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# Taskforce RFI Responses

Summary Report

[PAGE ]

CONSUMER FINANCIAL PROTECTION BUREAU

CFPB-0024962

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CONSUMER FINANCIAL PROTECTION BUREAU

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# Introduction

## **BACKGROUND AND PURPOSE**

The Consumer Financial Protection Bureau (Bureau) issued on March 27, 2020 a request for information (RFI) to assist the Taskforce on Federal Consumer Financial Law (Taskforce) with recommendations on harmonizing, modernizing, and updating the federal consumer financial laws.

The Taskforce sought input from the public at that time to help identify areas of consumer protection on which it should focus its research and analysis during the balance of its one-year appointment. More specifically, the RFI sought comment and other information on the following topics: expanding access to consumer financial products and services; protection and use of consumer data; regulations the Bureau writes and enforces; federal and state coordination; and improving the market for consumer financial products and services. The RFI's comment period closed on June 1, 2020.

The Bureau received approximately 90 comments to the RFI. Commenters included individual companies or organizations, industry trade groups, consumer advocacy organizations, organizations of state employees, individual and organized academics, and individual consumers. Several submissions were form letters from individuals with the same or substantially similar content as well as unrelated consumer complaints that were more appropriate for the Bureau's official Consumer Complaints portal. This document presents a summary overview of the comments received on the Task Force RFI.

Given that we are in the midst of an unprecedented global pandemic that struck in earnest in the middle of the RFI comment period, we anticipated (correctly) that there would be a lower number of RFI comment submissions than usual from major consumer advocates, individual companies, and industry trade groups. Because of this, we set up a Public Research initiative to proactively search the websites of 27 key consumer protection, industry, and research groups as well as the Congressional testimony of 22 identified prominent individuals in this space to identify their perspective on the questions asked in the RFI. Those findings are also noted in a separate report.

# 1. RFI Responses

## OVERVIEW

The Bureau received approximately 90 comments to the RFI. Some of these responses were duplicates, substantially similar form letters, or what appeared to be consumer complaints about specific companies. The approximate breakdown of submissions by different groups is as follows:

Commenter Type	Number of Comments
Individual Consumers or Practitioners	38 comments
Consumer Advocacy Groups	11 comments
Industry Trade Groups	25 comments
Individual Financial Institutions or Service Providers	7 comments
Academics	10 comments
Association of State Gov't Employees	1 comment

One comment (#92 on the Regulations.gov submission portal) is a 578-page joint comment signed by 27 consumer advocacy organizations (“Coalition Letter”). This joint comment consisted of a brief cover letter, followed by copies of the organizations’ respective responses to the Bureau’s 2018 Call for Evidence, a series of RFIs on topics that overlap in some respects with the questions that the Taskforce RFI asked.

Most comments from individuals and consumer advocacy groups did not address the RFI’s questions in depth but instead objected to the RFI process continuing during the COVID-19 pandemic and the makeup, mission, and existence of the Taskforce broadly.

Some commenters organized responses by question (mostly financial institutions or trade groups), others submitted general comments. Those who did answer individual RFI questions did not answer all of them, instead answering only the questions that were most relevant to them or their organization.

Not all groups who we hoped or expected to respond did, likely at least in part because of ongoing COVID-19-related operations struggles, though some consumer advocacy groups may have withheld comment in part because of concerns about the Taskforce generally. Most major consumer advocacy groups joined the Coalition Letter and made their positions known, but several major industry groups did not submit. To make sure we captured a diverse set of views, we launched a Public Research effort focused on scouring the websites, reports, and congressional testimonies of consumer advocacy groups, industry groups, and affiliated individuals for their positions on the questions contained in the RFI. The findings from that effort are cataloged in a separate report.

## OUR APPROACH

Methodology: We follow the comment-summary template that RMR used for the Call for Evidence RFIs with adaptations to fit the spirit of the Taskforce's inquiry, such as sections on agreement and disagreement between industry and consumer advocacy groups. We attempt to synthesize the comments into discrete points addressing each question with enough detail for them to stand alone in this document, but with citations back to the comment docket if necessary.

Comment Summary: The data in the "Comment Summary" section below accounts for all comments submitted to the public RFI docket. To the extent that a single comment may address multiple RFI questions, we have recorded those comments in each respective question's section. Where possible, we use direct quotes, which are indicated by quotation marks (""). Statements provided without quotation marks are the staff summary of the organization's position.

RFI Topic Areas: The data in the "RFI Topic Areas" section below includes all comments relevant to each topic area listed. The topic areas are as follows: Expanding Access, Consumer Data, The Regulations, Federal and State Coordination, and Improving Consumer Protection. Each topic area has four to six specific questions within it, and the responses below are organized according to these specific questions within each topic.

Representative Sentiments: The RFI sought comment on 23 wide-ranging questions.<sup>1</sup> The representative sentiments below are meant to provide a flavor of the most numerous substantive comments on each topic.<sup>2</sup> We attempted to select the most succinct articulations of each issue found among the comments, though that resulted in some commenters being quoted more frequently than others. Expanding Access

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<sup>1</sup> The 23 areas include: (1) Banking Services, (2) Payments, (3) Promoting Competition in Banking, (4) Short-Term, Small Dollar Credit, (5) Alternative Data, (6) Disparate Impact, (7) Protecting Consumer Data, (8) Accuracy of Consumer Data, (9) Data Breach Laws, (10) FinTech, (11) Regulatory Gaps, (12) Regulations to Clarify, (13) Regulatory Modernization, (14) Regulatory Principles, (15) Shared Jurisdiction, (16) Changes to Shared Jurisdiction, (17) Federal and State Cooperation, (18) Overlapping Federal and State Law's Effect on Small Institutions, (19) Market Performance, (20) Disclosures, (21) Remedies for Law Violation, (22) Bureau Tool Choice, and (23) Assessing Success.

<sup>2</sup> The representative sentiments are not intended to reflect all the issues that were raised by commenters on a particular topic. To improve the clarity of representative sentiments, where appropriate, we have made non-substantive formatting changes and have omitted non-substantive footnotes.

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Topic	RFI Question
1 Banking Services	Millions of U.S. households lack a bank account. Should the Bureau promote greater access to banking services and, if so, how? Are alternatives to deposit accounts, such as prepaid cards and peer-to-peer electronic payments, sufficient when compared to traditional banking products? What is the evidence regarding consumers' understanding of, and experience and satisfaction with, these products?
2 Payments	One important reason for access to a bank account is to facilitate transactions. To what extent is it necessary to tie transaction services to the banking system? To what extent could transaction services and the banking system exist independently, and would independent existence raise new consumer protection risks that regulators should consider? Would reducing clearance times impact the demand for alternative products, such as check cashing, small-dollar loans, and overdraft protection? If so, to what extent?
3 Promoting Competition in Banking	What steps could be taken to promote greater competition among providers of services such as payments, financial advisory services, and savings accounts? How do third-party applications, sometimes referred to as "open banking," affect the competition? To what extent do third-party applications raise new consumer protection risks that regulators should consider?
4 Short-Term, Small Dollar Credit	There is consumer demand for short-term, small-dollar credit. What impediments exist for expanding access to short-term, small-dollar loans and ensuring that this market is fair, transparent, and competitive? What has been the impact of State and Federal efforts to regulate such credit? Is the annual percentage rate a meaningful measure for a very short-term loan? If not, what other measures might be more useful to help consumers in understanding and assessing the cost of short-term credit?

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Topic	RFI Question
5 Alternative Data	Some creditors are supplementing or replacing traditional methods of underwriting (which often use income, debts, credit history, and stability factors) by employing “alternative data.” Some types of alternative data clearly expand the sources of financial information, such as payment histories for rent, utilities, and other consumer obligations, and other types of alternative data appear to have little in common with traditional underwriting information. What role should the Bureau play in regulating the furnishing, reporting, and use of alternative data, and what should the Bureau consider in developing policy in this area? How should the Bureau consider alternative factors which creditors find helpful in predicting risk, but which may lack an obvious relationship with creditworthiness or have differential impacts on some consumers or groups of consumers?
6 Disparate Impact	Should the Bureau clarify its position on disparate impact theory under the Equal Credit Opportunity Act? If so, what should be the Bureau’s position?

## REPRESENTATIVE SENTIMENTS

Where possible, direct quotes are used. These are indicated by quotation marks (""). Statements provided without quotation marks are the staff summary of the organization's position based on the source cited.

### 1. BANKING SERVICES

Commenter Type	Representative Sentiments
	<p><b><u>Alternatives are complements, not replacements:</u></b></p> <p>Commenter believes peer-to-peer electronic payments are complementary to bank accounts and, therefore, not substitutes as currently structured. Prepaid cards are not sufficient replacements for banking accounts because they offer less functionality, are costly to reload, and consumers cannot arrange for direct deposits. They do, however, limit a consumer's ability to overdraft. – Financial Health Network</p>
	<p><b><u>Maximize financial health over fees:</u></b></p> <p>The Bureau should promote a market for deposits that maximizes financial health of individuals over fees. The free checking model and associated overdraft fees in banking is an example of issues arising from "profit before financial health" deposit models. The Federal Reserve Board's "opt-in rule" for overdraft fees contributes to inequities. – Financial Health Network</p>
	<p><b><u>Focus on expanding credit, not regulation:</u></b></p> <p>"[O]nly a consumer understands the particular circumstances he or she faces, and only a consumer is equipped to determine the products and financial service providers that best meet their needs. Government policy should thus focus on expanding credit access and facilitating consumer choice." – Community Financial Services Association of America + Financial Service Centers of America</p>
Trade groups	<p><b><u>Research banking services before acting:</u></b></p> <p>The Bureau should research why many Americans do not have bank accounts before taking action to promote access to them. Commenter notes many reasons cited by consumers for not having a bank account including mistrust of the industry and high or unpredictable fees. – Community Financial Services Association of America + Financial Service Centers of America</p> <p><b><u>The Bureau should promote access to prepaid accounts:</u></b></p> <p>The Bureau's suggestion that use of prepaid cards is due to the lack of access to checking accounts and other types of credit products is valid. Therefore, the Bureau should promote access to prepaid cards. – Independent Community Bankers of America</p> <p><b><u>Prepaid card services are important and should be expanded:</u></b></p> <p>Prepaid cards have been used by public and private sector for uses as diverse as payroll, reimbursements, disaster relief, rebates, insurance claim payments, and more. These serve un- and underbanked individuals much better than a traditional paper check and saves millions each year in disbursement costs. Prepaid accounts also provide stronger consumer protections than checks because of the CFPB Prepaid Rule. – Innovative Payments Association</p>

**COVID-19 proves bank account alternatives are crucial:**

The COVID-19 crisis has proven that alternatives to bank accounts such as prepaid cards, peer-to-peer transactions, etc. are important for consumers and crucial to weathering financial downturn like caused by COVID-19. The Bureau should validate that these are protected products and should be considered as disbursement options during the COVID-19 crisis and beyond. – Innovative Payments Association

Commented [NA(2): Howard: This is a good idea!]

Individual  
Financial  
Institutions or  
Service  
Providers

**Prepaid and debit cards should have the same Overdraft treatment:**

Currently overdraft on a prepaid card is treated like an extension of credit, under a host of Reg Z-related burdens. The Prepaid Rule should be amended to fix this. Reg E protections should apply. We believe un- and underbanked consumers would benefit from overdraft protection on prepaid cards. We disagree with the Bureau's research from the time of the rule. – Mastercard

**Withdraw "hybrid prepaid-credit cards" provision from Prepaid Rule:**

"In NetSpend's view, the Bureau could promote greater access to banking services, address consumer demand for short-term liquidity, and level a disparity in the market by withdrawing the provisions of the Prepaid Rule that regulate prepaid account overdraft features as 'hybrid prepaid-credit cards' ... We strongly urge the Bureau to withdraw the 'hybrid prepaid-credit cards' provisions of the Prepaid Rule because these provisions are not based on evidence of consumer harm, are overly burdensome, and deny prepaid cardholders equal access to financial services." – NetSpend

Academic

**The Bureau should regulate P2P services:**

The Bureau should promote greater access to banking services but do so in a way that does not compromise consumer protection. For example, peer-to-peer services are unregulated and the Bureau should step in to fill the void. – Mark E. Budnitz, Georgia State Law

**Promoting access to bank accounts is outside of the Bureau's domain:**

Questions about promoting access to bank accounts sit outside the Bureau's jurisdiction and are best handled by Treasury (e.g., OCC, FDIC). If the Bureau wishes to address financial inclusions, it should address consumer protection problems, such as UDAAPs associated with payday loans. – Susan Block-Lieb, Fordham Law

## 2. PAYMENTS

Commenter Type	Representative Sentiments
	<b><u>Facilitating transactions cannot be separated from the banking system:</u></b>
	Facilitating transactions is a critical function of the banking system and cannot be separated without exposing consumers to undue risk of loss and liability, even when provided by non-banks. There is no reason to treat consumer protections differently because their product comes from a bank or a non-bank institution. Bank and non-bank providers should be subject to a level regulatory playing field. Consumers do not know or care whether or not the services they use are technically banks or non-banks - the service is the same from their point of view. – Innovative Payments Association
	<b><u>Faster payment services are needed:</u></b>
Trade groups	"[T]he Financial Health Network has both encouraged the development of innovative products that give consumers timely access to their wages, and supported the establishment of a faster payments system. In today's economy, an hourly worker paid bi-weekly gives her employer an interest-free loan for more than two weeks before her own paycheck arrives. While this float is certainly appreciated by the employer, it comes at a real cost to the worker providing the loan... The Taskforce may also wish to examine and provide clarity on the applicability of laws regulating the extension of credit to certain types of programs which enable employees to obtain their wages as earned... [T]he Financial Health Network has advocated for the Federal Reserve to move with all haste to establish a faster payments system. We are also supportive of private sector innovation to enable faster payments, and believe that consumers would be well served by legislative action directing the Federal Reserve to mandate real-time fund availability while the Fed is in the process of setting up its recently announced FedNow system." – Financial Health Network
	<b>Commented [NA(3): Action – Potential recommendation]</b>
	<b><u>Splitting the banking / transaction services systems is risky:</u></b>
	Splitting the systems "could introduce new risks, as many consumer protections related to transactions are tied to the banking system. Further, allowing payments to migrate away from the banking system and towards large technology firms, for example, may introduce new considerations for prudential regulators, not to mention considerations for competition policy and data governance. In China, where such a migration has already occurred, the central bank stepped in ex post to require technology firms to link their popular payments applications to traditional bank accounts, and to keep 100 percent of the float in reserve at the central bank." – Financial Health Network
	<b>Commented [NA(4): Todd – point on Chinese Fintech]</b>
	<b><u>Real-time payments are essential to modernization of financial services market:</u></b>
	Real-time networks "that use a good funds, credit push model may facilitate decreased friction and cost of accessing funds by reducing overdrafts and reliance on check cashiers and payday lenders; thus, reducing the demand for alternative products." Additionally, real-time payments would spur innovation in the industry. – Independent Community Bankers of America
	<b><u>No jurisdiction:</u></b>
Academic	The Bureau does not have jurisdiction over whether payments services should be tied to banking system. – Susan Block-Lieb

### 3. PROMOTING COMPETITION IN BANKING

Commenter Type	Representative Sentiments
	<p><b><u>Data portability can help:</u></b></p> <p>Financial institutions have very little incentive to prioritize consumer financial health due to high cost of switching to another institution and information asymmetries. Greater emphasis on data portability may offer a solution. – Financial Health Network</p>
Trade groups	<p><b><u>FinTech regulation gap hurts competition:</u></b></p> <p>"The banking regulatory agencies play a valuable role in defining and identifying the risks of existing and emerging technologies for both community banks and their service providers. ICBA recommends that regulation of fintech products and services should include consumer and data-security protections consistent with those that apply to the banking industry. These frameworks should also maintain harmonized due diligence requirements to reduce burdens for both the bank and fintechs. Additionally, the CFPB should craft guidance in a manner that does not hamper innovation." – Independent Community Bankers of America</p>
Academic	<p><b><u>Focus on law-breakers:</u></b></p> <p>The best way to foster competition is to root out those who violate the law because illegal activities put honest companies at a disadvantage. – Mark E. Budnitz</p> <p><b><u>No jurisdiction:</u></b></p> <p>The Bureau does not have jurisdiction to promote competition in banking services. – Susan Block-Lieb</p>
Individual Financial Institutions or Service Providers	<p><b><u>Third-party applications are risky:</u></b></p> <p>The Bureau must look at risks posed to consumers surrounding the use of third-party applications and cybersecurity/fraud. – Suncoast Credit Union</p>
Individual Consumers	<p><b><u>Competition by itself does not produce consumer benefits.</u></b></p> <p>- Lea Williams</p>

Commented [NA(5): Data portability]

#### 4. SHORT-TERM, SMALL DOLLAR CREDIT

Commenter Type	Representative Sentiments
	<p><b>Credit Unions and Payday lenders are not the same:</b> Credit unions provide small dollar loans but should not be subject to the rules used to reign in traditional abusive payday lenders. – Credit Union National Association</p>
	<p><b>APR is a meaningful measure:</b> “CCIA supports the current Regulation Z2 calculation and disclosure of the annual percentage rate as a “meaningful measure” to compare the cost of credit for loans of similar sizes and duration, including very short-term loans. CCIA supports the current treatment of Voluntary Protection Products in the Regulation Z calculation, in that they are not treated as a cost of credit.” – Consumer Credit Industry Association</p>
	<p>“The Taskforce should confirm that five decades of jurisprudence and regulatory guidance have led to confidence in the term ‘APR’—what it means, what is included, and what is not included in its calculation. The Taskforce should recommend against using an ‘all-in’ APR because it is not useful to add the cost of voluntary products as a ‘cost of credit’ by inclusion in APR.” – American Financial Services Association</p>
	<p><b>End disparate treatment of prepaid products:</b> Prepaid cards are the perfect vehicle for STSD loans, but the current regulatory framework does not allow prepaid account providers to do so. This is because the CFPB Prepaid Rule, which treats overdraft and other credit functions very differently than the same features on debit cards connected to traditional checking accounts. Prepaid cards are the only financial services products in the market subject to this limitation. Get rid of these limitations. [Reg Z/Reg E]– Innovative Payments Association</p>
Trade groups	<p><b>Encourage experimentation with terms and pricing / APR is not meaningful:</b> “While APR can be a useful tool for comparing many kinds of credit products, its utility diminishes as the number of days in a loan’s term approaches zero. Some states have pioneered new kinds of price regulation that may be more useful for short term loans. These regulations cap the total cost of the loan at a percentage of the principal and spread the cost over the term of the loan to reward borrowers who repay early and avoid creating incentives for lenders to refinance loans.” – Financial Health Network</p> <p>“Instead of an APR, Consumers should be given a More Meaningful Measure of Cost that Better Reflects How Consumers Use Small-Dollar Loans.” APR is not an accurate measure to assess the cost of overdraft fees or quantify the cost of short-term, small-dollar credit. Consumers use small-dollar credit to recover from a financial shock, to account for fluctuations in the consumers income or expenses over the course of a year, or to pay off accumulated debt at a lower cost (e.g. when nonpayment or default would be more costly). None of these three scenarios is suited to the use of an APR to assess cost of credit given an APR would overstate the cost of the small-dollar loan. – Community Financial Services Association of America + Financial Services Centers of America</p> <p><b>Ability to Repay is good:</b> “An initial determination of ability to repay is key. That determination must include consideration not only of the repayment terms, but must also take borrowers’ other obligations into consideration to ensure that borrowers can meet all their fixed obligations and still have enough left to cover their basic living expenses.” – Financial Health Network</p>

**Commented [NA(6):** Recommendation: Acknowledge that APR is not useful in this context, but we don't have an obvious better solution. Continue research and experimentation.

**Commented [NA(7):** Payday lenders

**The ends do not justify the means:**

Access to credit does not justify preserving predatory lending or destructive practices that leave consumers worse off. The Bureau's original analysis for the Payday rule was adequate and gutting the ATR provisions of the rule is bad for consumers. – Coalition Letter (27 signatories)<sup>3</sup>

Consumer advocacy groups

**Promote a fee-inclusive APR:**

"The CFPB should... require a fee-inclusive APR for applications and solicitations. Restoring the effective APR would make TILA disclosures more meaningful and truthful... Restoring the effective APR would also remove incentives for payday lenders and other high cost lenders to convert their predatory loan products into open-end credit. It would require a more meaningful and truthful APR disclosure for products such as the line of credit offered by CashNetUSA.com. In Utah, CashNetUSA discloses an APR of 299%. However, this does not include the 15% "Transaction Fee" imposed each time a borrower obtains a cash advance. Combining the Transaction Fee with the periodic interest translates into an effective APR of 480%." – Coalition Letter (27 signatories)

**Commented [NA(8): Action]**

Academic

**No jurisdiction:**

The Bureau does not have jurisdiction to promote access to small-dollar market and opening those actions is inconsistent with its prior consumer protection regulatory actions. Moreover, the Bureau cannot preempt State law solely to expand access to markets or to promote competitions. DFA sections 1041 through 1043 have specific criteria for preemption; e.g., 1041(a) does not permit preemption if State law offers consumers greater protections than do Federal law. – Susan Block-Lieb

Individual consumer

**Interest rates and rate of compounding should be capped.**

- Linda Schneider

<sup>3</sup> See Appendix for full list of consumer advocacy signatories to this letter

## 5. ALTERNATIVE DATA

Commenter Type	Representative Sentiments	
	<b>Congress should amend FCRA to allow for cash-flow data:</b> Cash flow data is massively important as a real-time signal of creditworthiness, but is not accounted for in FCRA, which is outdated for this purpose. To encourage innovation, the Bureau must work with Congress to update FCRA to better reflect today's reliance on technology-powered tools, the processes by which aggregators access consumer's financial data with their consent, and the types of data that extend affordable credit to consumers and small businesses that might not otherwise qualify for loans. – Financial Data and Technology Association	Commented [NA(9]: Recommendation: We don't see problems with using this already, but if necessary, Congress should clarify that this is permissible.
Trade groups	<b>Modernize credit underwriting standards:</b> The Bureau should take steps to modernize credit underwriting standards. This will enhance opportunities for use of alternative data and artificial intelligence to refine credit underwriting and promote access to credit. Allow the use of bill payment data and data on cash flow through transactional accounts and provide greater flexibility to adjust pricing and terms for open-end credit to reflect changes in cash flow. – Bank Policy Institute	Commented [NA(10]: Action
	<b>Provide clear rules and directives:</b> "OLA encourages the Taskforce to include in its evaluation of data issues the role that alternative data plays in credit decisions and consider rules and directives that provide clear and practical guidelines that foster the use of alternative data, thus lowering unnecessary barriers to credit." – Online Lenders Alliance	Commented [NA(11]: Guidance
Individual Financial Institutions or Service Providers	<b>Do not regulate alt data in credit models:</b> It is unnecessary and premature for the Bureau to regulate the use of alt data in credit models. If the Bureau implemented specific alt data requirements, it would stifle innovation and harm consumers. – Mastercard <b>Consider alternative factors using ECOA framework:</b> To evaluate alternative factors which may lack an obvious relationship with creditworthiness or have differential impacts on certain consumers, the Bureau should use the ECOA framework: (1.) Is the factor explicitly prohibited or restricted in the evaluation of applications by the ECOA, specifically 12 C.F.R. § 1002.6? (2.) Does the factor lead to unlawful discrimination on a prohibited basis under the ECOA, either through disparate treatment or disparate impact? If the answer to both of these is "No," the Bureau should defer to creditors. – Mastercard	Commented [NA(12]: Flag for the future
Academic	<b>Do not address alt data:</b> It is unnecessary for Taskforce to address alternative data in light of Interagency Statement on Use of Alternative Data in Credit Underwriting. If Bureau gets involved, it should limit itself to what collection and use of alternative data (1.) constitutes a UDAAP, or (2.) violates a consumer's reasonable expectation of privacy. – Susan Block-Lieb	Commented [NA(13]: Flag

## 6. DISPARATE IMPACT

Commenter Type	Representative Sentiments
	<p><b><u>Disparate Impact is not legitimate:</u></b></p> <p>AFSA believes that ECOA does not include text referring "to the consequences of actions" taken by a creditor and therefore disparate impact claims are not cognizable under ECOA, based on the Supreme Court's reasoning in <i>Inclusive Communities</i>. The Taskforce could review the Bureau's interpretive authority in this area and explain the difference between FHA and ECOA, as well as the limits of the Bureau's authority. – American Financial Services Association</p>
Trade groups	<p><b><u>Bureau should adopt Inclusive Communities holding:</u></b></p> <p>Bureau should adopt the Supreme Court's adopt the <i>Inclusive Communities</i> holding. – Consumer Bankers Association</p> <p>"If the Bureau finds that ECOA does allow for disparate impact evaluations, then ICBA urges the CFPB to update its disparate impact standard in Reg B in order to ensure that it is consistent with the <i>Inclusive Communities</i> decision by including a robust causality requirement and an affirmative defense for algorithmic lending" – Independent Community Bankers of America</p>
	<p><b><u>Do not clarify or otherwise change position on Disparate Impact:</u></b></p> <p>"We strongly oppose any effort to weaken Regulation B, implementing the Equal Credit Opportunity Act, by straying from the use of disparate impact analysis in assessing discrimination. Disparate impact is the statutory legal standard under the ECOA, notwithstanding the congressional action on the auto loan guidance, and any amendments that undercut that statutory standard would be outside the CFPB's authority. . . . Lending discrimination is more commonly covert, requiring the Disparate Impact doctrine to combat unfair practices. . . . Proliferation of systemic barriers to credit access necessitate the use of Disparate Impact. . . . The CFPB and other federal regulatory agencies are critical to ensuring equitable access to credit" – Coalition Letter (27 signatories)</p>
Consumer advocacy groups	<p>NFHA refers to its prior comment recommending preserving disparate impact (DI). DI is needed to detect most discrimination. Systemic barriers prevent minority access to credit. Examples include: Auto lending, minimum loan and minimum value loan policies, age of house restrictions, maternity leave policies, use of outdated credit scoring models, and loan-level pricing adjustments (e.g., GSEs require using a model that has discriminatory effect on consumers). The Bureau needs to enforce Reg B because of ongoing disparities in treatment of minorities. – National Fair Housing Alliance</p> <p>We support traditional use of disparate impact (DI). Legislative history shows intent to get rid of such impacts and that DI could be used to establish <i>prima facie</i> case of discrimination. People of color are disproportionately impacted by pandemic's economic effects, making DI important during this time. See our comment on HUD's proposed rule to change use of DI in fair housing cases. HUD's proposed burden-shifting rule would make it more difficult to prove discrimination. Among other things, it would create defenses for using discriminatory algorithms. – National Community Reinvestment Coalition</p>

Commented [NA(14]: Major banks have walked this back

Seek clarification from Tom Pahl, stance of Bureau, the potential symposium

## DISAGREEMENT BETWEEN INDUSTRY GROUPS

Topic	Disagreement
Banking Services	<p><b><u>Whether the Bureau should be involved in promoting banking services:</u></b></p> <p>"[O]nly a consumer understands the particular circumstances he or she faces, and only a consumer is equipped to determine the products and financial service providers that best meet their needs. Government policy should thus focus on expanding credit access and facilitating consumer choice." – Community Financial Services Association of America + Financial Service Centers of America</p> <p>The Bureau's suggestion that use of prepaid cards is due to the lack of access to checking accounts and other types of credit products is valid. Therefore, the Bureau should promote access to prepaid cards. – Independent Community Bankers of America</p>
Short-Term, Small Dollar	<p><b><u>Whether or not APR is a meaningful measure for small dollar credit:</u></b></p> <p>"CCIA supports the current Regulation Z calculation and disclosure of the annual percentage rate as a 'meaningful measure' to compare the cost of credit for loans of similar sizes and duration, including very short-term loans. CCIA supports the current treatment of Voluntary Protection Products in the Regulation Z calculation, in that they are not treated as a cost of credit." – Consumer Credit Industry Association</p> <p>"The Taskforce should confirm that five decades of jurisprudence and regulatory guidance have led to confidence in the term 'APR'—what it means, what is included, and what is not included in its calculation. The Taskforce should recommend against using an 'all-in' APR because it is not useful to add the cost of voluntary products as a 'cost of credit' by inclusion in APR." – American Financial Services Association</p> <p>"While APR can be a useful tool for comparing many kinds of credit products, its utility diminishes as the number of days in a loan's term approaches zero. Some states have pioneered new kinds of price regulation that may be more useful for short term loans. These regulations cap the total cost of the loan at a percentage of the principal and spread the cost over the term of the loan to reward borrowers who repay early and avoid creating incentives for lenders to refinance loans." – Financial Health Network</p> <p>"Instead of an APR, Consumers should be given a More Meaningful Measure of Cost that Better Reflects How Consumers Use Small-Dollar Loans." APR is not an accurate measure to assess the cost of overdraft fees or quantify the cost of short-term, small-dollar credit. Consumers use small-dollar credit to recover from a financial shock, to account for fluctuations in the consumers income or expenses over the course of a year, or to pay off accumulated debt at a lower cost (e.g. when nonpayment or default would be more costly). None of these three scenarios is suited to the use of an APR to assess cost of credit given an APR would overstate the cost of the small-dollar loan. – Community Financial Services Association of America + Financial Service Centers of America</p>

Commented [NA(15]: Payday lending group

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Alternative  
Data

**Whether or not the Bureau should provide guidance on alt data:**

"OLA encourages the Taskforce to include in its evaluation of data issues the role that alternative data plays in credit decisions and consider rules and directives that provide clear and practical guidelines that foster the use of alternative data, thus lowering unnecessary barriers to credit." – Online Lenders Alliance

It is unnecessary and premature for the Bureau to regulate the use of alt data in credit models. If the Bureau implemented specific alt data requirements, it would stifle innovation and harm consumers. – Mastercard

## Consumer Data

	<b>Topic</b>	<b>Description</b>
7	Protecting Consumer Data	Both the Fair Credit Reporting Act (FCRA) and its implementing Regulation V and the Gramm-Leach-Bliley Act and its implementing Regulation P contain important protections of consumers' personal information. Are these protections sufficient? Why or why not? If not sufficient, what further protections should the Bureau or Congress consider? Are there obligations in these regulations or statutes that impose a burden not justified by the corresponding consumer benefit?
8	Accuracy of Consumer Data	The FCRA requires consumer reporting agencies to "follow reasonable procedures to assure the maximum possible accuracy"; requires these agencies to disclose to a consumer the contents of the consumer's file; contains procedures for consumers to dispute the accuracy of information in these agencies' files; and requires notifications when information from these agencies' files has contributed to a user's adverse action. In addition, the FCRA's implementing Regulation V requires that data furnishers implement and maintain reasonable written policies and procedures concerning the accuracy of the data they furnish. Are these provisions designed to ensure accuracy sufficient? Why or why not? If not, what further protections should the Bureau or Congress consider? Are there obligations in these laws that impose a burden not justified by the commensurate consumer benefit?
9	Data Breach Laws	Most States have enacted laws that afford consumers certain protections in the event of a data breach. There is considerable variation among these laws, including the triggering events for coverage by the law and the requirements and remedies relating to a breach. Would Federal legislation, regulation, or guidance addressing data breaches be desirable? Why or why not? Would it be desirable to have a uniform national standard for data breach obligations? Why or why not?
10	FinTech	Financial technology, or FinTech, companies often use consumer data to provide new or enhanced financial products and services, but this can raise concerns about consumers' ability to protect privacy and control the use of their data. With respect to consumer data, how best can the Bureau or Congress balance between facilitating FinTech innovations that increase consumer choice and ensuring consumer protection? Do any existing technologies or practices, such as zero-knowledge proofs, raise fewer consumer protection concerns or have the potential to help regulators resolve the balance between consumer choice and consumer protection?

## REPRESENTATIVE SENTIMENTS

Where possible, direct quotes are used. These are indicated by quotation marks (""). Statements provided without quotation marks are the staff summary of the organization's position based on the source cited.

## 7. PROTECTING CONSUMER DATA

Commenter Type	Representative Sentiments
	<p><b><u>GLBA is sufficient:</u></b></p> <p>"GLBA has strong consumer privacy standards that should remain the standard for privacy protections by financial institutions at both the federal and state levels." – American Land Title Association</p>
	<p><b><u>GLBA can be improved:</u></b></p> <p>There is room for significant improvement in GLBA and opt-out (of sharing personal information) structure is a bad model. "[W]e believe that bank-initiated data sharing should be governed by an opt-in regime, with a default assumption that customers do not have any particular desire for their financial data to be sold to, rented to, or otherwise used by other third parties as they see fit." – Financial Health Network</p>
Trade groups	<p><b><u>Update FCRA:</u></b></p> <p>"Cash flow data is massively important as a real-time signal of creditworthiness, but is not accounted for in FCRA, which is outdated for this purpose. To encourage innovation, the Bureau must work with Congress to update FCRA to better reflect today's reliance on technology-powered tools, the processes by which aggregators access consumer's financial data with their consent, and the types of data that extend affordable credit to consumers and small businesses that might not otherwise qualify for loans." – Financial Data and Technology Association</p> <p>"AFSA believes it is time for the CFPB to simplify and clarify Regulation V. In particular, the Taskforce should recommend that the CFPB address the exponential increase in FCRA credit dispute abuses that lack factual basis for the dispute and merely attempt to do no more than improve a credit score. Often these complaints are submitted repeatedly, with little or no difference. These meritless, frivolous, and/or repeated disputes take up resources that would be better devoted to addressing consumer complaints with merit or to other areas of customer service. Perhaps the Taskforce could consider a safe harbor for good-faith, reasonable reporting." – American Financial Services Association</p> <p>"The Taskforce should also recommend that the CFPB address the issue of FCRA identity theft claim requirements when a reasonable investigation must be conducted, even though a reasonable likelihood of identity theft has not been asserted. In addition, the Taskforce should recommend that the CFPB review FCRA bankruptcy reporting. It may be appropriate to establish safe harbors for both of these provisions." – American Financial Services Association</p> <p>Congress should amend the FCRA to place reasonable and consistent limits on class action liability, bringing it in line with similar consumer laws, and create a safe harbor disclosure form for employment uses of consumer reports by directing the Bureau to engage in rulemaking to develop model forms. – Consumer Data Industry Association</p>

Commented [NA(16): Action]

Commented [NA(17): Action]

Commented [NA(18): Jean agrees]

**Third party applications and data aggregators raise concerns:**

Commented [NA(19]: Guidance

The emergence of third-party applications and data aggregators raise consumer protection concerns. Liability between and among financial institutions or facilitators leaves open possibility liability could be shifted to the consumer. The Bureau "should issue guidance that consumers are not liable for unauthorized transactions originated with login credentials a consumer has shared with a data aggregator" and encourage risk mitigation policies such as third-party liability insurance. – Financial Health Network

"If some or all aggregators are deemed to be consumer reporting agencies under FCRA based upon the activities of the aggregators, there also would be a need to clarify whether banks are furnishers." – Financial Health Network

**FCRA doesn't work:**

FCRA does not fulfill its core purpose of ensuring accuracy in consumer data. Additionally, consumer reporting agencies devote insufficient resources to ensure accuracy, correct errors or respond to consumer disputes. Additional regulatory oversight is needed. – Financial Health Network

**FCRA issues stem from noncompliance, not problem with law:**

Commented [NA(20]: Action

"While there are serious problems in the credit reporting area, many of these stem from failure to comply with existing rules rather than gaps in those rules. Thus, the most critical task for the CFPB is to ensure vigorous supervision of larger participant consumer reporting agencies and to enforce existing law." – Coalition Letter (27 signatories)

"To the extent that there are focused, limited improvements for Regulation V, we have the following suggestions: Adopt the Federal Trade Commission's FCRA Staff Report with Summary of Interpretations as an official interpretation of the FCRA; Prevent disputes or delays over medical insurance or billing from impacting consumers' credit reports and scores; Require employers to provide 35 days' notice, allowing time to address errors, prior to a final action taken in reliance on a consumer report; Eliminate overbroad exceptions to the requirement to notify consumers when a consumer report or credit score results in a higher price." – Coalition Letter (27 signatories)

Commented [NA(21]: Guidance? Is this a formal process? Propose it as commentary to Reg Z?

**Data Aggregation companies should comply with privacy laws:**

Commented [NA(22]: Action

Individual Financial Institutions or Service Providers

Data aggregation firms should adhere to the data protection and privacy requirements of GLBA and submit to supervisory oversight by federal agencies. – Yodlee

"FCRA is ambiguous on whether data aggregators are subject. Differing interpretations of FCRA's applicability can be an obstacle to a consumer's ability to use their own data. CFPB should consider requiring that consumers have the ability to request and receive a full disclosure of the information being provided in a cash flow underwriting environment, as well as requiring that enablers of such underwriting processes clearly provide consumers with tools to assist them with disputes related to data accuracy." - Yodlee

**Privacy protections and credit reporting protections are functioning effectively.**

- Hon. Carol J. Kenner (retired US Bankruptcy Court Judge, retired Chief Judge of Bankruptcy Appellate Panel for First Circuit Court of Appeals)

**Compliance costs are not a valid excuse:**

Individual Consumers

Do not reduce consumer privacy or credit reporting protections because of compliance cost.  
– Linda Schneider

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**The system is broken:**

There are no real protections for consumers. Personal data should be owned by the consumer, not the bank who does the transaction (name, address, phone number, purchases, etc.). — Art Castelli

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## 8. ACCURACY OF CONSUMER DATA

Commenter Type	Representative Sentiments	
Trade groups	<p><b><u>Update research on accuracy of credit reports:</u></b></p> <p>"The Bureau should conduct an independent analysis of the accuracy of credit reports." – US Chamber of Commerce</p> <p>"[T]he CFPB [should] obtain or conduct up-to-date research on the state of the accuracy of consumer reports before proposing regulation or supporting legislation to amend the FCRA." – Consumer Data Industry Association</p> <p><b><u>COVID-19 guidance is welcome:</u></b></p> <p>ICBA "also welcomes the Bureau's recently published policy statement . . . to highlight furnishers' responsibilities under the CARES Act and inform furnishers of the Bureau's flexible supervisory and enforcement approach during the COVID-19 pandemic regarding compliance with FCRA and Regulation V." – Independent Community Bankers of America</p>	<p><b>Commented [NA(23): Action Recommendation]</b></p>
Individual Financial Institutions or Service Providers	<p><b><u>FCRA is sufficient as is:</u></b></p> <p>FCRA is already extensive and substantial. We do not believe that additional requirements are needed. Adding more requirements could be a huge burden, leading to perverse incentives to not report credit information because of compliance costs and fear of litigation. Additional requirements on CRAs may discourage new market participants and thus innovation. – Mastercard</p> <p><b><u>Provide a regulatory standard for "reasonable procedures":</u></b></p> <p>The Bureau should provide a regulatory standard for the statutory requirement of "reasonable procedures to assure maximum possible accuracy." The Bureau should follow the GAO advice to consider principles-based guidance for CRAs on this topic. Reasonable procedures are context dependent and may vary from CRA to CRA. – Mastercard</p>	<p><b>Commented [NA(24): Guidance]</b></p> <p><b>Commented [NA(25): Action]</b></p>
Individual consumers	<p><b><u>Demand accountability from CRAs:</u></b></p> <p>"Addressing the operations of the credit reporting agencies would be an excellent addition to your agenda. These agencies for too long have been lacking in transparency and impossible to correspond with. Yet they have enormous power over our lives. More scrutiny and demand for accountability over their practices would greatly benefit consumers. For example, Experian should not be charging a fee for a credit lock. Their freeze is free, but not the lock. That is inexcusable." – Judy Daley</p>	

## 9. DATA BREACH LAWS

Commenter Type	Representative Sentiments
Trade groups	<p><b>Create a national standard:</b></p> <p>"A patchwork of state privacy and data laws undermines consumer expectations and trust. We need a Federal standard, a uniform framework for the collection, use, and sharing of personal data and handling data breaches. Attached is the framework adopted by our members, the IPA Proposed Framework for Federal Privacy Legislation (Page 20 of 0049_IPA.pdf). In short, it is a principles-based, technology neutral approach that expressly preempts non-conforming state law. We believe data breaches are best left to Federal regulators and state AGs without an individual private right of action." – Innovative Payments Association</p> <p>Create federal data privacy standards as part of a U.S. open finance framework, consistently apply it to all market participants, and make sure it's designed and implemented with the consumer's best interests in mind. Require shared responsibility across the system in case of loss of funds from data breach. The party responsible for that breach should be responsible for making them whole. – Financial Data and Technology Association</p>
Individual Financial Institutions or Service Providers	<p><b>Create a national standard:</b></p> <p>"CFPB should support a uniform national standard for data breach notification. Any such legislation should include: (1) federal preemption of state data breach notification laws and exclusive federal enforcement of the legislation; (2) a 'risk of harm' standard for breach notifications; (3) consumer notification by consumer-facing providers of goods and services; (4) notification of consumer-facing providers by their service providers; and (5) exemptions from breach notification requirements for Gramm-Leach-Bliley Act ('GLBA') financial institutions." – Mastercard</p>
Academics	<p><b>The Bureau cannot preempt state law:</b></p> <p>Bureau cannot preempt State law solely to expand access to markets or to promote competitions. DFA sections 1041 through 1043 have specific criteria for preemption; e.g., 1041(a) does not permit preemption if State law offers consumers greater protections than Federal law. – Susan Block-Lieb</p> <p><b>Issue a specific RFI on data breaches:</b></p> <p>Equifax shows that data breaches can happen and can have significant consequences. The Bureau should issue a Request for Information regarding its authority under the FCRA and other relevant laws to address data breaches. – Patricia McCoy, Boston University Law</p>

**Commented [NA(26): Action – Framework provided – send to Howard]**

The view of the Taskforce is that there is no obvious benefit to having 50 states doing this. No endorsement of preemption, but could be good in the absence of a good reason not to do it.

## 10. FINTECH

Commenter Type	Representative Sentiments	
	<p><b><u>Bureau should increase supervision and exams of Fintechs:</u></b></p> <p>"For instance, non-banks are responsible for more than half of all mortgages in the United States, the largest provider of student loan refinancing is a fintech, and there has been a 163% increase in non-bank loan origination over the past 5 years." Differing treatment raises competition issues: Fintechs do not face the same compliance burdens when entering a new market. – Consumer Bankers Association</p>	<p>Commented [NA(27]: Action</p>
Trade groups	<p><b><u>Subject data aggregators to regulation:</u></b></p> <p>The Bureau should apply Reg P privacy rules and Reg E liability for unauthorized transactions to data aggregators. Doing so ensure equal treatment of institutions and equal protections for consumers. – Consumer Bankers Association</p>	<p>Commented [NA(28]: Action</p>
	<p><b><u>Update FCRA to include cash flow data:</u></b></p> <p>Cash flow data is massively important as a real-time signal of creditworthiness, but is not accounted for in FCRA, which is outdated for this purpose. To encourage innovation, the Bureau must work with Congress to update FCRA to better reflect today's reliance on technology-powered tools, the processes by which aggregators access consumer's financial data with their consent, and the types of data that extend affordable credit to consumers and small businesses that might not otherwise qualify for loans. – Financial Data and Technology Association</p>	
Consumer advocacy groups	<p><b><u>States can innovate without federal intervention:</u></b></p> <p>"As matters stand now, when servicers need to conduct a foreclosure, they hire local attorneys who are familiar with each state's foreclosure laws. These attorneys can ensure that foreclosure sales convey good title. At the same time, states can regulate mortgage servicers, and do so in ways that are innovative and more protective of their consumers than the minimal RESPA requirements. States can ensure that their innovative laws function consistently with the requirements of state property law. One federal agency cannot perform this task for fifty different states." – Coalition Letter (27 signatories)</p>	

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## DISAGREEMENT BETWEEN INDUSTRY GROUPS

Topic	Disagreement
Protecting consumer data	<p><b><u>Strength of GLBA:</u></b></p> <p>"GLBA has strong consumer privacy standards that should remain the standard for privacy protections by financial institutions at both the federal and state levels." – American Land Title Association</p> <p>There is room for significant improvement in GLBA and opt-out structure is a bad model. "[W]e believe that bank-initiated data sharing should be governed by an opt-in regime, with a default assumption that customers do not have any particular desire for their financial data to be sold to, rented to, or otherwise used by other third parties as they see fit." – Financial Health Network</p>

## The Regulations

	<b>Topic</b>	<b>RFI Question</b>
11	Regulatory Gaps	Are there gaps in consumer financial protections that should be filled by strengthening the Bureau's regulations? What type of protections are needed (e.g., additional disclosures, substantive requirements)? How should the costs and benefits of the proposed changes be evaluated?
12	Regulations to Clarify	Uncertainty can increase compliance costs and litigation risk without benefitting consumers. Are there areas of significant ambiguity or inconsistency in the regulations? Where would regulations benefit significantly from increased clarity or harmonization—both with respect to the Bureau's regulations and with respect to overlap, duplication, or inconsistency with regulations issued by other Federal agencies? Please explain the lack of clarity and how the regulations should be clarified.
13	Regulatory Modernization	Where have regulations failed to keep up with rapid changes in consumer financial services markets? Are regulatory changes needed to address new products and services and the way consumers obtain them? Are there regulations that have outlived their usefulness? Are there new regulations that might be needed? Are there regulatory areas or specific regulations now sufficiently so overlapping as to be redundant?
14	Regulatory Principles	Some stakeholders favor regulations with specific requirements, which draw bright lines for a company's compliance obligations but can apply a one-size-fit-all approach. Others favor "principle-based" regulations, which can provide a company with flexibility but can create compliance uncertainty. Federal regulations currently employ both approaches (e.g., Regulation Z's highly specific disclosure rules, and Regulation V's requirement that data furnishers implement and maintain reasonable written policies and procedures concerning the accuracy of the data they furnish). Which approach is preferable, and does this depend on the industry, the statute, or other considerations? Please explain.

## REPRESENTATIVE SENTIMENTS

Where possible, direct quotes are used. These are indicated by quotation marks (""). Statements provided without quotation marks are the staff summary of the organization's position based on the source cited.

## 11. REGULATORY GAPS

Commenter Type	Representative Sentiments
	<p><b><u>The Bureau should create a consumer financial data right under section 1033 of the DFA:</u></b></p> <p>The Bureau should formalize financial data rights for consumers like the UK's Open Banking regime, Europe's second payment services directive (PSD2), and Australia's Consumer Data Right. The U.S. risks falling behind as the world leader in consumer financial empowerment, digital innovation, and market competition. – Financial Data and Technology Association</p>
Trade groups	<p><b><u>Prepare for next crisis:</u></b></p> <p>The Bureau should review COVID-19 guidance and establish disaster recovery and rule relief programs so that institutions can move quickly during the next disaster. – Consumer Bankers Association</p> <p><b><u>Subject data aggregators to regulation:</u></b></p> <p>Bureau should apply Reg P privacy rules and Reg E liability for unauthorized transactions to data aggregators. Doing so ensure equal treatment of institutions and equal protections for consumers. – Consumer Bankers Association</p> <p><b><u>Close gaps in proposed FDCPA rule:</u></b></p> <p>"The proposed rule omits three key issues in debt collection: (1) clarify dispute process, including what it means to provide "verification" of a debt; (2) include a right-to-cure provision for violations; and (3) clarify what information creditors need to maintain and to provide to their collectors." – Consumer Relations Consortium</p>
Consumer advocacy groups	<p><b><u>Define larger participants in more markets:</u></b></p> <p>"The CFPB has appropriately defined which debt collectors, consumer reporting agencies, student loan servicers, international money service transfer companies, and auto finance companies should be supervised as "larger participants" in their respective markets. The Bureau should engage in rulemakings to similarly define larger participants in the prepaid account, installment loan, vehicle title lending, and financial data aggregator markets." – Coalition Letter (27 signatories)</p> <p><b><u>There are major gaps to be filled:</u></b></p> <p>The Bureau should investigate automobile financing trends, debt collection and payday abuses, small dollar loan enforcement, student loans, and student loan servicing when looking to plug regulatory gaps to protect consumers – Better Markets</p> <p>On deposit accounts and overdraft loans, the Bureau should rein in fees, treat overdraft as a finance charge, and look at the UK FCA example. On auto lending, the Bureau should ban discretionary dealer interest markups or other compensation tied to terms of the loan. – Center for Responsible Lending</p>

**Commented [NA(29):** See recent FTC case. American Bar Association working on a rule addressing this. Auto lending group is interested in this as well. Jean to send a short memo out to group.]

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Individual consumers	<b><u>Do not reduce consumer protections:</u></b> We need strong enforceable regulations to protect consumers. No changes should be made that reduce consumer protection especially during the pandemic. – Carol Kenner
Academics	<b><u>Cost / Benefit analysis is not possible:</u></b> It is not possible to measure the costs and benefits of consumer financial services laws with any quantitative certainty given unquantifiable parts of a consumer's interaction with a financial institution or acquisition of a financial product or service (e.g. it would be difficult to measure the emotional distress resulting from unfair debt collection practices). – Mark E. Budnitz

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## 12. REGULATIONS TO CLARIFY

Commenter Type	Representative Sentiments
	<p><b><u>Clarify auto rules:</u></b></p> <p>The FTC Buyer Guide form is a federal form but at state level use of the form is not enforced uniformly. This creates uncertainty for dealers unsure if they should follow the guide or not. Odometer rules and signature rules vary by state even in situations where federal rule exists (for example, federal law allows electronic signatures for odometer readings but some states require wet signatures). There are conflicting rules regarding cosigner and coapplicant definitions. TILA/Reg Z requires disclosures before consummation but leaves consummation up to state definition. The E-SIGN Act exists but TILA/Reg Z require dealers to provide TILA/Reg Z disclosures in writing before signing. – Association of Dealership Compliance Officers</p>
	<p><b><u>Create a national data privacy standard:</u></b></p> <p>“A patchwork of state privacy and data laws undermines consumer expectations and trust. We need a Federal standard, a uniform framework for the collection, use, and sharing of personal data and handling data breaches. Attached is the framework adopted by our members, the IPA Proposed Framework for Federal Privacy Legislation (Page 20 of 0049_IPA.pdf). In short, it is a principles-based, technology neutral approach that expressly preempts non-conforming state law. We believe data breaches are best left to Federal regulators and state AGs without an individual private right of action.” – Innovative Payments Association</p>
	<p><b><u>ATR/QM discriminates against affiliate business arrangements (AfBAs):</u></b></p> <p>ATR/QM requires a mortgage lender with affiliates to count the affiliate charges against the 3% cap on fees and points that is a part of the QM safe harbor. The justification for this is unclear and creates an unlevel playing field, disadvantaging AfBAs from offering one stop shopping. Bipartisan legislation to fix this was introduced but went nowhere. Members of Congress from both sides of the aisle have pointed to the Bureau’s broad powers to act to benefit consumers and suggested action. TRID/RESPA’s anti-kickback provisions already provides consumer protections that should be adequate on this point. AfBAs are held to higher standards regarding disclosures of relationships than other providers and makes discrimination under QM even more unnecessary and excessive. Loan Officer Compensation Rules and TRID/KBYO rules also ensure consumer protections and hold AfBAs to a higher standard. – Real Estate Service Providers Council</p>
Trade groups	<p><b><u>Clarify TRID confusion:</u></b></p> <p>Fix the confusing disclosure of owner’s title insurance premiums created by the rule. Survey information shows 40% of consumers are confused by the current method. This adds to consumer frustration. Modify the Official Interpretations for §1026.37(f)(2), §1026.37(g)(4) and §1026.38(g)(4). Allow the industry to disclose title insurance the same way as every other cost. Consumers should get the actual cost the consumer will pay for the service based on the best information reasonably available. – Real Estate Service Providers Council</p>
	<p><b><u>Clarify definitions within and across regulations:</u></b></p> <p>E.g., Regulations B and C define “application” differently than do Regulations Z or X. Other examples include “days,” “business days,” and “calendar days” that differ in how they count weekdays, weekend days, and holidays, which creates confusion about deadlines. – US Chamber of Commerce</p>

**Clarify non-GSE, non-government insured loan regs:**

"The Bureau should revise Appendix Q so that mortgage lenders can make credit available to self-employed borrowers and others who have been excluded by its unnecessarily strict requirements." The commenter refers the Bureau to a more comprehensive analysis of alleged weaknesses of Appendix Q and possible fixes in MBA's comments submitted in response to the Bureau's ANPR on the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z). – Mortgage Bankers Association

**Fix ambiguous adverse impact notice regs in indirect auto:**

Fix "the statutory and regulatory regime that applies to the delivery of adverse action notices to consumers who apply for and are denied credit in the indirect vehicle financial market. The ambiguity confronting indirect vehicle financing creditors and their customers centers on the application of two overlapping statutes (the Fair Credit Reporting Act (FCRA) and ECOA), the involvement of multiple creditors to which the vehicle financing applications are presented, and the potential consequences of not delivering an adverse notice when required by federal law." – National Automobile Dealers Association + National Association of Minority Automobile Dealers

**Clarify prepaid status under Regulation CC:**

It is unclear whether prepaid accounts are "accounts" within the scope of Regulation CC. We have been asking the FRB and the Bureau to update the funds availability schedule for nearly five years. Prepaid accounts and Remote Deposit Capture have been used for many years and it is long past time to update Regulation CC to encompass these technological changes. – Coalition Letter (27 signatories)

**Provide guidance on bank accounts:**

The Bureau should provide guidance on the distinction between safe bank accounts ("checkless checking") and prepaid accounts to provide clarity to industry and avoid evasions. – Coalition Letter (27 signatories)

**Clarify deceptive fee disclosures:**

"CFPB should address fees that reduce savings and make any disclosures inherently deceptive. Regulation DD sets out the method of calculating and disclosing the interest rate, reflected as an annual percentage yield (APY). The APY disclosures are based entirely on the interest rates paid and do not account for fees charged. Yet some banks charge monthly fees on savings accounts. In this low interest rate environment, when balances are low, those fees can easily exceed any interest earnings. Not only does this make the APY deceptive, but it even makes the term "savings" misleading, as consumers can actually lose money if they put their funds in a savings account. This is exacerbated by the fact that some banks charge inactivity fees that can begin accruing even on accounts that are not dormant and abandoned. Consumers – especially those who struggle to but should be encouraged to save – should not be misled about the usefulness of a savings account." – Coalition Letter (27 signatories)

Commented [NA(30]: How prevalent is this?

Consumer advocacy groups

**Clarify consumer protections under Reg E / EFTA:**

"Regulation E should make clear that, for ACH transactions and other transfers that are not expected to occur immediately after authorization, consumers have a right to revoke authorization. This right to revoke authorization is implicit in Regulation E today but should be made explicit." – Coalition Letter (27 signatories)

The Bureau should clarify that consumers are protected if a purported authorization is obtained through fraud, regardless of the manner in which the purported authorization is obtained or manifested. This is consistent with the EFTA's mandate that "the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized." – Coalition Letter (27 signatories)

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**Clarify PACE loan protections:**

"The CFPB already has the authority to clarify that TILA's mortgage protections apply to PACE loans and should do so while implementing section 307's requirements. The agency should do so expeditiously, as the rising abuses in the PACE market must be addressed before they spread." – Coalition Letter (27 signatories)

"The CFPB should clarify that, in addition to the QM standard established for PACE, the overall ability to repay rules also apply to PACE." – Coalition Letter (27 signatories)

**Clarify that E-SIGN consent does not transfer:**

"The CFPB should clarify that E-Sign consent does not transfer from the prior creditors, debt collectors, or debt buyers. The CFPB should also refuse to exempt validation notices from the ESign consent requirement." – Coalition Letter (27 signatories)

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**Clarify definition of "autodialer" under TCPA**

- Suncoast Credit Union

**Provide a regulatory standard for "reasonable procedures":**

The Bureau should provide a regulatory standard for the statutory requirement of "reasonable procedures to assure maximum possible accuracy." The Bureau should follow the GAO advice to consider principles-based guidance for CRAs on this topic. Reasonable procedures are context dependent and may vary from CRA to CRA. – Mastercard

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**Taskforce is redundant:**

For significant rulemakings, Taskforce's assessment is superfluous because DFA section 1022(d) already prescribes the process for reviewing the rulemaking. I.e., a five-year assessment. For other rulemakings, section 1022(d) does not apply, but proposing overhauls of them based solely on responses to broad RFI questions is inappropriate. Instead, Bureau should undergo neutral fact-gathering process specific to each rule, similar to the five-year assessments. – Patricia McCoy

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## 13. REGULATORY MODERNIZATION

Commenter Type	Representative Sentiments
	<p><b><u>Modernize or eliminate E-SIGN:</u></b></p> <p>"Similar to the annual privacy notice, the Taskforce should consider whether the ESIGN statement is helpful to consumers. We believe that in this electronic age, it has outlived its usefulness and should be eliminated. At a minimum, the antiquated statements concerning hardware/software requirements and/or the reasonable demonstration standard should be eliminated." – Bank Policy Institute</p>
	<p><b><u>Modernize Reg E:</u></b></p> <p>Modernize Regulation E and all other existing rules and statutes to conform with a federal data privacy standard that shares responsibility for breaches and loss of funds across the system. – Financial Data and Technology Association</p>
Trade groups	<p><b><u>General Recommendations:</u></b></p> <p>Many regulations are based on outdated technologies or industry practices. Six general recommendations: (1) Establish a consistent, principles-based approach to electronic disclosures. Rules should articulate disclosure requirements as general principles, with examples of how institutions may comply. (2) Provide practical guidance. E.g., the Bureau should develop model digital forms or guidance to companies that demonstrate or explain how they engage effectively and safely with consumers in digital contexts. (3) Provide alternatives to E-SIGN that facilitate use of electronic communications. E.g., in the context of Regulation E – the rule implementing the Electronic Funds Transfer Act – the Bureau should not require the 10-day notice of varying preauthorized electronic funds transfers to be in writing (thus permitting electronic delivery). (4) Eliminate or modify requirements that are unworkable for digital communications. E.g., some disclosures have very specific formatting and font-size requirements that don't make sense for smart phones, etc. (5) Eliminate or modify requirements tied to obsolete technologies. E.g., Regulation Z permits banks to charge previously undisclosed balance transfer fees without being subject to a change-in-terms waiting period only if they provide disclosures on a paper access check. (6) Allow appropriate use of alternative data to determine credit worthiness. – US Chamber of Commerce</p> <p><b><u>Update and harmonize rules with e-disclosure or advertisement requirements:</u></b></p> <p>(1) E.g., Regs X, Z, and DD have prominence and proximity requirements that need to be clarified. (2) E.g., Regs B, E, X, V, Z, and DD should permit institution to provide disclosures through hyperlinks. Bureau should clarify how the "clear and conspicuous" standard applies in this scenario. – Consumer Bankers Association</p> <p><b><u>Don't restrict payday:</u></b></p> <p>"Unjustified and redundant regulation of the industry will ultimately restrict access to this valuable form of credit and inhibit market competition by creating a further barrier to entry. Many lenders simply do not have the ability to track failed withdrawal attempts and developing and maintaining such systems will be costly. Lenders will also likely be forced to pass along these additional costs to borrowers. The Bureau could address these deficiencies by initiating a new rulemaking." – Community Financial Services Association of America + Financial Service Centers of America</p>

Consumer  
advocacy  
groups

**Improve fee disclosures for bank accounts and reform overdraft:**

"If the CFPB embarks on modernization of Regulation E, we also recommend improving fee disclosures for bank accounts, protection against unauthorized charges, and protections against compulsory use of electronic repayment of credit. Our top Regulation E issue is to reform the treatment of overdraft fees. Overdraft fees drain \$14 billion from working families every year, and nearly 80% of overdraft and nonsufficient fund fees are borne by only 9% of accounts, vulnerable families who tend to carry low balances averaging \$350." – Coalition Letter (27 signatories)

**Modernize Regulation CC:**

"We urge the CFPB to undertake a long overdue update of Regulation CC to give consumers prompt access to checks deposited to prepaid accounts and via mobile devices." – Coalition Letter (27 signatories)

**Protect consumer disclosure rights:**

"Information should be provided in a form that consumers can keep, and some transactions are too complex to be adequately understood on mobile devices. We oppose removing the choice of paper disclosures, statements, records or other information for consumers who prefer to receive information on paper." – Coalition Letter (27 signatories)

"In 2007, the FRB exempted application disclosures for certain variable rate mortgage loans from E-Sign requirements. If the CFPB addresses electronic disclosures, we urge it to remove this exemption. There is no reason why creditors should not have to obtain consumer consent before providing a fairly long list of mandated information in electronic format at the application stage." – Coalition Letter (27 signatories)

**Amend Reg E authorization requirements:**

"Regulation E should be amended to include authorization requirements for all electronic transfers similar to those required for preauthorized transfers under Regulation E and for ACH transactions under NACHA rules." – Coalition Letter (27 signatories)

**Eliminate deferred interest:**

"It is well past time for the CFPB to take action on deferred interest. There is plenty of evidence that deferred interest is unfair, deceptive, and abusive. Furthermore, the CFPB has clear authority under the Truth in Lending Act to eliminate the Regulation Z exceptions that permit deferred interest. Specifically, the CFPB should eliminate the exceptions for deferred interest plans in the Official Commentary §§ 1026.55(b)(1)-3.i and 1026.54(a)(1)-2.i." – Coalition Letter (27 signatories)

**Restore a fee-inclusive APR price tag for credit cards:**

"The CFPB has noted in its semi-annual regulatory agenda that it expects to modernize or streamline the open-end credit provisions of TILA. As part of that process, the CFPB should mandate an APR disclosure that includes the impact of fees on the cost of credit." – Coalition Letter (27 signatories)

**Disallow pre-account opening fees:**

"We do urge the CFPB to repeal the regulation permitting pre-account opening fees that are used to evade the credit card fee harvester provisions of the Credit CARD Act." – Coalition Letter (27 signatories)

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Individual

Financial

Institutions or

Service

Providers

**Modernize TCPA:**

TCPA needs to be amended to reflect today's modern telecommunications activity. The law designed with unsolicited contact in mind and not today's relationship-based communication.

– Suncoast Credit Union

Academics

**Plan for the next disaster:**

"In addition to enforcement of current statutes and regulations, the Bureau should consider additions and modifications of regulations to protect consumers when future epidemics and natural disasters occur. For example, the Electronic Fund Transfers Act (EFTA) exempts financial institutions from liability when they are unable to comply with the statute's provisions due to "Acts of God" and technical malfunctions. 15 USC 1693h(b). Consumers need a provision in the law which takes into consideration their inability to meet deadlines in order to perfect their rights when an Act of God or technical malfunction makes that impossible or difficult." – Mark E. Budnitz

**Clarify peer-to-peer protections:**

"[I]t is not clear that nonbanks that offer peer-to-peer electronic payments are subject to the same consumer protection law as traditional financial institutions. It would be a serious mistake not to fill this gap." – Mark E. Budnitz

## 14. REGULATORY PRINCIPLES

Commenter Type	Representative Sentiments
	<p><b><u>Rule flexibility with defined boundaries:</u></b></p> <p>Generally, dealers want to know where the boundaries are (for example, Reg Z disclosure rules tell dealers where, when and how to provide disclosures). However, some situations are better suited for flexibility in the rule (Safeguards Rule, Red Flags Rule). – Association of Dealership Compliance Officers</p>
Trade groups	<p><b><u>Clear definitions and parameters are needed:</u></b></p> <p>"We believe that the CFPB should promulgate rules with clear definitions and parameters rather than using enforcement actions as a vehicle to expound upon rules." – American Financial Services Association</p>
	<p><b><u>Establish a consistent, principles-based approach to electronic disclosures.</u></b></p> <p>- US Chamber of Commerce</p>
	<p><b><u>Preference safe harbors:</u></b></p> <p>We favor clear rules, though level of specificity necessary will depend on the particular statute. In general, CRC favors clear safe harbor disclosure language and safe harbor procedures. E.g., FDCPA rule could give examples of procedures that are a safe harbor but are not the only way to comply. – Consumer Relations Consortium</p>
	<p><b><u>Reject calls to subject all rules to quantitative cost-benefit analysis:</u></b></p> <p>Cost-benefit analyses rely on predictions and assumptions that are imprecise and often prove inaccurate. They also are biased towards industry because costs to firms are easier to quantify than potential benefits to consumers. Congress chose not to require a mechanical cost-benefit analysis--the DFA requires the Bureau only to "consider" the costs and benefits, not to weigh them. – Better Markets</p>
Consumer advocacy groups	<p><b><u>Precise rules are best:</u></b></p> <p>"Precise rules are also helpful for industry, so that companies know exactly what is required of them and each company that offers consumer credit does not have to draft language, devise disclosure forms, or obtain legal advice to resolve ambiguities. From 1968 until 2011 when the Federal Reserve Board had responsibility for Regulation Z, on many occasions industry representatives on the FRB's Consumer Advisory Committee commented that they prefer as much clarity and specificity as possible to enhance compliance and limit potential liability." – Coalition Letter (27 signatories)</p>
Individual Financial Institutions or Service Providers	<p><b><u>Avoid "one size fits all" rules:</u></b></p> <p>One size fits all does not work where different industries exist with different products. Flexibility still requires definitive rules so that the boundaries are known. – Suncoast Credit Union</p>

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**Uniform national rules are good:**

- Academics      The Bureau was created to have uniform, national floor for consumer protection. Don't go back to the old way of having varying requirements depending on location and type of institution. – Patricia McCoy
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## Federal and State Coordination

	<b>Topic</b>	<b>RFI Question</b>
15	Overlapping Federal Jurisdiction	With respect to institutions and laws currently within the Bureau's jurisdiction, the Bureau's supervision or enforcement authority may be exclusive or shared with other regulators, depending on the institution or law in question. Have the agencies been cooperating appropriately in areas of shared jurisdiction, and are there ways in which their cooperation could be improved? Is more clarity needed about how the agencies are cooperating in areas of shared jurisdiction? Do the Bureau and other agencies act jointly in appropriate circumstances?
16	Changes to Jurisdiction	Are changes to the shared-jurisdiction framework desirable (e.g., by legislation)? In what way? For instance, would it be beneficial to assign to one agency sole (or primary) responsibility for supervising or enforcing some or all the consumer financial protection laws? Would having a single source of authority enhance or detract from competition and consumer welfare? What are the costs and benefits of overlapping enforcement jurisdiction for nonbank creditors?
17	Federal and State Cooperation	State financial regulators typically examine a financial institution's compliance with State law, but they can also bring cases under certain Federal consumer financial protection laws. For example, a State may initiate its own action to enforce the Dodd-Frank Act and certain enumerated consumer laws. In addition, once the Bureau has decided to bring an enforcement action, the Bureau may invite States to join in the action. What are the costs and benefits to consumers and financial institutions of overlapping enforcement powers?
18	Overlapping Federal and State Law Effects on Small Institutions	Given the jurisdictional overlap between State and Federal regulators on consumer financial markets, are there quantifiable examples of whether this overlap has led to disproportionate compliance costs for small financial institutions, such as community banks or credit unions?

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## REPRESENTATIVE SENTIMENTS

Where possible, direct quotes are used. These are indicated by quotation marks (""). Statements provided without quotation marks are the staff summary of the organization's position based on the source cited. We have combined responses to RFI questions 15 and 16 because of the low number of responses to 15, all of which also address 16.

## 15 AND 16. OVERLAPPING FEDERAL JURISDICTION AND CHANGES TO JURISDICTION

Commenter Type	Representative Sentiments
	<p><b><u>Leave credit union supervision to the National Credit Union Administration.</u></b></p> <p>- Credit Union National Association</p> <p><b><u>Multiple regulators are confusing:</u></b></p> <p>Some situations make it unclear as to who is the primary regulator. Having one regulator would offer the opportunity to have clear guidance. In addition, the Bureau should adopt FTC's practice of issuing business guides to help with compliance. – Association of Dealership Compliance Officers</p> <p><b><u>Clarify responsibilities via MOUs with other regulators:</u></b></p> <p>Work with other federal regulators to make clear that the Bureau is the consumer compliance examiner, do this by revising the MOU that exists now between federal regulators. – Bank Policy Institute</p> <p>Clarify the enforcement authorities of the Bureau and the Federal Trade Commission over data security or explore whether an MOU could effectively clarify the agencies' roles in this area. – US Chamber of Commerce</p>
Trade groups	<p>We recommend a formal Memorandum of Understanding with the FTC stating that the FTC retains its Gramm-Leach-Bliley Act rulemaking and enforcement authority and that the CFPB simply acts as an examiner in the area of bureau data security. We need federal guidance or legislation on data-breach obligations. – Consumer Data Industry Association</p> <p><b><u>The Bureau should work with FCC on TCPA rules:</u></b></p> <p>"While the Federal Communications Commission (FCC) has the authority to issue rules under the TCPA, the CFPB has a role to play and the Taskforce could look at how the CFPB could work with the FCC to better serve consumers and financial institutions." – American Financial Services Association</p> <p><b><u>The Bureau should coordinate enforcement activities with state and prudential regulators:</u></b></p> <p>"Doing so would not only reduce duplicative efforts, streamline processes, reduce cost and manpower needed to review and assess enforcement activity and documentation, but would also help the Bureau accomplish its Strategic Plan goal of filing or settling a matter within two years of opening an investigation." – Independent Community Bankers of America</p>

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**The Bureau should retain all authorities:**

Consumer advocacy groups  
The Bureau's supervision activities should not and cannot be delegated to prudential or state regulators. The Dodd-Frank Act is clear that the Bureau has exclusive authority to supervise banks with over \$10 billion in assets for consumer protection compliance and is required to supervise certain nonbanks for the same. Furthermore, prior to the Dodd-Frank Act, prudential regulators failed at supervision for compliance with consumer financial laws, due in part to structural issues and in part to a perceived conflict between protecting consumers and bank safety and soundness. State regulators often lack the authority and resources to supervise nonbank financial services providers, and relying on them would leave consumers without uniform protection across the country. – Coalition Letter (27 signatories)

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Individual Financial Institutions or Service Providers      **Credit unions should be regulated by NCUA and state regulators:**

The Bureau should get involved with credit unions only when it finds NCUA and state regulators have found issues that command further. Otherwise, the Bureau's involvement is duplicative and burdensome. Keeping the Bureau as a secondary regulator would not harm consumers or hinder competition. – Suncoast Credit Union

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Individual Consumers      **The Bureau needs sole authority:**

The Bureau should assume sole authority for review of financial services consumer protection regulation violations. – Ralph Schiano

## 17. FEDERAL AND STATE COOPERATION

Commenter Type	Representative Sentiments
Trade groups	<p><b><u>Get the Bureau out of insurance:</u></b></p> <p>Dodd Frank limits the Bureau's activity in the realm of insurance, yet the Bureau attempts to backdoor its way into insurance products. The Bureau should leave insurance regulation to the states as intended by Dodd Frank. – Consumer Credit Industry Association</p> <p><b><u>The Bureau should defer some oversight for specific areas:</u></b></p> <p>"[T]he Bureau should issue policy statements for categories of specific providers to indicate it will defer to proven adequate state oversight--supervision, examination and enforcement—where appropriate to provide certainty and clarity that all parties including consumers can rely on." – American Escrow Association</p> <p><b><u>Increase federal and state coordination:</u></b></p> <p>AFSA is a strong advocate of increased federal and state coordination. As the RFI notes, the Bureau is one of a myriad of federal agencies with supervision or enforcement responsibilities over financial institutions. Having more than one agency can increase the resources devoted to supervision and enforcement, but it also increases the burdens on regulated entities and on the costs to consumers. It also sometimes results in conflicting positions between governmental agencies. There should be consistent overlap between federal and state exams. – American Financial Services Association</p>
Consumer advocacy groups	<p><b><u>The Bureau should retain all authorities:</u></b></p> <p>The Bureau's supervision activities should not and cannot be delegated to prudential or state regulators. The Dodd-Frank Act is clear that the Bureau has exclusive authority to supervise banks with over \$10 billion in assets for consumer protection compliance and is required to supervise certain nonbanks for the same. Furthermore, prior to the Dodd-Frank Act, prudential regulators failed at supervision for compliance with consumer financial laws, due in part to structural issues and in part to a perceived conflict between protecting consumers and bank safety and soundness. State regulators often lack the authority and resources to supervise nonbank financial services providers, and relying on them would leave consumers without uniform protection across the country. – Consumer Action (submission of previous coalition RFI responses)</p> <p><b><u>Congress already decided this:</u></b></p> <p>"States are important backstops against inaction at the federal level. Indeed, Congress already made decisions about how to balance the competing interests on many of the questions the Bureau has posed, such as the important role of states in enforcing CFPB rules." – Coalition Letter (27 signatories)</p> <p><b><u>Coordination with states is essential to consumer protection:</u></b></p> <p>"Our organizations believe that the Bureau has successfully collaborated with other federal, state, and in one case, tribal enforcement partners. Between 2012 and 2015, the Bureau cited the collaboration of an enforcement partner in about a third of its public enforcement actions. In order to address the largest violations of consumer protection law, the Bureau will likely need to continue an active program of coordinating with other enforcement partners." – Coalition Letter (27 signatories)</p>

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Individual Financial Institutions or Service Providers	<p><b><u>Get rid of overlapping jurisdiction:</u></b></p> <p>Overlapping redundant jurisdiction wastes credit union resources that could be better spent serving customers and actually working on consumer compliance matters. – Suncoast Credit Union</p>
Academics	<p><b><u>No jurisdiction to decide:</u></b></p> <p>The Bureau cannot preempt State law solely to expand access to markets or to promote competitions. DFA sections 1041 through 1043 have specific criteria for preemption; e.g., 1041(a) does not permit preemption if State law offers consumers greater protections than Federal law.” – Susan Block-Lieb</p>
Individual Consumers	<p><b><u>Move toward further enforcement by Attorney Generals.</u></b></p> <p>- Lea Williams</p> <p><b><u>State AGs are essential:</u></b></p> <p>There are regional or state differences in credit practices which make it essential for state attorney generals to play a role. State AGs have historically been highly effective in monitoring and enforcing regulations that protect consumers. – Hon. Carol J. Kenner (retired US Bankruptcy Court Judge, retired Chief Judge of Bankruptcy Appellate Panel for First Circuit Court of Appeals)</p>
Association of State Government Employees	<p><b><u>RFI should not have asked questions about federal preemption:</u></b></p> <p>“State regulators are concerned with the inclusion of inquiries soliciting input on whether additional preemption of state laws and state regulatory authority is warranted. Questions as to whether less federal preemption is warranted are noticeably absent from the request for information, which is equally troubling, particularly as it relates to the apparent focus of the Taskforce. The State Coordinating Committee (SCC), established with the CFPB in 2013, already serves the purpose of coordinating state and federal oversight of financial institutions. Congress gives state regulators independent authority to regulate financial matters.” – Conference of State Bank Supervisors</p>

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## **18. OVERLAPPING FEDERAL AND STATE LAW EFFECTS ON SMALL INSTITUTIONS**

Commenter Type	Representative Sentiments
<i>No RFI responses to this question were recorded</i>	

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## Improving Consumer Protection

	<b>Topic</b>	<b>RFI Question</b>
19	Market Performance	Which markets for consumer financial products or services are functioning well—that is, which markets are fair, transparent, and competitive? Which markets might benefit from regulatory changes that could facilitate competition and materially increase consumer welfare?
20	Disclosures	What types of disclosures regarding consumer financial products or services are effective and what types are not? Could the content, timing, or other aspects of disclosures be improved and, if so, how?
21	Remedies for Law Violations	How should the Bureau determine an appropriate remedy for a law violation, considering the need to correct and deter violations without creating adverse effects on competition and other unintended consequences?
22	Bureau Tool Choice	What is the optimal mix of regulation, enforcement, supervision, and consumer financial education for achieving the Bureau's consumer protection goals?
23	Assessing Success	How can we best assess the efficacy of the Federal consumer financial protections in achieving their goals?

## REPRESENTATIVE SENTIMENTS

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## 19. MARKET PERFORMANCE

Commenter Type	Representative Sentiments
Trade groups	<p><b><u>The auto market is fair, transparent, competitive and self regulating.</u></b></p> <p>- Association of Dealership Compliance Officers</p> <p><b><u>Debt collection has not been functioning well since the FDCPA:</u></b></p> <p>Debt collection will continue to be hampered by the FDCPA's failure to address modern communication technologies. Debt collection also would benefit from having consistent requirements across regulations regarding: (1) record retention; (2) requirements for responding to a dispute; (3) overlap of FDCPA and Bankruptcy Code; and (4) overlap of FDCPA and TCPA regarding telephone calls and communications. – Consumer Relations Consortium</p> <p><b><u>Consumer ability to repay is ignored for credit cards and other financial products:</u></b></p> <p>Credit cards offer consumers ability to make small purchases and revolve debt, but many cannot afford to pay off debt and card issuers have incentive to encourage spending and revolving. This is not fair or transparent. – Financial Health Network</p>
Consumer advocacy groups	<p><b><u>Avoid putting consumer choice above all other considerations:</u></b></p> <p>(1) Consumers often lack clear or sufficient information and are sometimes deceived. (2) Some financial services are inherently abusive—from usurious interest rates to conflicted investment advice to some hopelessly complex and disadvantageous annuities—such that no meaningful choice exists. – Better Markets</p> <p><b><u>No markets are performing well during the pandemic:</u></b></p> <p>E.g., 30 million people sought unemployment within 2 months, and millions have applied for mortgage forbearances. – Consumer Reports</p>
Other industry	<p><b><u>Debt settlement is well functioning and consumer-centric:</u></b></p> <p>"[I]n direct response to the Taskforce's interest in whether debt settlement provides a 'fair, transparent, and competitive' consumer experience, the TSR amendments [the 2010 amendments to the FTC's Telemarketing Services Rule] stipulate that consumers enrolled in debt settlement programs have the right to reject any proposed settlement at any time, for any reason, or to withdraw from their debt settlement program whenever they choose, without any penalty. The Taskforce also asks in its RFI whether the terms of the services offered in various financial markets, including debt settlement, are 'clear, so that consumers can make informed choices.' Here, too, the FTC's 2010 TSR amendments provide a regulatory framework that ensures a well functioning, consumer-centric market." – Freedom Financial Network</p>

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Academics

**The Bureau's existence proves markets are not fair, transparent, or competitive:**

"[T]he idea that competition can routinely be relied upon to provide consumer protection in financial markets is preposterous, and indeed, if it were true, there would be no need for the CFPB to exist." Some markets have no competition: e.g., loan servicing, debt collection, and consumer reporting. In indirect lending or online lending obtained through a lead generator, lender competes for dealer/lead generator's business, not for consumer's business. Other markets have formal barriers to entry: e.g., requirement for banking charters. Competition works best when there are limited factors on which to compete, namely pricing. But other than ATM fees, consumer financial products are so bespoke and variable that it's hard to have competition. And the competition that exists is primarily on salient price terms, but not on other price terms or non-monetary terms that can affect consumers. – Adam Levitin, Georgetown Law

## 20. DISCLOSURES

Commenter Type	Representative Sentiments
	<p><b><u>Revise overall approach to oral disclosures:</u></b></p> <p>E.g., the Prepaid Rule in some cases requires creditors to provide oral disclosures that can take seven to ten minutes to read aloud. – US Chamber of Commerce</p>
	<p><b><u>Update and harmonize rules with e-disclosure or advertisement requirements:</u></b></p> <p>(1) E.g., Regs X, Z, and DD have prominence and proximity requirements that need to be clarified. (2) E.g., Regs B, E, X, V, Z, and DD should permit institution to provide disclosures through hyperlinks. The Bureau should clarify how the “clear and conspicuous” standard applies in this scenario. – Consumer Bankers Association</p>
Trade groups	<p>The Bureau should clarify or amend E-SIGN requirements. For example: (1) Prior consent for e-delivery of adverse action notice is inconsistent with Reg V, which permits e-delivery. (2) Clarify what constitutes a “reasonable demonstration of access” to electronically receive and access information. (3) Clarify that a submitting an application electronically constitutes consent. – Consumer Bankers Association</p>
	<p><b><u>Revisit TRID:</u></b></p> <p>“ICBA asks that the CFPB revisit timing concerns regarding the costs and benefits of the three-day closing disclosure requirement, and timing challenges in general.” – Independent Community Bankers of America</p>
	<p><b><u>Very wary of electronic disclosures:</u></b></p> <p>Door-to-door PACE loan contractors should not be allowed to provide disclosures solely by showing the disclosures to the homeowner on the contractor’s electronic tablet. – Coalition Letter (27 signatories)</p> <p>Information should be provided in a form that consumers can keep, and some transactions are too complex to be adequately understood on mobile devices. We oppose removing the choice of paper disclosures, statements, records or other information for consumers who prefer to receive information on paper. – Coalition Letter (27 signatories)</p>
Consumer advocacy groups	<p>In 2007, the FRB exempted application disclosures for certain variable rate mortgage loans from E-Sign requirements. If the Bureau addresses electronic disclosures, we urge it to remove this exemption. There is no reason why creditors should not have to obtain consumer consent before providing a fairly long list of mandated information in electronic format at the application stage. – Coalition Letter (27 signatories)</p>
	<p><b><u>Disclosures don’t solve all problems:</u></b></p> <p>While clear and useful information is important, the Bureau should not rely on disclosures to take the place of substantive rules. Disclosures can sometimes have negative effect: Evidence indicates that disclosures are capable of undermining consumer and investor protection goals by emboldening advisers to ignore the client’s best interest once they have “checked the disclosure box.” – Better Markets</p>
	<p><b><u>Rules should easily allow delivery of disclosures via electronic means.</u></b></p> <p>Other industry - Suncoast Credit Union</p>

**Prepaid rule disclosures need to be fixed:**

The short form periodic fee disclosures are not sufficiently informative and could easily be improved. The required disclosure regarding additional fee types is misleading and not informative. The requirement to disclose additional incidence-based fees (or 5 percent fees) on the short form should be eliminated because the required calculations are overly difficult. The short form incidence-based fee disclosures are misleading because issuers are required to disclose artificially high fees. – NetSpend

**Conduct a National Assessment of Consumer Disclosure Literacy:**

This would be a two-phased approach to measure average literacy levels of American consumers and with the goal of improving consumer disclosure literacy. Phase 1: empirical psychometric analysis of literacy skills required to comprehend and take actions based on info presented in disclosures. Phase 2: support development of a financial disclosures literacy assessment that measures the core literacy tasks. Then execute a study of representative Americans to assess average levels of literacy and understand differences across subgroups. – Fors Marsh Group (Bureau contractor)

FMG recommends the Taskforce assess the usability of proposed changes to all disclosures by establishing a Consumer Experience Usability Testing Center. All guideliness or rules governing disclosures would be evaluated to maximize communication, functionality, and accessibility. This testing would include Cognitive Testing, In-Depth Interviews and Focus Groups, Iterative Usability Testing and Rapid Prototyping, and Eye Tracking. – Fors Marsh Group

FMG recommends the Bureau conduct an Impact Evaluation of Consumer Disclosure Comprehension to determine the true effects of changes to disclosure forms. – Fors Marsh Group

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**Little evidence showing disclosures are effective generally:**

"There are a few studies that indicate that particular types of disclosure affect consumer behavior, but generally studies have not found existing disclosures (at least cost of credit disclosures required under the Truth in Lending Act) to be effective." And even if consumers understand and read disclosures re interest and fees, they are unlikely to read and understand others, e.g., terms in credit card agreements that provide that there is an interest free grace period only upon two consecutive on-time payments. – Adam Levitin

Academics

**Research needed before supporting electronic disclosures:**

Electronic disclosures raise concerns because research has shown that consumers almost never read them. The Bureau needs to conduct extensive quantitative and qualitative research before it permits electronic disclosures. – Patricia McCoy

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## 21. REMEDIES FOR LAW VIOLATIONS

Commenter Type	Representative Sentiments
	<p><b><u>Do not fine small businesses:</u></b></p> <p>"CFPB regulations should provide for an enforcement action seeking fines or other penalties against a small business (&lt;50 employees) if and only if the violation was 'willful.' Small businesses cannot afford the lawyers, accountants, and clerks that larger companies use to implement costly business systems necessary to comply with regulations. The Regulatory Flexibility Act declares that Small Businesses are different and should be treated differently."</p> <p>– National Federation of Independent Businesses</p>
Trade groups	<p><b><u>UDAAP policy is good:</u></b></p> <p>ICBA supports the Bureau's approach to UDAAP violations and believes it balances unintentional violations of law and the need for deterrence. "Specifically, the UDAAP policy (1) focuses on citing or challenging conduct as abusive in supervision and enforcement matters only when the harm to consumers outweighs the benefit; (2) avoids 'dual pleading' of abusiveness and unfairness or deception violations arising from all or nearly all the same facts, and alleging 'stand alone' abusiveness violations that demonstrate clearly the nexus between cited facts and the Bureau's legal analysis; and (3) seeks monetary relief for abusiveness only when there has been a lack of a good-faith effort to comply with the law. These underlying principles should be considered when the Bureau evaluates all potential violations of the law, and not just when a UDAAP violation is alleged." The Bureau should use these principles to evaluate all potential violations of law. – Independent Community Bankers of America</p>
Consumer advocacy groups	<p><b><u>Do not limit remedies:</u></b></p> <p>"The Bureau should not adopt policies that could limit the ability of Bureau staff to obtain remedies that benefit the public. Any changes to the Bureau's procedures that would minimize restitution or civil money penalties would harm the public and lead to less efficient use of public resources." – Coalition Letter (27 signatories)</p> <p>"TILA's statutory remedies are also of high importance, and it would be outside of the CFPB's authority to weaken them." – Coalition Letter (27 signatories)</p>
Academics	<p><b><u>Criteria for remediation:</u></b></p> <p>"Remedies for violations of the law should be determined based on the seriousness of the violation, the number of consumers affected, the harm to consumers, and the need to deter the violator and others from engaging in similar conduct. The RFI indicates that the Taskforce is concerned that a remedy may create adverse effects on competition. However, imposing a remedy that deters a violator benefits not only consumers, but also those competitors who do not violate the law. A remedy that does not deter those who violate the law in effect unfairly penalizes those who comply with the law." – Mark E. Budnitz</p>

## 22. BUREAU TOOL CHOICE

Commenter Type	Representative Sentiments
	<p><b><u>See prior CBA comment:</u></b></p> <p>"CBA address Bureau tool choice extensively in its Call for Evidence comments. See Docket No. CFPB-2018-0001, available at: [ <a href="https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-letter-cfpb-re-cid-processes">HYPERLINK "https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-letter-cfpb-re-cid-processes"</a> ], Docket No. CFPB-2018-0005, available at: [ <a href="https://www.consumerbankers.com/cba-issues/comment-letters/cba-rii-comment-bcfp-external-engagement">HYPERLINK "https://www.consumerbankers.com/cba-issues/comment-letters/cba-rii-comment-bcfp-external-engagement"</a> ]." – Consumer Bankers Association</p>
	<p><b><u>Don't misuse UDAAP:</u></b></p> <p>"CDIA recommends that UDAAP authority not be used to create new legal requirements where there is already an existing statute or regulation." – Consumer Data Industry Association</p> <p>Consumer education is integral to protecting consumers because it empowers them with leverage (thus, promoting competition) without imposing undue burdens and costs which may be borne by consumers. Additional regulation is not warranted unless there is a market failure. – National Automobile Dealers Association + National Association of Minority Automobile Dealers</p>
Trade groups	<p><b><u>The Bureau should invest in Supervisory Tech / Regulatory Tech systems:</u></b></p> <p>"In addition to policies that focus on regulating innovations made at banks and other market participants, ICBA strongly encourages the Bureau to invest in programs that help its staff implement technologies that improve their supervision, examination, and rulemaking responsibilities, typically classified as supervisory technology ('suptech') and regulatory technology ('regtech'). In particular, regtech and suptech would be beneficial for use with regulations that require data collection and reporting. This would include the development of technology that harnesses automated reporting, real-time monitoring, and data management and validation. The technologies would be useful for any data-intensive regulation, such as regulations implementing the Home Mortgage Disclosure Act ('HMDA'), the Bank Secrecy Act ('BSA'), the Community Reinvestment Act ('CRA'), and section 1071 of the Dodd-Frank Act." – Independent Community Bankers of America</p>
	<p><b><u>Revise exam procedures:</u></b></p> <p>The Bureau should solicit input from supervised entities prior to examinations, provide more advanced notice of areas of examination, discuss potential violations prior to issuing reports, and solicit post-exam feedback to identify areas of inefficiency. – Community Financial Services Association of America + Financial Service Centers of America</p>
Consumer advocacy groups	<p><b><u>Education is not enough:</u></b></p> <p>"Consumer education alone does not provide the necessary oversight and safeguards that the [Dodd-Frank] mandate. It is simply not possible in some markets, such as mortgage servicing, credit reporting and debt collection for consumers to use "informed choice" to protect themselves. There is no choice. Consumer protection must include careful analysis and transparency about the voluminous number of complaints that the Bureau has been receiving during this crisis, and must hold firms that harm consumers accountable for their actions. CFPB consumer protections must include regular and robust supervision of financial firms, rather than a relaxation or suspension of oversight. Consumer protection must include strict enforcement of Bureau rules to help dissuade future harmful behavior, and recourse for</p>

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consumers, financial and otherwise, when financial firms deceive or abuse their customers.”  
– Consumer Action

“Contrary to the subtext of the Bureau’s questions, education, disclosures and competition are not enough to protect consumers. Enforcement must be more than a backstop that is limited to only the most abusive practices. The amount of industry profits or skewed industry cost estimates should not be used to block rules that provide important protection to consumers, even if the consumer benefits are not always quantifiable.” – Coalition Letter

**Do not weaken CID authority:**

“The CFPB must not adopt changes to its processes for using civil investigative demands that would hurt or delay the Bureau’s important work investigating potential legal violations.” – Coalition Letter (27 signatories)

**Adjudicate more often:**

“CFPB should utilize the adjudication process more frequently in contested matters. We recommend that the Bureau increase the number of contested enforcement actions handled through adjudications. If anything, the Bureau has erred on the side of over-protecting the rights investigation subjects by turning to federal litigation even in situations where the overwhelming evidence supports a violation of law.” – Coalition Letter (27 signatories)

**Commented [NA(32): Action – they provided much more context]**

Academics

**Education is not effective:**

“Simply put, there is no evidence indicating that consumer financial education has meaningful welfare impacts on consumers... Consumer financial decisions are complex and contingent and depend on numerous factors that are unlikely to be addressed by education, such as limited self-restraint, optimism biases, terms buried in fine print, lack of understanding of complex products that cannot be rectified by general consumer financial education, etc.”  
Absent evidence of education's effectiveness, Bureau should not waste resources on it. – Adam Levitin

**Prioritize enforcement:**

The Bureau should prioritize strong and aggressive enforcement and require companies that violate the law to reimburse consumers and pay substantial penalties. Enforcement is the most effective way to prevent and remedy harm caused by illegal conduct. – Mark E. Budnitz

## 23. ASSESSING SUCCESS

Commenter Type	Representative Sentiments
	<p><b><u>Establish a program to monitor consumer financial health:</u></b></p> <p>"To help meet this responsibility, we believe the CFPB should establish an ongoing program to monitor financial health in the United States and to develop metrics that can be used to measure financial health outcomes attributable to particular financial services products or relationships. Indeed, we believe that financial services providers should be encouraged -- if not required -- to measure and monitor the financial health of their customers and the impact that the providers' activities are having on financial health. At a minimum, such measurement should be a necessary element of any No Action Letters, Approvals, Trial Disclosure Waivers, or similar actions by the Bureau to facilitate consumer-friendly innovation." – Financial Health Network</p>
Trade groups	<p><b><u>Assess research to understand efficacy of consumer protection:</u></b></p> <p>"The Bureau should be guided by peer reviewed studies that analyze whether a consumer understands a particular product in determining the efficacy of consumer financial protections. Empirical research shows that small-dollar loan borrowers understand the nature of the product, including that their loan indebtedness may last longer than the two-week or thirty-day initial term of the loan, and accurately predict how long it'll take to repay their loans. Consumers thus fully understand and act in their own interests." The Commenter goes on to note that studies suggested consumers accurately predicted the amount of time it took them to repay the loan, weighed risks and were satisfied with the product. – Community Financial Services Association of America + Financial Service Centers of America</p>
Individual Consumers	<p><b><u>The Bureau already has the tools to evaluate efficacy of protections:</u></b></p> <p>Administrative rules such as the APA, Regulatory Flexibility Act, and Paperwork Reduction Act already provide the Bureau with tools to assess the efficacy of financial regulations. ICBA points to the requirement to solicit and consider stakeholder feedback on a number of efficacy issues and the requirement for the Bureau to review certain rules within 10 years of publications found in Section 610 of the RFA. "As the Bureau collects comments during a RFA review to determine whether a follow-up rulemaking or deregulatory action is needed, ICBA suggests that the Bureau attempt to collect, collate and convey all information received, regardless of whether a rule is ultimately revised or rescinded. The report published under the Economic Growth and Regulatory Paperwork Reduction Act ('EGRPRA') is a good model for the Bureau to emulate. Under EGRPRA, federal banking agencies are mandated to conduct a review of regulations in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Unlike RFA reviews, EGRPRA reports require the agencies to summarize, and respond to, all comments received in response to the review." ICBA recommends the Bureau undertake these reviews every 10 years. – Independent Community Bankers of America</p>

## Additional Notes

1. The following organizations were signatories to the comment letter submitted by NCLC on behalf of a group of 27 consumer, community, civil rights, and legal services groups, identified above as from “27 consumer advocacy groups” (-0092). The collected statement includes other statements signed by additional advocacy organizations, but those are not reflected here:

Allied Progress	NAACP
Americans for Financial Reform Education Fund	National Association of Consumer Advocates
Arkansans Against Abusive Payday Lending	National Housing Law Project
California Reinvestment Coalition	National Consumer Law Center (on behalf of its low-income clients)
Center for Digital Democracy	National Fair Housing Alliance
Center for Economic Integrity	North Dakota Economic Security and Prosperity Alliance
Center for Responsible Lending	Public Citizen
Consumer Action	Public Counsel
Consumer Federation of America	Reinvestment Partners
Interfaith Center on Corporate Responsibility	Texas Appleseed
Jacksonville Area Legal Aid, Inc.	U.S. PIRG
Kentucky Equal Justice Center	Virginia Poverty Law Center
Maryland Consumer Rights Coalition	Virginia Citizens Consumer Council
Mississippi Center for Justice	

## APPENDIX A: INDEX OF COMMENTER ACRONYMS

<b>Acronym</b>	<b>Definition</b>
ABA	American Bankers Association <a href="https://www.aba.com">https://www.aba.com</a>
AFR	Americans for Financial Reform <a href="http://ourfinancialsecurity.org/">http://ourfinancialsecurity.org/</a>
AFSA	American Financial Services Association <a href="https://www.afsaonline.org/">https://www.afsaonline.org/</a>
CBA	Consumer Bankers Association <a href="http://www.consumerbankers.com/">http://www.consumerbankers.com/</a>
CCMC	U.S. Chamber of Commerce's Center for Capital Markets Competitiveness <a href="https://www.uschamber.com/center-capital-market-competitiveness">https://www.uschamber.com/center-capital-market-competitiveness</a>
CEI	Competitive Enterprise Institute <a href="https://cei.org">https://cei.org</a>
CMC	Consumer Mortgage Coalition <a href="http://www.consumermortgagecoalition.org/">http://www.consumermortgagecoalition.org/</a>
CRC	California Reinvestment Coalition <a href="http://calreinvest.org/">http://calreinvest.org/</a>
CRL	Center for Responsible Lending <a href="https://www.responsiblelending.org/">https://www.responsiblelending.org/</a>
CUNA	Credit Union National Association <a href="https://www.cuna.org/">https://www.cuna.org/</a>
Discover	Discover Financial Services <a href="https://www.discover.com/">https://www.discover.com/</a>
ETA	Electronic Transactions Association <a href="https://www.electran.org/">https://www.electran.org/</a>
HPC	Housing Policy Council of the Financial Services Roundtable <sup>4</sup>
ICBA	Independent Community Bankers of America <a href="https://www.icba.org/">https://www.icba.org/</a>
MBA	Mortgage Bankers Association <a href="https://www.mba.org/">https://www.mba.org/</a>
MSBA	Money Services Business Association <a href="https://www.msbasassociation.org/">https://www.msbasassociation.org/</a>
NAFCU	National Association of Federally-Insured Credit Unions <a href="https://www.nafcu.org/">https://www.nafcu.org/</a>
NBPCA	Network Branded Prepaid Card Association <a href="https://www.nbPCA.org/">https://www.nbPCA.org/</a>

<sup>4</sup> With the dissolution of the Financial Services Roundtable, the Housing Policy Council no longer has an active webpage.

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<b>Acronym</b>	<b>Definition</b>
NCLC	National Consumer Law Center <a href="https://www.nclc.org/">https://www.nclc.org/</a>
SBA Office of Advocacy	U.S. Small Business Administration Office of Advocacy <a href="https://www.sba.gov/advocacy">https://www.sba.gov/advocacy</a>

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CFPB-0025015