foundation Professor of Law, Antonin Scalia Law School at George Mason University			
J. Howard Beales III	Professor, Strategic Management and Public Policy, George Washington School of Business			
Thomas “Tom” Durkin	Senior Economist, Federal Reserve Board (Retired)			
William “Bill” Macleod	Partner, Kelley Drye & Warren LLP			
Jean Noonan	Partner, Hudson Cook LLP			

Last updated: 1/23/2020

# Taskforce on Federal Consumer Financial Law

Member biographies



Consumer Financial  
Protection Bureau

**Chairperson, Todd Zywicki** is the George Mason University Foundation Professor of Law at Antonin Scalia Law School at George Mason University, Senior Fellow at the Cato Institute, and former Executive Director of the George Mason Law and Economics Center. He is also a Senior Fellow of the Mercatus Center's F.A. Hayek Program for the Advanced Study of Politics, Philosophy, and Economics, and former Editor of the *Supreme Court Economic Review*. Professor Zywicki is the co-author of *Consumer Credit and the American Economy* (Oxford University Press, 2014) and is the author of more than 120 articles in leading law reviews and peer-reviewed economics journals. From 2003-2004, Professor Zywicki served as the Director of the Office of Policy Planning at the Federal Trade Commission (FTC). Professor Zywicki has testified frequently before Congress on issues of consumer bankruptcy law and consumer credit and is a frequent commentator on legal and economic issues in the print and broadcast media. He received his J.D. from the University of Virginia, where he was a John M. Olin Scholar in Law and Economics and executive editor of the *Virginia Tax Review*. Professor Zywicki also received an M.A. in Economics from Clemson University and an A.B. cum Laude with high honors in his major from Dartmouth College.

**Dr. J. Howard Beales III** taught in the School of Business at the George Washington University, from 1988 through 2019. From 2001 through 2004, he was the Director of the Bureau of Consumer Protection at the Federal Trade Commission (FTC). As Director, he was instrumental in establishing the national Do Not Call Registry, obtained the largest redress orders in FTC history and attacked high volume frauds. From 1977 to 1987, Dr. Beales served as a staff economist and in various positions in the Bureau of Consumer Protection at the FTC. In 1987-88, he was a Branch Chief in the Office of Information and Regulatory Affairs. He received his Ph.D. in economics from the University of Chicago in 1978, after graduating magna cum laude from Georgetown University in 1972.

**Dr. Thomas A. Durkin** has specialized in the economics and regulation of consumer financial services in the federal government, academic, and private sectors. Before retiring, he most recently was Senior Economist in the Division of Research and Statistics at the Federal Reserve Board where he has also been Visiting Professor. From 1988 to 1998 he was Regulatory Planning and Review Director in the Federal Reserve Office of the Secretary. Since retiring from the Federal Reserve, he has been engaged in a variety of writing projects concerning consumer financial services. He has also been Assistant and Associate Professor of Finance at Penn State University and Chief Economist and Director of Research of the American Financial Services Association. He has published extensively in the field of financial institutions and especially consumer credit and is co-author of four books in the financial area including *Truth in Lending: Theory, History, and a Way Forward* published in February 2011 by Oxford University Press and *Consumer Credit and the American Economy* published in August 2014 by Oxford. He holds an A.B. degree from Georgetown University and a Ph.D. degree from Columbia University.

**William C. MacLeod** chairs the Antitrust and Competition practice group at Kelley Drye & Warren LLP. A former Director of the Bureau of Consumer Protection at the Federal Trade Commission (FTC), he is also a Past Chair of the Antitrust Section of the American Bar Association. During his FTC tenure, Mr. MacLeod supervised the Credit (now Financial) Practices Division, which enforces federal consumer financial protection laws and regulations. He shaped policy and brought cases under the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth-in-Lending Act, the Equal Credit Opportunity Act and other consumer protection authorities. Mr. MacLeod also held positions as Attorney Advisor to the FTC Chairman, Director of the FTC's Chicago (now Midwest) Regional Office, and Advisor to the Assistant Attorney General in the Antitrust Division at the U.S. Department of Justice. Mr. MacLeod currently serves as Vice Chair of the Consumer Policy Committee of the Business and Industry Advisory Committee at OECD. In his legal practice, he represents plaintiffs and defendants in consumer protection and competition cases and investigations. He has counseled clients on compliance with financial consumer protection, privacy and data security, and antitrust law.

**Jean Noonan** is a partner with the law firm of Hudson Cook, in its Washington, DC, office. Her practice concentrates on consumer financial services, financial privacy, fair lending, and consumer protection matters. Ms. Noonan writes and lectures extensively on many aspects of consumer financial services law. She has served as an expert witness on fair lending, credit reporting, and insurance issues and has testified before the U.S. Congress on behalf of the Federal Trade Commission (FTC). During her tenure at the FTC, Ms. Noonan served as an Associate Director of the Bureau of Consumer Protection, where led the FTC's enforcement of the federal consumer credit, credit reporting, and debt collection laws. Ms. Noonan also served as the General Counsel of the Farm Credit Administration, which supervises the nation's agricultural and rural lending cooperatives. Ms. Noonan is a graduate of the University of Texas Law School.