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# Taskforce RFI Public Research

Summary Report

[PAGE ]

CONSUMER FINANCIAL PROTECTION BUREAU

CFPB-0024917

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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 RFI comment period closed June 1, 2020, with approximately 90 comments submitted. The comments were made up of letters from 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 would have been better served by submitting to the Bureau's official Consumer Complaints portal. The summary of these submitted comments is found in a separate report.

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. Several organizations expressed this concern to us directly. In order to ensure that the Taskforce received input from significant stakeholders representing diverse views on consumer protection issues, the Taskforce Support Team devoted a significant amount of time over the course of two months to researching and summarizing publicly available information from stakeholders that are relevant to the Taskforce's work.

The first step of this research was to build a library of reports, policy statements, and testimony before Congress by consumer advocacy groups, trade organizations, and experts in consumer protection who have typically commented on Bureau rules or otherwise provided public input to the Bureau—in other words, from groups and individuals who we expected to comment on the Taskforce RFI. The second step was to review and summarize the materials in this library to help ensure Taskforce Members are aware of the diversity of views held by various stakeholders, including those who may not have

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commented on the RFI because of the pandemic. Due to time and resource limitations, as well as the significant volume of information that many organizations and individuals have produced over time, the Taskforce Support Team could not hope to review and summarize the entire universe of publicly available information, but the Team made a good-faith effort to ensure that a diversity of views is represented. What follows is a summary of our Public Research initiative and our approach to summarizing content from identified entities' websites.

# 1. Public Research

## OVERVIEW

Initially, we identified 30 organizations or institutions and 25 associated or independent individuals as part of this public research initiative. Their makeup is as follows:

Type	Quantity
Organizations and Institutions	
Consumer Advocacy Groups	14 groups
Industry Trade Groups	11 groups
Individual Financial Institutions or Service Providers	1 company
Research Institutions	4 institutions
Individuals	
Individuals Associated with Organizations	22 individuals
Academics and Practitioners	3 individuals

We started this work well in advance of the RFI deadline such that we would be on track to organize and present this data on a reasonable timeline. Many of the organizations and individuals we listed were able to submit to the RFI after all. In this case, if a Team member had not already researched the organization or individual, we removed them from our list. If a Team member had already completed the research, it remained in our analysis and summary. If an RFI response was submitted by an entity with an individual associated with it, we still attempted to find relevant Congressional testimony for that individual. Not all entities from whom we sought information had readily-accessible information that we could cite addressing the specific questions asked in the RFI.

Subsequently, the summary positions outlined in this document consist of identified positions of the following entities. Appendix A has the complete list of entities from whom we sought information.

Type	Quantity
Organizations and Institutions	
Consumer Advocacy Groups	5 groups
Industry Trade Groups	2 groups
Individual Financial Institutions or Service Providers	1 company
Research Institutions	4 institutions
Individuals	
Individuals Associated with Organizations	25 individuals
Academics and Practitioners	1 individual

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## OUR APPROACH

Methodology: We visited the official websites of the various entities and, using key words in websites' search functions, identified content related to the various RFI questions asked. For individual Congressional testimony, we used a Congressional transcript service to identify relevant testimony if it existed. Not all individuals testified before Congress and not all entities had adequate answers on their webpages for all questions. Because of the wealth of information on many of these websites, we chose to limit content for consideration to publications within the last three years.

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 positions into discrete points addressing each question with enough detail for them to stand alone in this document, but with citations back to the original source for posterity. Where possible, direct quotation is used. This is not an attempt to put words in the mouths of the identified groups, but rather to help us understand their positions on the issues to make sure all relevant points of view are accounted for.

Position Summary: The data in the "Position Summary" section below captures the representative positions of the various entities as identified from their respective websites or Congressional testimony. 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 positions 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: This is our attempt to suggest representative positions of the various entities relating to the RFI's 23 wide-ranging questions.<sup>1</sup> The representative sentiments included below are meant to provide a flavor of the most numerous positions that the Taskforce Support Team identified on these topics.<sup>2</sup> We have tried to select the most succinct articulations of each issue found

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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.

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among the entity websites and testimony, though that resulted in some entities being quoted more frequently than others. Some of the sentiments provided below are verbatim quotes from entities, while others are highly stylized summaries of the content provided.

The “Public Research Comment Summary\_Full.xlsx” file in the Taskforce Z: drive contains more comments by more entities than are shared here. They were omitted either because of redundancy or because they were not germane.

## Expanding Access

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	<p>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?</p>
6 Disparate Impact	<p>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?</p>

## 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

Entity Type	Representative Sentiments
Trade groups	<p><b><u>Repeal the Durbin Amendment:</u></b></p> <p>"Unfortunately, access to basic banking accounts and debit cards has been reduced by the archaic and obsolete Durbin Amendment, pushing some consumers to inferior financial services options that are not readily loadable into mobile payment apps. Repealing the Durbin Amendment would allow more people to qualify for free or low-cost, high-quality deposit accounts that support mobile payments. This increased access would reduce the impact of cashless policies chosen by merchants." - American Bankers Association</p>
Consumer advocacy groups	<p><b><u>Oppose "negative" CRA reforms:</u></b></p> <p>"Oppose 'Modernizations' of the CRA that Give Less Weight to Local Community Needs: Policymakers in Congress considering changes to the CRA, and prudential regulators considering proposed CRA rule changes, should oppose and avoid changes that would give less weight to local community needs, including the needs of older adults. Congress and the regulators should support changes to the CRA that strengthen the service test for large banks and strengthen oversight on bank lending to small businesses." – Woodstock Institute</p>
Individual financial institutions or service providers	<p><b><u>Expanding Access:</u></b></p> <p>The Bureau should encourage banks to offer low cost accounts, limit overdraft fees (via caps on fees, the number of hits per month, or disallow them altogether) to encourage healthy consumer uptake of traditional financial products. – Clarifi</p>
Research institutions	<p><b><u>Establish universal basic accounts for all Americans:</u></b></p> <p>"Federal banking regulators could convene community development stakeholders to develop, inform, and refine a proposal for universal basic accounts. Congress could explore legislative options by holding hearings and/or requesting further study of the concept." – Urban Institute</p> <p><b><u>Strengthen CRA:</u></b></p> <p>"Triple bank lending, services, and investment in unserved markets by leveraging the Community Reinvestment Act... As Congress and regulators consider the CRA, they can evaluate ways to strengthen the law's ability to increase the provision of financial services in low-income communities and communities of color, particularly rural communities. Incentivizing and holding banks accountable for CRA service, lending, and investments not only where they have a physical branch but also where they lend and collect deposits would benefit underbanked and low-income rural areas." – Urban Institute</p>

## 2. PAYMENTS

Entity Type	Representative Sentiments
Trade groups	<p><b><u>Keep transaction services tied to banking system:</u></b></p> <p>Keep transaction services (at least in the peer-to-peer space) tied to the banking system. This is safer, more efficient, guaranteed (backed by deposits / FDIC insured), and trusted, where other alternatives have large risks. ABA represents the banking consortium that owns peer-to-peer platform Zelle (BofA, BB&amp;T, CapOne, Chase, and Wells Fargo). – American Bankers Association</p>
Consumer advocacy groups	<p><b><u>Small businesses suffer from reduced mainstream capital, must use fintechs:</u></b></p> <p>Since the Great Recession, mainstream financial institutions have reduced their small businesses lending, leading some businesses to resort to alternative, non-bank financial technology (fintech) lenders for needed capital. While small businesses could potentially benefit from having an additional source of capital that fintech lenders provide, many of those new lenders only provide loans with exceedingly high interest rates, onerous terms, and relatively poor customer service. – Woodstock Institute</p>
Individuals associated with organizations	<p><b><u>Let banks offer small-dollar credit:</u></b></p> <p>"In their roles as hosts to our national payment systems and providers of deposit and transaction accounts, banks have unique insights into the day-to-day earning and spending—and ultimately, the financial health—of their customers. They are well-positioned to offer solutions to financially vulnerable consumers to improve and maintain their financial health. Small dollar credit (SDC) products can be a part of these offerings... Banks are also well-positioned to lower the risk and cost of extending small-dollar credit. Lending to existing customers can largely eliminate fraud risk, while banks' insight into customers' earning and spending behavior can enable them to assess default risk and extend credit to consumers whose credit scores underestimate their ability to repay... Separately, banks' ability to debit repayments from consumers' incoming deposits can reduce their default risk... However, permission to collect payments via auto-debit should not be made a condition for extending credit. Likewise, loss of one's checking account should never be made a consequence of non-payment of credit... [FHN] supports the efforts of the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Federal Deposit Insurance Corporation (FDIC) to build a framework that spurs the growth of another source of responsible SDC." – Garry Reeder (Financial Health Network)</p>

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### 3. PROMOTING COMPETITION IN BANKING

Entity Type	Representative Sentiments
Trade groups	<p><b><u>Repeal the Durbin Amendment:</u></b></p> <p>"[T]he signature payments policy accomplishment of the retail lobby has been the Durbin Amendment, which raised financial services costs to consumers and reduced access to free checking and debit card rewards. We have and will repeatedly reference it because its impacts have so thoroughly rippled throughout a web of related issues, from delaying the rollout of secure payment technologies to touching on the most fundamental questions of competition and access. Regrettably, this law resulted in harm primarily to Americans of lower economic status while transferring tens of billions of dollars in benefits from consumers to large merchants, and harming the competitiveness of community financial institutions." – American Bankers Association</p>
Consumer advocacy groups	<p><b><u>Licensure is good:</u></b></p> <p>ABA runs its own certification program for trust and financial advisors, suggesting they advocate for licensure or certification at some level. – American Bankers Association</p> <p><b><u>Lower switching costs:</u></b></p> <p>It should be easier for consumers to move accounts from bank to bank so that competition by banks for consumers leads to better consumer experiences via better customer service. – Center for American Progress</p>

Commented [NA(5): Portable banking

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

Entity Type	Representative Sentiments	
	<b><u>Cap loans at 36%:</u></b> In addition to a federal bill to permanently cap loans at 36% APR, Woodstock and our allies support a bill that would at least temporarily cap loans at 36% APR. Times like these reveal why a 36% cap is in the best interests of consumers and the overall economy. A cap would help prevent unscrupulous lenders from taking advantage of this or any other crisis...  Obtaining a loan from a financial institution – even a high-cost payday, installment, or auto title loan – may seem like a necessary evil under the circumstances, but a loan, while helping to meet short-term needs, may make a household's financial crisis worse and make it last longer if they took some different steps before and when seeking a loan.” – Woodstock Institute	<b>Commented [NA(6):Action</b>
Consumer advocacy groups	<b><u>APR is not an appropriate measure:</u></b> “APR was created as a tool for comparison shopping of similar credit products (e.g. 30-year fixed mortgages). The APR calculation does allow the consumer the ability to compare real world trade-offs such as a payday loan versus paying rent. While a standard measurement of cost is essential for a transparent market, APR is not that tool for the Small Dollar Credit (SDC) market.” – Garry Reeder (Financial Health Network)	
Individuals associated with organizations	<b><u>Innovation can help expand healthy short-term lending:</u></b> Innovation is critical to giving consumers choices to maintain their financial health. Things like overdraft insurance, cash flow-based underwriting, and Early Wage Access can give consumers access to low- or no-cost small dollar credit in ways that avoid problematic loans. We are upset that the CFPB eliminated Ability to Pay from the final Payday rule. – Garry Reeder (Financial Health Network) <b><u>Small-dollar credit usage is a symptom of poor financial health:</u></b> “Our research suggests that a variety of different needs and use cases underlie the demand for small-dollar credit and that many of them are symptomatic of one or more dimensions of poor financial health on the part of borrowers. Historically, payday lenders, auto title lenders, pawn shops, and other subprime lenders have dominated the provision of small-dollar loans. Many of the products they have offered are expensive, rarely underwritten, rely on cycles of continuous use, and harsh collection practices that both exploit and perpetuate borrowers' financial distress. Auto title loans are of particular concern because of the potential loss of a car in the event of default.  Understanding the nature of demand for such products should inform how providers can meet that demand responsibly—and the limits to their doing so. Short-term, small-dollar credit products must generate sufficient profit in order for providers to make them available to credit-worthy consumers who need them. The success of responsible products must be measured not simply by whether they meet demand, but by their potential to help users improve their financial health.” – Garry Reeder (Financial Health Network)	

## 5. ALTERNATIVE DATA

Entity Type	Representative Sentiments
	<p><b><u>Alternative data can be good for consumers:</u></b></p> <p>Alternate data in credit reporting can help the unbanked and other thin credit file individuals if managed correctly. – Consumer Data Industry Association</p>
	<p><b><u>Provide compliance guidance:</u></b></p> <p>Regulators should provide guidance on how banks can demonstrate compliance with fair lending laws when using alt data. – American Bankers Association</p>
	<p><b><u>There are big risks for consumers:</u></b></p> <p>"There is increased risk to borrowers if data originally collected for other purposes, such as identity verification or fraud mitigation, is applied to credit decisions despite the original purpose of its collection and usage. This ties back to the principle of Minimization in CFSI's (FHN's) Consumer Data Sharing Principles, since the collection of data for one purpose could lead to other uses without the consumer's knowledge or consent." – Financial Health Network</p> <p>"The reporting of alternative loan payments also presents potential risk of harm for consumers if current disparate impact guardrails in FCRA regulation do not prevent its use for purposes of denying credit. While there is great potential for credit building when alternative loan providers report repayment to the 'Big Three' credit bureaus, it is also possible for the data showing that a consumer borrowed such a loan, regardless of the loan's repayment outcome, to be used against the consumer. We believe data indicating use of alternative credit should not be allowed to stigmatize or harm the borrower's ability to otherwise demonstrate creditworthiness." – Financial Health Network</p>
Trade groups	<p><b><u>Role for Regulators:</u></b></p> <p>"Data aggregators, alternative bureaus, and all other alternative data processors that provide analysis or synthesis of data provided to lenders for use in credit decisions should be subject to the Fair Credit Reporting Act (FCRA) and Equal Credit Opportunity Act (ECOA) rules governing the fairness, accuracy, and completeness of information as well as addressing consumer disputes into information accuracy." – Financial Health Network</p> <p>"[A]lternative data used for credit decisions should be available and reliable, able to be viewed and corrected by the consumer, shared only with the knowledge and consent of the consumer if privately held, and only applied for the minimum usage and timeframe necessary for its intended purpose." – Financial Health Network</p> <p>"It is important that credit decisions made by advanced AI/ML models are understandable by consumers and defendable. ECOA mandates that applicants be given the reason for denial. AI/ML models cannot fall prey to the 'black box' affect, where this is difficult to discern. Regulators must be aware and make decisions on how to handle this." – Financial Health Network</p> <p>"To the extent that lender reticence to adapt to newer scoring models is driven by apprehensions of regulatory scrutiny, we encourage regulators to proactively communicate their support for the use of these newer models to decrease lenders' perceptions of risk or significant regulatory burdens associated with their uptake." – Financial Health Network</p> <p>"Regulators could also consider whether requirements of positive repayment reporting should be implemented for industries such as phone or utility companies that currently may do so only optionally. Today, most consumers find that negative repayment information is reported, but there is no guarantee that positive repayment will be reported in like fashion. This would</p>

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add a layer of compliance for the industries in question, but could also benefit these same industries in the long run by ensuring that they have better access to thorough and uniform information about the consumers they serve, and their consumers have added incentive to make on-time payments, leading to more accurate marketing, engagement, and product development opportunities.” – Financial Health Network

“Requirements for the dispute process should also take into account the speed of the process, since consumers often only become aware of data inaccuracies and the need for a dispute or correction when they are in need of credit but have been denied. This means that just as data is digitized, the dispute process should be automated and digitized for swift, online means of engagement and resolution.” – Financial Health Network

“An updated dispute and correction process should take into account the vast proliferation of data, and recognize that when data are corrected or updated at one point in the supply chain, they may still need to be updated at the source, or at other supply chain points. Requirements for the ongoing refreshing of data by those who collect, broker, aggregate, and use alternative data can help ensure that updated information makes its way into credit decisions in a timely manner. An update to the e-OSCAR system in place today could also contain a requirement that the initial data furnisher be notified and responsible for correcting or updating the data in question.” – Financial Health Network

“We believe there is opportunity for regulators to foster clear opportunities for a range of market participants in the data supply chain to experiment cooperatively in a sandbox environment where they can a) test multiple layers of data collection, aggregation, and application in concert; b) share the results of experimentation with regulators for feedback and advisement in an iterative fashion as types of data incorporation and model strategies are tested and adjusted, and c) alert regulators to types of data or data collection practices that are problematic or would benefit from closer scrutiny or improvement where they fall short.” – Financial Health Network

**Risks of behavioral alt data:**

Commented [NA(9): Caution

Consumer advocacy groups

Consumer Action is generally wary of ‘behavioral’ alt data (time of application, browser used, social media habits, purchase history, etc.). While including non-credit-related information may open up borrowing opportunities for millions, it could also lead to discriminatory lending decisions if conclusions are drawn based on limited, subjective information. It is unclear how reliable non-financial data is. If lenders incorrectly interpret alternative data, consumers could be unfairly denied credit and not even know why because fair credit reporting laws may not apply to non-financial information. – Consumer Action

**Discrimination concerns:**

Using behavioral alternative data opens the door for discriminatory behavior if behaviors are associated with different groups. – Consumer Action

**Role for Regulators:**

Commented [NA(10): Action

The Bureau should develop set of principles and safeguards for digital marketplace while making sure to apply current law to digital services – US PIRG

Individual financial institutions or service providers

**Opportunities:**

Use of rent and utility repayment data in credit scores would increase mortgage lending to black and Latino borrowers as inclusion would increase their credit scores, which is a good thing. – Clarifi

## 6. DISPARATE IMPACT

Entity Type	Representative Sentiments	
	<p><b><u>DI should apply to alternative loan data:</u></b></p> <p>"The reporting of alternative loan payments also presents potential risk of harm for consumers if current disparate impact guardrails in FCRA regulation do not prevent its use for purposes of denying credit. While there is great potential for credit building when alternative loan providers report repayment to the 'Big Three' credit bureaus, it is also possible for the data showing that a consumer borrowed such a loan, regardless of the loan's repayment outcome, to be used against the consumer. We believe data indicating use of alternative credit should not be allowed to stigmatize or harm the borrower's ability to otherwise demonstrate creditworthiness." – Financial Health Network</p>	<b>Commented [NA(11): Proposal</b>
Trade groups	<p><b><u>DI is a bad standard:</u></b></p> <p>"To promote the use of alternative data, we urge the Bureau, the Department of Justice, and prudential bank regulators to acknowledge in writing that disparate impact claims are not recognized under the Equal Credit Opportunity Act (ECOA). When considering whether to use alternative data and modeling techniques for non-mortgage consumer credit, bankers should focus on identifying – and avoiding – alternative data and models that present the risk of intentional discrimination, an obligation that can be managed by compliance programs and can be embraced by all." – American Bankers Association</p> <p>"ABA believes that neither the text nor history of the ECOA support disparate impact liability" – American Bankers Association</p>	
	<p><b><u>Regulators need to clarify DI standards:</u></b></p> <p>"[R]egulators should provide guidance on how banks can test and demonstrate that models comply with the Fair Housing Act's disparate impact liability, consistent with the Supreme Court's Inclusive Communities framework, and also meet supervisory safety and soundness expectations about model validation. Such guidance should be flexible and tailored so as to be useful and practical across the range of creditors, mortgage products and datasets, recognizing that expectations for small and mid-size banks may vary from those for large institutions." – American Bankers Association</p>	<b>Commented [NA(12): Action</b>
Consumer advocacy groups	<p><b><u>DI is legitimate and necessary:</u></b></p> <p>"The comments below discuss the history and intent of ECOA, the long-standing jurisprudence affirming the cognizability of the disparate impact doctrine, the covert nature of lending discrimination and the types of systemic barriers in the financial market that necessitate disparate impact enforcement, the need to maintain and fully enforce Regulation B, and the nearly singular role that the federal government plays in detecting and abating lending discrimination in all credit markets in the United States. We submit these comments to remind Acting Director Mulvaney of the responsibilities that the CFPB has to fully enforce the Equal Credit Opportunity Act." – National Consumer Law Center</p> <p>"By focusing on the consequences of unfair housing practices, the disparate impact standard often helps screen out discrimination that is intentional, but subtle or concealed. Equally important, it eliminates practices that may be neutral on their face but nevertheless freeze in place the effects of prior discrimination." – National Consumer Law Center</p> <p>"The disparate impact doctrine has been a critical tool against systematic housing discrimination for many decades." – Woodstock Institute</p>	

**DISAGREEMENT BETWEEN INDUSTRY GROUPS**

Commented [NA(13]: Disagreement

Topic	Entity Type	Disagreement
<b><u>The use of Disparate Impact, especially in Alternative Data:</u></b>		
Alternative Data / Disparate Impact	Trade groups	<p>"The reporting of alternative loan payments also presents potential risk of harm for consumers if current disparate impact guardrails in FCRA regulation do not prevent its use for purposes of denying credit. While there is great potential for credit building when alternative loan providers report repayment to the 'Big Three' credit bureaus, it is also possible for the data showing that a consumer borrowed such a loan, regardless of the loan's repayment outcome, to be used against the consumer. We believe data indicating use of alternative credit should not be allowed to stigmatize or harm the borrower's ability to otherwise demonstrate creditworthiness." – Financial Health Network</p> <p>"To reduce the compliance risk and resistance to using alternative data, regulators should enforce ECOA under the disparate treatment standard and reject the regulatorily subjective disparate impact analysis. Doing so will ensure fair treatment of borrowers while promoting the fair and responsible use of alternative data that will promote credit opportunity and availability." – American Bankers Association</p>

**AGREEMENT BETWEEN INDUSTRY AND CONSUMER ADVOCACY GROUPS**

Commented [NA(14]: Agreement

Topic	Agreement
<b><u>Alternative Data should be subject to FCRA and ECOA:</u></b>	
Alternative Data	<p>"Data aggregators, alternative bureaus, and all other alternative data processors that provide analysis or synthesis of data provided to lenders for use in credit decisions should be subject to the Fair Credit Reporting Act (FCRA) and Equal Credit Opportunity Act (ECOA) rules governing the fairness, accuracy, and completeness of information as well as addressing consumer disputes into information accuracy." – Financial Health Network</p> <p>"If alternative data is used for credit decision making, its use must be regulated by the Equal Credit Opportunity Act (ECOA). Unless the data represents direct experience between the lender and the consumer, it should also be regulated by the Fair Credit Reporting Act (FCRA). Compliance with both these laws will be critical for the purposes of accuracy, predictiveness, transparency and minimizing disparate impact." – National Consumer Law Center</p>

## Consumer Data

	<b>Topic</b>	<b>RFI Question</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

Entity Type	Representative Sentiments
	<p><b><u>Apply GLBA to third parties, such as data aggregators:</u></b></p> <p>ABA supports requiring GLBA data privacy compliance from third parties, meeting the same standard that banks have to comply with. More transparency/disclosures should be required of fintechs regarding what data they're accessing, how long they're holding the data, and how they are using the data. Consumers should be able to control access and use of their data, including what's shared and how it's used. Consumers should be able to 'intuitively control' their data by seeing easily who is authorized to receive their data, modify what access they have, and revoke that access when a service is no longer used. Bank level security should be required for the same services. – American Bankers Association</p>
	<p><b><u>The Bureau should promulgate a rule on consumers' right to data:</u></b></p> <p>The Bureau should undertake a formal rulemaking under the DFA Section 1033 to establish a principles-based regulatory regime and clarify consumers' right to access data. This will provide clarity to industry, protections to consumers, and solve a lot of problems in the data privacy market. – Financial Health Network</p>
Trade groups	<p>"The Financial Health Network encourages the CFPB to use its authority to affirm consumers' right to access their financial data and protect consumers from emergent risks. We also encourage the CFPB to coordinate with other regulators to ensure appropriate supervision of data aggregators, and strongly consider whether direct supervision might be appropriate." – Financial Health Network</p> <p>"The ability of small financial institutions to make consumers' data available is largely dependent on their core technology providers, particularly if the ecosystem moves away from screen scraping. Ensuring that these providers make sustainable data sharing solutions available to their customers is critical to ensuring that a meaningful right to access under Section 1033 does not exclude customers of small community banks and credit unions." – Financial Health Network</p>
	<p><b><u>Role for Regulators:</u></b></p> <p>"The Bureau should clarify Reg E liability for unauthorized transactions resulting from credentials shared with data aggregators. We recommend that the CFPB issue guidance that consumers are not liable for unauthorized transactions originated with login credentials a consumer has shared with a data aggregator. Such guidance may help to motivate industry to come to an agreed-upon [data protection] framework. In order to ensure that a future breach does not jeopardize the solvency of data aggregators or third-party application providers, we believe that the CFPB should also encourage appropriate risk mitigation policies, including third-party liability insurance." – Financial Health Network</p>

Consumer advocacy groups

**FCRA should apply to non-credit arenas:**

FCRA should cover information gathered and sold related to character, general reputation, personal characteristics, mode of living, etc. – US PIRG

Commented [NA18]: Action

Apply FCRA protections to other arenas where the same information used in credit decisions is sold to non-credit issuers for non-credit purposes (ex: background checks, employment, etc.) – US PIRG

**There is no competition incentive to improve service in debt collection:**

Consumers can't choose debt collectors, and this leads to no competitive incentives for collectors to protect information. – US PIRG

Research Institutions

**Privacy laws place undue onus on consumers:**

"When it comes to data governance, the emphasis on individual control and privacy self-management shifts the regulatory burden on users, who are often unaware and vulnerable to interface design manipulation, leaving the industry free to engage in data collection, profiling, and other processing activities that lawmakers and regulators should be scrutinizing more thoroughly. By shifting the burden of governance on users, consent and control serve the industry's interests, making systemic privacy and data governance questions appear intractable." – Hoover Institution

Commented [NA19]: Concept

"The current emphasis [of privacy laws] relies on a chimeric view of the possibilities of informed consent which is not realistic in the platform economy" – Hoover Institution

"We need, instead, to start thinking of ways to regulate the information economy that go beyond individual rights and voluntary compliance but that consider the kinds of data processing activities that are too harmful to be tolerated by a modern democratic society. We need to think of new forms of collective, rather than individualized and fragmented, self-determination. The questions we should be asking at this historical moment are, for example: Which kinds of data or data uses are beneficial and good for people? Which kinds of data or data uses are instead harmful and should be banned? Which kinds of data uses can be tolerated and subjected to market-based preferences? The emphasis on consent and control too often prevents us from taking these questions seriously. We are made to believe that these questions are intractable, that they go too far, which curtails our engagement and ability to push for change." – Hoover Institution

Current laws do not adequately address privacy issues presented by data aggregation and correlation and use of algorithms. Concepts of consent and notice used in laws are unrealistic given consumers cannot and do not read privacy notices. U.S. needs a common law approach to privacy. Use the Consumer Privacy Bill of Rights as the baseline (2012 document issued by the House) and flesh out concrete rules through FTC enforcement actions. The Consumer Privacy Bill of Rights correctly applied data minimization/legitimate use concepts correctly. – Brookings Institution

**Need for Congressional Action:**

Commented [NA20]: Action

"New legislation should put the burden on companies to only use, disclose, and retain consumer data for legitimate purposes. This would mean that consumers' personal data could only be processed in ways that are consistent with reasonable expectations formed in their relationships with companies. This can be accomplished by limiting providers to the collection, creation, use, and sharing of the data necessary for or compatible with the services being provided. When no longer necessary for those legitimate uses, data should not be retained in identifiable form... Furthermore, obtaining individual consent could not override this "legitimate purposes" approach." – Brookings Institution

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**Data isn't property, it's information:**

"Treating personal information as property to be licensed or sold may induce people to trade away their privacy rights for very little value while injecting enormous friction into free flow of information. The better way to strengthen privacy is to ensure that individual privacy interests are respected as personal information flows to desirable uses, not to reduce personal data to a commodity... Rather than trying to resolve whether personal information belongs to individuals or to the companies that collect it, a baseline federal privacy law should directly protect the abiding interest that individuals have in that information and also enable the social benefits that flow from sharing information." – Brookings Institution

## 8. ACCURACY OF CONSUMER DATA

Entity Type	Representative Sentiments
Trade groups	<p><b><u>FCRA gives consumers adequate rights:</u></b></p> <p>ABA believes FCRA gives adequate rights to consumers, and that there is no need for the newly suggested Protecting Your Credit Score Act. – American Bankers Association</p>
Consumer advocacy groups	<p><b><u>Role for Congress:</u></b></p> <p>US PIRG / Ed Mierzwinski endorse the Comprehensive Consumer Credit Reporting Reform Act and Protecting Innocent Consumers Affected by a Shutdown Act put forth by Maxine Waters in 2019 and all of the protections therein. – US PIRG</p> <p><b><u>Stronger consumer protections are necessary:</u></b></p> <p>Congress / regulators should give consumers new rights to appeal disputes, require agencies and furnishers to have sufficient staff to handle disputes, require reporting agencies to conduct dispute research apart from just asking the furnisher, and require reporting agencies to hold information related to disputes as long as the item remains in the credit report, among other things. – Americans for Financial Reform</p> <p><b><u>Bureau rulemaking:</u></b></p> <p>"CFPB should be required to engage in a rulemaking to impose stricter requirements and generally establishing minimum procedures to ensure "maximum possible accuracy" – Chi Chi Wu (National Consumer Law Center)</p>
Individuals associated with organizations	<p><b><u>CRAs have no incentive to ensure data accuracy:</u></b></p> <p>"This testimony and the attached timeline make an effort to describe how consumer reporting agencies have no incentives to sell accurate credit reports, so they do not." – Ed Mierzwinski (US PIRG)</p> <p>"Our credit scores are low because the CRAs haven't been forced to do a better job protecting our files from misuse or to keep them accurate or to respond to us properly when we dispute the mistakes. Instead of carrying out these statutory duties, the CRAs have persisted in aggressively hawking a variety of over-priced self-help products, often in an unfair or deceptive way." – Ed Mierzwinski (US PIRG)</p> <p><b><u>Credit Bureaus favor furnishers over consumers:</u></b></p> <p>"... our 2009 Automated Injustice report documented how credit bureaus are universally biased in favor of furnishers and against consumers in disputes. In a practice known as "parroting," credit bureaus blindly adopt the response of the furnisher without performing any independent review." – Chi Chi Wu (National Consumer Law Center)</p> <p><b><u>Credit Bureau reform should strengthen consumer protections:</u></b></p> <p>Credit Bureau reform should include: the right of appeal to an independent body, stricter matching criteria such as all nine digits of a consumer's SSN, requiring bureaus to devote sufficient resources to dispute resolution, injunctive relief for consumers to compel them to fix credit reports, and providing a public alternative – that is, a publicly-owned CRA that is responsive to public pressure and government oversight. – Chi Chi Wu (National Consumer Law Center)</p>

## 9. DATA BREACH LAWS

Entity Type	Representative Sentiments
Trade groups	<p><b>Aggregators should be held to the same standards as banks:</b>  Data aggregators should be required to notify consumers or their banks in the event of a data breach - the same standards as banks have. Aggregators should be subject to the FTC's Safeguards Rule. – American Bankers Association</p> <p>Data aggregation should be covered by Reg P (Bureau's Privacy rule). This requires disclosures to consumers about how data is collected, stored, shared, and safeguarded. The Bureau should create a large participant rule in data aggregation to subject firms to regular supervision (GLBA and Reg. E). Banking regulators should clarify that bank agreements with data aggregators do not constitute third-party vendor relationships. – American Bankers Association</p>
Consumer advocacy groups	<p><b>The Bureau should clarify Reg E liability:</b>  "The Bureau should clarify Reg E liability for unauthorized transactions resulting from credentials shared with data aggregators. We recommend that the CFPB issue guidance that consumers are not liable for unauthorized transactions originated with login credentials a consumer has shared with a data aggregator. Such guidance may help to motivate industry to come to an agreed-upon framework. In order to ensure that a future breach does not jeopardize the solvency of data aggregators or third-party application providers, we believe that the CFPB should also encourage appropriate risk mitigation policies, including third-party liability insurance." – Financial Health Network</p>
Research Institutions	<p><b>National data breach and security standards rule:</b>  "However, we think the FTC needs to go further and require more detailed and stringent requirements for the nationwide CRAs and certain other financial institutions that present especially high risks because of the valuable nature of the data they hold. These financial institutions should be required to comply with certain detailed security frameworks, including those issued by the National Institute of Standards and Technology ('NIST') and the Federal Financial Institutions Examination Council (FFIEC). They should also be required to report data security breaches to the FTC." – National Consumer Law Center (joint letter with other groups)</p>
	<p><b>Congressional action for data protection:</b>  "Congress should move to narrow the gap by passing a federal law that takes two steps to protect data...it should require companies that possess sensitive personal information to publicly disclose when significant breaches of this information occur." – Hoover Institution</p> <p><b>Data breach policy proposal:</b>  "Worry and concern [of breaches] are real harms, even if intangible ones... In the future, appropriate legislation could require that with every data breach notification letter sent to individuals, the company responsible must include in the envelope a \$30 check payable to the addressee—and as a quid pro quo, the legislation could also explicitly rule out class-action lawsuits. Multiplying \$30 per person by a hundred million people implies billion-dollar penalties, a threat that will have a real and substantial impact on incentivizing companies handling sensitive personal information to pay better attention to cybersecurity." – Hoover Institution</p>

## 10. FINTECH

Entity Type	Representative Sentiments
Consumer advocacy groups	<p><b>Require fintechs seeking a federal charter to have robust financial inclusion plans:</b></p> <p>"Any ILC or fintech federal charter granted to a fintech should have the same safety and soundness requirements that regular banks have and should require a robust financial inclusion plan analogous to a bank's CRA plan. The plan should include strategies to help ensure that all consumers within the fintech's service area, including older adults, have access to the fintech's services. In the case of Square, which is a fintech lender and payments processor that serves entrepreneurs and small businesses, a financial inclusion plan that offers activities designed to help older entrepreneurs in LMI communities would be particularly suitable because such activities would help address the negative impacts of the digital divide." – Woodstock Institute</p>
Research Institutions	<p><b>Potential for reduced consumer choice and other risks:</b></p> <p>"Big data and AI put more knowledge about consumers in the hands of institutions and governments, for better or worse. To what extent might consumers be vulnerable to institutions which become too powerful – and might the winner-takes-all tendency of AI technologies reduce consumer choice? There are concerns that AI might increase the risk of predatory behavior by dominant institutions, for example, by enabling them to extract too much consumer surplus." – Centre for the Study of Financial Innovation</p> <p>"Consumers could suffer from material damage caused by the theft of sensitive data – especially as institutions collect and centralize more of it, and process it in ways which make it even more valuable to cyber criminals and fraudsters." – Centre for the Study of Financial Innovation</p> <p>"[T]his CSFI report is making an important contribution in introducing a framework which defines the main risk drivers (i.e. opacity and complexity, distancing of humans from decision making and changing incentive structures) and the key risks (i.e. new ethical challenges, skills gap and market dynamics) that might arise from the increasing use of AI in financial services. Finally, the report explores the consequences that an increased reliance on AI might have for consumers, institutions and the stability of the financial system." – Centre for the Study of Financial Innovation</p>

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## AGREEMENT BETWEEN INDUSTRY AND CONSUMER ADVOCACY GROUPS

Topic	Agreement
Protecting Consumer Data	<p><b>The Bureau should clarify Reg E to prevent liability for fraudulent transfers:</b></p> <p>"The Bureau should clarify Reg E liability for unauthorized transactions resulting from credentials shared with data aggregators. We recommend that the CFPB issue guidance that consumers are not liable for unauthorized transactions originated with login credentials a consumer has shared with a data aggregator. Such guidance may help to motivate industry to come to an agreed-upon [data protection] framework. In order to ensure that a future breach does not jeopardize the solvency of data aggregators or third-party application providers, we believe that the CFPB should also encourage appropriate risk mitigation policies, including third-party liability insurance." – Financial Health Network</p> <p>"In these days of increasing data breaches and identity theft, the protection provided to consumers by the EFTA and Regulation E against liability for unauthorized transfers is more important than ever. The CFPB should clarify and strengthen Regulation E to ensure that consumers can maintain confidence in existing and new electronic transfer systems and receive the protection mandated by Congress." – National Consumer Law Center</p>

Commented [NA(31): Agreement]

## 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

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### 11. REGULATORY GAPS

Commented [NA(32]: Actions and proposals abound

Entity Type	Representative Sentiments
Trade groups	<p><b>Reg P should cover Data Aggregators</b></p> <p>Data aggregation should be covered by Reg P (Bureau's Privacy rule). This requires disclosures to consumers about how data is collected, stored, shared, and safeguarded. The Bureau should create a large participant rule in data aggregation to subject firms to regular supervision (GLBA and Reg. E). Banking regulators should clarify that bank agreements with data aggregators do not constitute third-party vendor relationships. – American Bankers Association</p>
	<p><b>1033 Rule for Data Privacy:</b></p> <p>The Bureau should undertake a formal rulemaking under the DFA Section 1033 to establish a principles-based regulatory regime and clarify consumers' right to access data. This will provide clarity to industry, protections to consumers, and solve a lot of problems in the data privacy market. – Financial Health Network</p>
Consumer advocacy groups	<p><b>Section 1071 Rulemaking:</b></p> <p>"Promulgate rules under Section 1071 of the Dodd-Frank Act to require small business lenders to report loan data to the Consumer Financial Protection Bureau (CFPB). In the rules, the CFPB should require small business lenders to report the type of lender, loan amount requested, the type of loan requested (e.g., term loan, credit card, or merchant cash advance), the action taken on the application, the amount loaned, the Annual Percentage Rate on the loan, whether the loan is payable by ACH debit, and the lender's default rates, in addition to any borrower demographics and business attributes necessary for fair lending analysis. If the Office of the Comptroller of the Currency (OCC) grants a special purpose charter to any fintech lender, the OCC should require the lender to report these same data." – Woodstock Institute</p>
Individuals associated with organizations	<p><b>Special-interest credit program:</b></p> <p>Banks who rely on GSEs should be obliged to have programs to bridge the rural-urban homeownership gap. The False Claims Act discourages lending to first-time home buyers. – Michael Calhoun (Center for Responsible Lending)</p>

Commented [NA(33]: Disclosures

Commented [NA(34]: Data privacy

Commented [NA(35]: Small business lending oversight

## 12. REGULATIONS TO CLARIFY

Entity Type	Representative Sentiments	
	<p><b><u>Targeted TRID Reforms:</u></b></p> <p>In a comment too voluminous to summarize, ABA proposes a list of "Targeted Reforms" for TRID, including lots of "small" tweaks. From a comment to the Bureau submitted as part of a previous RFI. They want clarification on definitions, liability, 'mistakes,' corrections of sample disclosures, more sample disclosures, clarification on when the rule applies, the ability for electronic delivery, clarity on handling multiple consumers, title insurance, wholesale transactions, right to rescind, exemptions, and more. – American Bankers Association</p>	<b>Commented [NA(36): Disclosures]</b>
	<p><b><u>1033 Rule for Data Privacy:</u></b></p> <p>The Bureau should undertake a formal rulemaking under the DFA Section 1033 to establish a principles-based regulatory regime and clarify consumers' right to access data. This will provide clarity to industry, protections to consumers, and solve a lot of problems in the data privacy market. – Financial Health Network</p>	
	<p><b><u>Data Privacy:</u></b></p> <p>Trade groups</p> <p>The Bureau should clarify that FCRA applies to data aggregators. – Financial Health Network</p> <p>"We encourage the CFPB to work with other regulators to issue interagency guidance that clarifies when aggregators are subject to oversight as third-party service providers. Further, the CFPB should strongly consider whether bringing aggregators under direct supervision via larger participant rulemaking would be appropriate in the context of other guidance." – Financial Health Network</p>	
	<p><b><u>Consumers should be protected by Reg E liability:</u></b></p> <p>"The Bureau should clarify Reg E liability for unauthorized transactions resulting from credentials shared with data aggregators. We recommend that the CFPB issue guidance that consumers are not liable for unauthorized transactions originated with login credentials a consumer has shared with a data aggregator. Such guidance may help to motivate industry to come to an agreed-upon framework. In order to ensure that a future breach does not jeopardize the solvency of data aggregators or third-party application providers, we believe that the CFPB should also encourage appropriate risk mitigation policies, including third-party liability insurance." – Financial Health Network</p>	
	<p><b><u>Protect older Americans:</u></b></p> <p>Consumer advocacy groups</p> <p>Clarify standards and accountability for financial institutions and securities brokers to identify and report financial abuse of older adults. – Texas Appleseed</p> <p><b><u>The Bureau should apply TILA to PACE loans:</u></b></p> <p>The Bureau should apply TILA to PACE loans, protecting consumers from issues in the PACE loan market. PACE is clearly covered in TILA's statute. TILA's exemption authority does not allow the Bureau to exempt PACE loans from any aspect of TILA. TILA's Exemption authority does not allow the Bureau to make adjustments and exceptions to TILA provisions designed to protect borrowers in PACE loan transactions. Issuing a Proposed Rule at this stage would be immature. – Consumer Action (coalition letter)</p>	<b>Commented [NA(37): Disclosures]</b>

## 13. REGULATORY MODERNIZATION

Entity Type	Representative Sentiments
	<p><b><u>Update Reg Z (TILA) to fix E-SIGN:</u></b></p> <p>"Unnecessary, cumbersome, and unclear requirements in some parts of Regulation Z are creating friction for banks seeking to innovate and better serve customers. These include Regulation Z's requirement that some — but not all — of that regulation's required disclosures comply with Electronic Signatures in Global and National Commerce Act (ESIGN)... Yet, current requirements for written disclosures impede the advancement of efficient and environmentally-friendly electronic disclosures." – American Bankers Association</p> <p>"We believe that the Bureau can make significant progress towards modernizing credit card and other disclosure requirements under its existing authorities. It has the authority to allow consumers to consent to obtain written disclosures electronically without an obligation that the consumer demonstrate an ability to access the disclosures. Moreover, this change would be consistent with the objective of the ESIGN Act to normalize the use of electronic consent in the course of routine commerce." – American Bankers Association</p>
Trade groups	<p><b><u>Update Reg Z (TILA) Reasonable Demonstration requirements:</u></b></p> <p>"Not only does the unnecessary reasonable demonstration requirement inhibit the use of electronic disclosures for existing products, it inhibits the development of new products people want — or will want once they learn about and use them. Products and services currently feasible as well as those not yet envisioned are hindered by unnecessary and unclear reasonable demonstration requirements. For example, the default presumption of written notice delivered through paper communications inhibits the development of digital only products and features that are best situated to meet and serve consumers in the channel of their choosing." – American Bankers Association</p> <p><b><u>The Bureau should review all disclosure requirements:</u></b></p> <p>"We recommend that the Bureau undertake a ground-up review of all disclosure requirements with an eye toward the current digital landscape and that it develop alternative standards that can be used for different modes of communications and emerging communications technologies, especially the conversational and responsive interfaces consumers are seeking." – American Bankers Association</p>
Consumer advocacy groups	<p><b><u>Extend consumer protections to small business loans:</u></b></p> <p>"Business borrowers, most of whom assume personal liability for repayment of loans to their businesses, should receive the same types of protections for small business loans as they would receive were the loans for personal use. Lenders should be required to disclose the loan terms clearly, in a way that enables the borrower to understand the cost of the loan and repayment terms, to determine the borrower's ability to repay the loan without additional borrowing, and be prohibited from engaging in abusive collection practices." – Woodstock Institute</p>
Individuals associated with organizations	<p><b><u>BSA and AML should be re-evaluated:</u></b></p> <p>Bank Secrecy Act and Anti-Money-Laundering Act place very heavy regulatory burdens on banks, especially small banks. – Michael Calhoun (Center for Responsible Lending)</p>

## 14. REGULATORY PRINCIPLES

Entity Type	Representative Sentiments
	<p><b>The Bureau should promulgate a principles-based rule on consumers' right to data:</b> The Bureau should undertake a formal rulemaking under the DFA Section 1033 to establish a principles-based regulatory regime and clarify consumers' right to access data. This will provide clarity to industry, protections to consumers, and solve a lot of problems in the data privacy market. – Financial Health Network</p>
Trade groups	<p><b>Provide flexible guidance on disparate impact liability:</b> "[R]egulators should provide guidance on how banks can test and demonstrate that models comply with the Fair Housing Act's disparate impact liability, consistent with the Supreme Court's Inclusive Communities framework, and also meet supervisory safety and soundness expectations about model validation. Such guidance should be flexible and tailored so as to be useful and practical across the range of creditors, mortgage products and datasets, recognizing that expectations for small and mid-size banks may vary from those for large institutions." – American Bankers Association</p>

Commented [NA(40): Guidance]

## 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**

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### **15. OVERLAPPING FEDERAL JURISDICTION**

Entity Type	Representative Sentiments
<i>No content was identified that answered the Bureau's RFI question on this topic.</i>	

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## 16. CHANGES TO JURISDICTION

Entity Type	Representative Sentiments
<i>No content was identified that answered the Bureau's RFI question on this topic.</i>	

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## 17. FEDERAL AND STATE COOPERATION

Entity Type	Representative Sentiments
Consumer advocacy groups	<p><b><u>Consumers benefit from overlapping state / federal jurisdiction:</u></b></p> <p>State and federal regulators and State Attorneys General all work to reign in bad actors. Far from being a patchwork, this shared jurisdiction protects consumers and is essential, especially where states have heightened consumer protection laws for good reasons. States often lead the way in consumer protection, and we should leave them with that authority. – US PIRG</p> <p><b><u>Stop federal preemption of heightened state protection laws:</u></b></p> <p>Congress should reverse the law that preempts states' ability to enact their own credit freeze laws. – Americans for Financial Reform</p>

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

Entity Type	Representative Sentiments
<i>No content was identified that answered the Bureau's RFI question on this topic.</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?

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## 19. MARKET PERFORMANCE

Entity Type	Representative Sentiments
<b><u>Dodd-Frank has benefitted the financial services industry and consumers:</u></b>	
Research institutions	<p>"[C]ore reforms have promoted a strong banking industry that can support economic activity. By any traditional measure, the performance of the U.S. banking industry and its support to economic growth has been strong in this post-crisis period. Let me touch on a few of these measures... At the same time, the U.S. banking industry is supporting the credit needs of the U.S. economy. Annualized loan growth at U.S. banks during the three years 2014-2016 averaged 5.7 percent— significantly outpacing nominal GDP growth in each year. This comparison suggests that banks are supporting economic growth rather than constraining it. Moreover, total bank loans outstanding have grown faster than loans held by non-bank sources of credit in six of the last seven years. In international comparisons, large U.S. banking organizations as a group are better capitalized than their European counterparts. Yet, both economic growth and bank loan growth have been substantially stronger in the United States than in Europe." – Brookings Institution</p>

## 20. DISCLOSURES

Entity Type	Representative Sentiments
	<p><b><u>Reg P should cover Data Aggregators</u></b></p> <p>Data aggregation should be covered by Reg P (Bureau's Privacy rule). This requires disclosures to consumers about how data is collected, stored, shared, and safeguarded. The Bureau should create a large participant rule in data aggregation to subject firms to regular supervision (GLBA and Reg. E). Banking regulators should clarify that bank agreements with data aggregators do not constitute third-party vendor relationships. – American Bankers Association</p>
Trade groups	<p><b><u>Update Reg Z (TILA) to fix E-SIGN:</u></b></p> <p>"Unnecessary, cumbersome, and unclear requirements in some parts of Regulation Z are creating friction for banks seeking to innovate and better serve customers. These include Regulation Z's requirement that some — but not all — of that regulation's required disclosures comply with Electronic Signatures in Global and National Commerce Act (ESIGN)... Yet, current requirements for written disclosures impede the advancement of efficient and environmentally-friendly electronic disclosures." – American Bankers Association</p> <p>"We believe that the Bureau can make significant progress towards modernizing credit card and other disclosure requirements under its existing authorities. It has the authority to allow consumers to consent to obtain written disclosures electronically without an obligation that the consumer demonstrate an ability to access the disclosures. Moreover, this change would be consistent with the objective of the ESIGN Act to normalize the use of electronic consent in the course of routine commerce." – American Bankers Association</p>
	<p><b><u>Update Reg Z (TILA) Reasonable Demonstration requirements:</u></b></p> <p>"Not only does the unnecessary reasonable demonstration requirement inhibit the use of electronic disclosures for existing products, it inhibits the development of new products people want — or will want once they learn about and use them. Products and services currently feasible as well as those not yet envisioned are hindered by unnecessary and unclear reasonable demonstration requirements. For example, the default presumption of written notice delivered through paper communications inhibits the development of digital only products and features that are best situated to meet and serve consumers in the channel of their choosing." – American Bankers Association</p>
	<p><b><u>The Bureau should review all disclosure requirements:</u></b></p> <p>"We recommend that the Bureau undertake a ground-up review of all disclosure requirements with an eye toward the current digital landscape and that it develop alternative standards that can be used for different modes of communications and emerging communications technologies, especially the conversational and responsive interfaces consumers are seeking." – American Bankers Association</p>
Consumer advocacy groups	<p><b><u>Extend consumer protections to small business loans:</u></b></p> <p>"Business borrowers, most of whom assume personal liability for repayment of loans to their businesses, should receive the same types of protections for small business loans as they would receive were the loans for personal use. Lenders should be required to disclose the loan terms clearly, in a way that enables the borrower to understand the cost of the loan and repayment terms, to determine the borrower's ability to repay the loan without additional borrowing, and be prohibited from engaging in abusive collection practices." – Woodstock Institute</p>

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**Adequate disclosures are key to small-dollar credit success:**

Individuals associated with organizations

"In 2014, as part of CFSI's Compass Principles, we issued The Compass Guide to Small-Dollar Credit. We outline seven characteristics of small-dollar credit products that embrace inclusion, build trust, promote success, and create opportunity among borrowers... (Principle 5) Has transparent marketing, communications, and disclosures. We encourage lenders to disclose the full cost of the loan to the borrower in simple, clear, and easy-to-understand language, with no hidden fees, industry jargon, or misleading information or fine print. This includes providing pricing information prior to the application. We discourage bundling of add-on products (such as credit insurance) that muddy the consumer's understanding of the full cost of the loan." – Garry Reeder (Financial Health Network)

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## 21. REMEDIES FOR LAW VIOLATIONS

Entity Type	Representative Sentiments
Consumer advocacy groups	<p><b><u>Always provide remediation to harmed consumers:</u></b></p> <p>The Bureau should provide remedy / relief to consumers when enforcement actions are taken. "Provide consumers with financial relief when the regulator determines companies have harmed them." – Consumer Action</p>

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## 22. BUREAU TOOL CHOICE

Entity Type	Representative Sentiments	Commented [NA(41): Action]	
	<b><u>Strengthen Examinations:</u></b>	<p>"CRA examiners need to be more stringent in the scoring of performance with respect to all types of lending, including small business loans, as well as mortgages and other personal loans. Examiners also need to consider the type of small business loans banks offer, rather than aggregating term loans, lines of credit, and credit cards, into a single category. In addition to the lending test, regulators should be more critical in enforcement of the service test and should exercise their authority to require banks to obtain nonobjection letters from their regulator whenever seeking to close branches in low- and moderate-income neighborhoods." – Woodstock Institute</p>	
Consumer advocacy groups	<b><u>Oppose Regulatory "Sandbox" Schemes:</u></b>	<p>"Policymakers at both the state and national levels have proposed regulatory "sandbox" schemes. A regulatory "sandbox" is essentially a zone in which companies and individuals can experiment on consumers without appropriate oversight. Sandbox advocates assert that sandbox policies encourage financial innovation, but history shows that some financial innovations (like the toxic mortgage products that led to the foreclosure crisis) lead to consumer harm. A fraudster in the sandbox could defraud consumers without fear of having a regulator examine its activities. Low-income older adults and older adults of color may be at heightened risk, as they have historically been vulnerable to other forms of predatory lending. Policymakers should pursue strategies that encourage innovation without sacrificing oversight and consumer safeguards." – Woodstock Institute</p>	
	<b><u>Always provide remediation to harmed consumers:</u></b>	<p>The Bureau should provide remedy / relief to consumers when enforcement actions are taken. "Provide consumers with financial relief when the regulator determines companies have harmed them." – Consumer Action</p>	
	<b><u>Restore OFLEO's previously-strong role in combatting discrimination:</u></b>	<p>"CFPB should Empower its Office of Fair Lending with enforcement authority to combat discrimination in financial services." – Consumer Action</p>	Commented [NA(42): Action]

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## 23. ASSESSING SUCCESS

Entity Type	Representative Sentiments
<i>No content was identified that answered the Bureau's RFI question on this topic.</i>	

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## APPENDIX A: ENTITIES

The following is a complete list of entities from whom we sought information, corresponding to this table from the Overview portion of this document. Note that not all of these organizations had relevant content or were cited here. More comments by more entities can be found in the “Public Research Comment Summary\_Full.xlsx” document in the Z: drive.

Type	Quantity
Organizations and Institutions	
Consumer Advocacy Groups	8 groups
Industry Trade Groups	3 groups
Individual Financial Institutions or Service Providers	1 company
Research Institutions	4 institutions
Individuals	
Individuals Associated with Organizations	22 individuals
Academics and Practitioners	3 individuals

Consumer Advocacy Groups	Industry Trade Groups	Individual Financial Institutions or Service Providers	Research Institutions
National Community Reinvestment Coalition	Electronic Transaction Association	Opportunity Fund	Urban Institute
Center for American Progress	American Bankers Association	Clarifi	Hoover Institution
Housing and Education Alliance		Center for the Study of Financial Innovation	
Woodstock Institute		Brookings Institution	

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<b>Consumer Advocacy Groups</b>	<b>Industry Trade Groups</b>	<b>Individual Financial Institutions or Service Providers</b>	<b>Research Institutions</b>
Opportunity Fund			

Summer 2018

**Individuals**

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Anna Laitin

Celia Winslow

Chi Chi Wu

Christopher Odinet\*

David Pommerehn

Duane Pozza\*

Ed Mierzynski

Francis Creighton

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Jesse Van Tol

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Kathleen Engel

Lauren Saunders

Laurie Goodman

Lisa Donner

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*\*signifies unaffiliated academic  
or practitioner*