

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



Consumer Financial  
Protection Bureau

July 23, 2020

## Briefing memorandum for the Director

### Taskforce on Federal Consumer Financial Law Monthly Check-in

<b>DATE</b>	Thursday, July 23, 2020
<b>TIME</b>	1:00 pm – 1:30 pm Eastern
<b>LOCATION</b>	WebEx
<b>PARTICIPANTS</b>	Matt Cameron, Assistant Director, OSM Todd Zywicki, Taskforce Chair Nat Weber, Taskforce Staff Director Tom Pahl, Deputy Director
<b>STAFF CONTACT</b>	Matt Cameron, Assistant Director, x [Redacted]
<b>POLICY ASSOCIATE</b>	Andrew Duke, Policy Associate Director, CEEA, x [Redacted]
<b>DIRECTOR APPROVAL</b>	Delicia Hand, Deputy Associate Director, CEEA, x [Redacted]

## Objective

The primary objective of this meeting is to provide you with a status update related to the Taskforce on Federal Consumer Financial Law's (Taskforce) work.

## Timing Considerations

The Taskforce governance documents state that the Director or her designee will hold monthly check-in meetings with the Taskforce Chair and the Staff Director, but there are no specific deadlines or other timing considerations to consider for this meeting.

Andrew Duke

Digitally signed by  
Andrew Duke  
Date: 2020.07.21  
07:46:58 -04'00'

## Background

The Taskforce will (1) examine the existing legal and regulatory environment facing consumers and financial services providers; and (2) report its recommendations for ways to improve and strengthen consumer financial laws and regulations, including recommendations for resolving conflicting requirements or inconsistencies, reducing unwarranted regulatory burdens in light of market or technological developments, improving consumer understanding of markets and products, and identifying gaps in knowledge that should be addressed through future Bureau research.

Pursuant to the Taskforce Roles and Responsibilities document, the Staff Director and Taskforce Chair will hold a monthly check-in with the Director to provide status updates on its work. The Staff Director will utilize the attached milestone schedule in **Tab 1** to discuss accomplishments to date, work currently in-progress, planned work, and risks that the team is working to mitigate. The Taskforce Chair will use the attached Chapter Outline in **Tab 2** to discuss the evolution of the report's contents and its progress. The Chair will also share requests for resource support, any support needed in addressing dissent, or scope clarification questions that may require executive input.

This is the sixth monthly check-in with the Staff Director and Taskforce Chair, but this is the first monthly check-in with Nat Weber serving as Staff Director. Your last interaction with the Taskforce Chair and Staff Director occurred a week ago at the Taskforce Public Hearing held as part of Consumer Financial Protection Week. Your last required monthly meeting with the Taskforce Chair and Staff Director was the June 25 Monthly Check-in. Below is a brief update that the Staff Director and Chair will expound upon during the monthly check-in.

### **Internal Bureau & External Engagements**

- The Taskforce held a two-hour Public Hearing on July 16, 2020 during Consumer Financial Protection Week. You made opening remarks at the event. The Taskforce conversed with a panel of four academic experts in the field of consumer financial protection. Information developed during the hearing is expected to help guide Taskforce work. The conversation generally revolved around five topics:
  1. Legal framework of consumer protection
  2. Consumer information and education

3. Competition and innovation
4. Inclusion and access
5. Regulatory modernization and flexibility

A recording of the discussion will be put on the Bureau website, and a transcript will be ordered. Additionally, the team will highlight useful recommendations and research discussed during the hearing so it can be considered for inclusion in the report. **Tab 6** contains information related to the Public Hearing.

- Earlier in the year, the Bureau issued a Request for Information (RFI) on March 27, 2020. The comment period closed on June 1, 2020. During the Taskforce four-day meeting held the week of June 15 – 19, Taskforce members were initially briefed on the RFI responses based on a preliminary review of the submitted material. A final summary of the RFI feedback is provided in **Tab 4**.
- In conjunction with the RFI, to ensure Taskforce members are made aware of the diversity of views held by consumer groups and trade organizations in case the COVID-19 pandemic limited the ability of stakeholders to submit comments to the RFI, Taskforce support staff researched, summarized, and recorded publicly available stakeholder views to supplement responses to the RFI. Taskforce members were initially briefed last month on the collected material along with the RFI briefing. A final summary of the Public Research findings is provided in **Tab 5**.
- The Taskforce continues to implement its state and federal outreach plan. It is guided in this effort by the attached state and federal outreach plan located in **Tab 3**. The next event in this outreach effort is a meeting with the Conference of State Bank Supervisors (CSBS). The Taskforce Chair was set to meet with officials from this group on July 15, but the meeting was postponed by CSBS a few days prior to the event. Efforts are underway to reschedule and conduct this meeting sometime on or before July 24.
- The support team will engage with the Intergovernmental team to begin arranging meetings throughout August for the Taskforce Chair to engage with key stakeholders from each of the state and federal organizations listed in **Tab 3**.
- Efforts will be made in August to begin the process of sharing with Bureau senior leadership the overall direction of the Taskforce's initiative.

## Report Progress

- The Taskforce members will generate a two-volume report, which will be informed by the public, meeting with Bureau experts, and leveraging members' past insights and expertise.
- For the first volume of the report, members will analyze data regarding the benefits and costs of consumer financial products and services and review the existing consumer financial regulatory framework to develop a common understanding of the history and current state of federal consumer financial laws and their influence on the marketplace.
- This week, starting Tuesday and working thru Friday, the Taskforce is meeting via WebEx in two-hour sessions, twice a day. The Taskforce continues with peer review and discussion of the 13 chapters of Volume I that are now nearing final form. Only part of this week's meeting will focus on Volume I. Most activity during the week will be the continued formulation of the recommendations to be captured in Volume II.
  - The team is moving forward with action items formulated during the Taskforce meeting during the June 15 – 19 gathering. Completion of some of these items requires outreach to other Bureau stakeholders with specialized knowledge. The requests for this support in researching or drafting small, well-defined scopes of work continues. A comprehensive list of requests can be shared upon request.
  - The Taskforce pivot to the future from its work to date on the history and current state of consumer financial protection has arrived as the group begins the process of forming specific recommendations for improvements to the protection system. These recommendations will be passed to you in Volume II of the report.

## Attachment

Tab 1: Taskforce Milestone Schedule Draft.

Tab 2: Draft Taskforce Chapter Outline.

Tab 3: Taskforce State and Federal Outreach Plan.

Tab 4: RFI Summary.

Tab 5: Public Research Summary.

Tab 6: Public Hearing Record.

Tab 7: Taskforce Key Points Document.

# July 23 Monthly Check-In Summary

Milestone	Target Deadline	Notes	Risks
4	Request for Information (RFI)	April 2020 Summaries completed on 7/17	Feedback from public may be limited due to COVID-19, so the team will rely heavily on Call for Evidence feedback as well as public research
6	Advisory Committee Listening Sessions	March 12-13, 2020 New milestones have been added to this document account for an updated public engagement plan.	Pandemic impacted the teams external engagement strategy. An updated public engagement plan was released via blog.
9	Obtain all research needed to begin crafting Volume I	June 2020 Only targeted ad hoc inquiries remain.	
10	Draft topic and theme analyses (i.e. Vol I of the report)	August 2020 Secondary peer review is being conducted July 21.	Members are writing concurrently to avoid delays. The team paralegal will serve as a copy editor to ensure the report reads as though it was drafted by a single author as much as possible
11	First Draft Recommendations (i.e. Vol II)	October 2020 July 22-24 team will develop a majority of recommendations	
12	Public hearing	July 16, 2020	State and Federal engagement events to be added to the milestone schedule when final.

Status Key

Not started	No risk
At risk	Pending
Complete	Cancelled

# July 23 Monthly Check-In Summary

Milestone	Target Deadline	Notes	Risks
13	ABC Listening Session	September 3, 2020 Recently added public engagement event. Details to be shared prior to finalization.	This will replace the March 13 ABC Listening Session, and will be used to refine final recommendations.
14	Engage Federal and State Partners on potential recommendations	September-October 2020 Strategy for engagement in final stages and will be shared.	
15	Finalize recommendations	November 1, 2020 Team plans to be onsite 10/5-9 for last meeting to add new content	
16	Refine report contents	November 2020 Team plans to be onsite 11/16-20 to conduct final revisions of report.	
17	Submit initial draft to clearance	November 24, 2020 On schedule to enter clearance on 11/24.	Team working to develop clearance process by early fall.
18	Final report delivered to Director	January 29, 2021	
19	Provide Bureau Stakeholders a readout	January 8, 2021 This will not be the first time Bureau stakeholders have gotten to see the report, but it will be the first it is shared in totality.	The team will work to avoid details leaking.
20	Provide Prudential Regulators a readout		
21	Publish Report	End of January 2021	

Status Key

Not started	No risk
At risk	Pending
Complete	Cancelled

# Milestone Schedule

	Jan – Mar 2020	Apr – Jun 2020	Jul – Sep 2020	Oct – Dec 2020
<b>Initiation</b>		Present – Mid-March		
1. Onboard Taskforce Members 2. Onboard Taskforce Support Staff 3. Define all opportunities for review				
<b>Prioritize, Learn, and Confirm</b>				
4. Public Request for Information 5. Roundtables 6. ABC Listening Sessions 7. Bureau Meetings 8. Draft Working Table of Contents for Volume I		February - April		
<b>Analysis</b>			March - July	
9. Obtain Research needed to begin crafting full report 10. Draft topic and theme analyses (i.e. Volume I of the report) 11. Draft Recommendations (Vol II)				
<b>Recommendations &amp; Engagement</b>			July - November	
12. Public Hearing 13. ABC Listening Sessions 14. Engage Federal and State Partners on potential recommendations 15. Finalize recommendations				Report Enters Clearance 11/24
<b>Clear, Socialization &amp; Close Out</b>			Late November - Feb	
16. Refine report contents 17. Submit initial draft to clearance 18. Final Report				

# High Level Schedule

	Jan 2021	Feb 2021	Mar 2021	Apr 2021
<b>Socialization</b>				
19. Provide Bureau Stakeholders a readout				
20. Provide Prudential Regulators a readout				
21. Publish Report				
22. Send report to Hill offices				
23. Conduct outreach on legislative recommendations				
<b>Closeout</b>				
24. Ensure records management requirements are met				
25. Taskforce Members Offboarding				
26. Director reviews report				
27. Create actionable plan to implement Taskforce recommendations				
28. Taskforce Support Staff Offboarding				
29. Taskforce Charter Expires				

## Volume 1: Detailed Outline

### I. Introduction (**Tom**)

- a. History of Consumer Financial Protection Reform Efforts
  - i. Early History: The Russell-Sage Foundation
  - ii. The National Commission on Consumer Finance
- b. The scope of the Taskforce report
- c. Summary of the Taskforce Findings and Recommendation
- d. Appendix: Recommendations of the NCCF in 1972

*Status: Draft ready for final review*

### II. Extent and Growth of Consumer Credit (**Tom**)

- a. Development of consumer credit economy
- b. Consumer Credit Growth
- c. Consumer Credit Growth and Means of Repayment
- d. Distribution of Consumer Credit Within the Population
- e. Measurements of Consumer Credit

*Status: Draft ready for final review*

### III. Demand for Consumer Credit (**Tom, Todd**)

- a. Neoclassical Economic Theory of Consumer Credit Demand
  - i. Life-cycle model
  - ii. Time-shifting of consumption model
  - iii. Evidence
- b. Behavioral Economics Theory of Consumer Credit Usage

*Status: Draft ready for final review*

### IV. Supply of Consumer Credit (**Greg & Tom**)

- a. Intermediation
- b. Costs of lending
- c. Revenues
- d. Breakeven APRs
- e. Price & competition

*Status: Draft ready for final review*

### V. Small Dollar (**Greg, Tom, Todd, & Howard**)

- a. There is no solution
- b. Juster and Shay: Credit rationing
- c. Lifecycle model
- d. Cycle of “Debt”/“Debt Trap”
- e. History: Competition & Regulatory Segmentation

*Status: First draft reviewed and undergoing final edits*

VI. Consumer Credit Regulator Principles (**Todd**)

- a. History of consumer financial protection
  - i. State regulation: Substantive regulation
  - ii. Federal regulation: Disclosure regulation
  - iii. Dodd-Frank
- b. Three-legged stool (competition, common law, regulation)
- c. Rise of Federal Presence
- d. Sources of market failure
  - i. Information asymmetry
  - ii. Market power/markets where consumers don't choose
    - 1. Debt Collection
    - 2. Credit Reporting Agencies
    - 3. Mortgage Servicers
  - iii. Externalities
- e. Evaluating Regulation
- f. Measuring regulation

*Status: Second draft ready for reviews*

VII. Information and Disclosure (**Howard**)

- a. Costs of Information and imperfect information
- b. Markets for information
  - i. Consumer Credit Cards (e.g., creditcards.com)
- c. Information asymmetry
- d. Transaction costs
- e. TILA
  - ii. Reduced costs of shopping

*Status: Second draft ready for reviews*

VIII. Competition (**Bill**)

- a. Competition value
- b. Regulatory segmentation
- c. Dodd-Frank (adverse impact → promoting consolidation)
  - iii. Competition promoted product improvement and innovation
- d. FinTech / New competitive landscape
- e. Competition/innovation
  - iv. Walmart

*Status: First draft ready for peer review*

IX. Innovation (**Bill**)

- a. FinTech: Potential & Risk
- b. Open banking
- c. Regulatory Framework
  - v. Flexible regulatory framework for innovation
- d. Principled v. Prescriptive
  - vi. Cooperative Regulator
    1. Potential for partnering between regulatory and trade for market improvements
    2. Tech sprints
  - vii. Regulatory sandbox
- e. Regulatory modernization
- f. Alternative data

*Status: First draft ready for peer review*

X. Financial Inclusion (**Todd**)

- a. Importance and why it matters
- b. Market incentives to expand access
  - viii. Credit scoring
  - ix. Competition
- c. Regulations Expand Access: Equal Credit Opportunity Act
- d. Regulations that block access

*Status: First draft ready for peer review*

XI. Privacy and Data Security (**Howard**)

- a. Use of data
  - x. Costs and benefits
- b. Price discrimination (virtues and concerns)
- c. Data breaches
- d. Payment security
- e. Fortress mentality/Big Data
- f. Global Data Protection Regulation (GDPR)
- g. Alternative data: Secondary uses of data
- h. Credit Reporting

*Status: Detailed outline peer reviewed; updates and draft in-progress*

XII. Financial Literacy and Education (**Greg and Todd**)

- a. Financial Empowerment
- b. Wealth Mobility
- c. Student Loans and deficits of the system
- d. Behavioral Economics
- e. Effectiveness

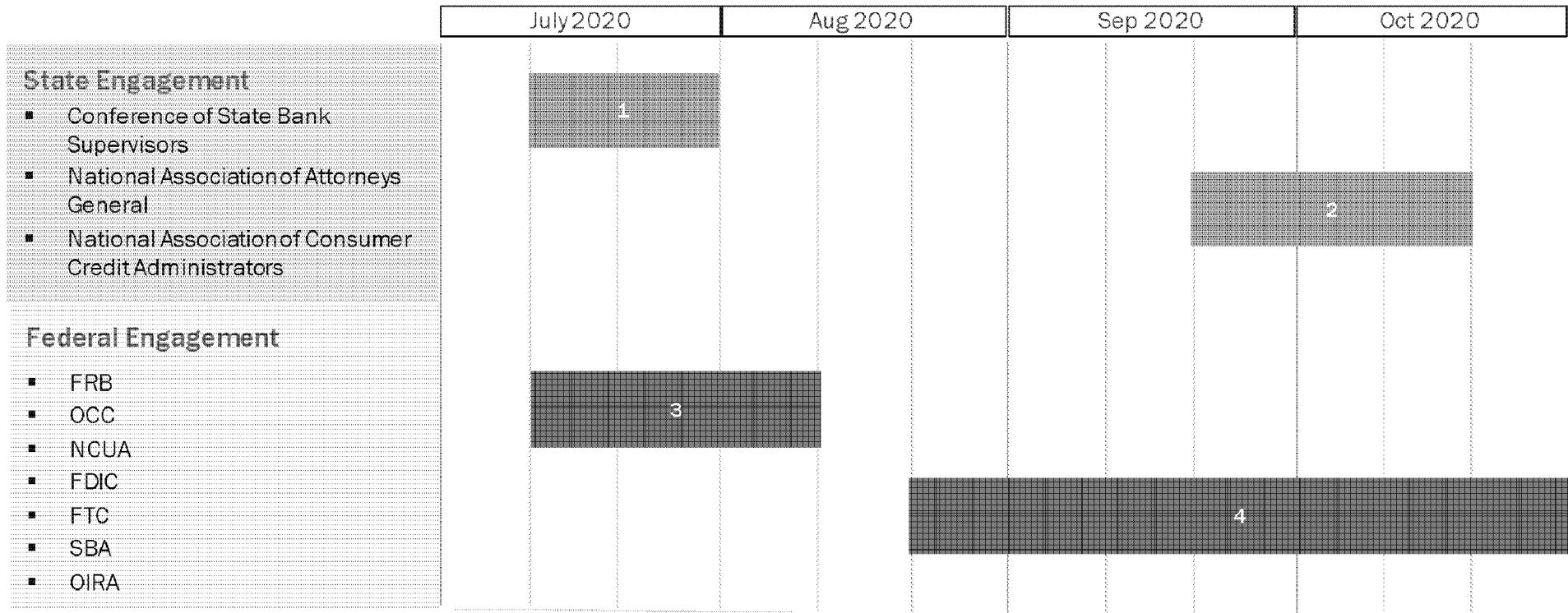
*Status: Detail outline complete; draft in-progress*

XIII. Regulatory Modernization Framework (**All, to be fleshed out more**)

- a. Interagency
  - xi. Current state: Considerations of overlaps & gaps, overlap, gaps—CFPB is the expert in consumer financial protection and has the overall view of consumer welfare with a broad view across markets
- b. Federalism
- c. Regulatory Modernization
- d. Regulatory Effectiveness

*Status: Detailed outline complete; first draft to be initiated*

# High Level State & Federal Engagement Plan



	Event	Target Date	Participant	Event Goal
1	Initial engagement	7/13-31	Todd Zywicki	Chair joins a summer call to share Taskforce scope and initial outline of state-federal issues in scope. Offers an email address for individuals to share areas of state-federal interaction that they would be interested in seeing included in the report.
2	Share and refine state recommendations	9/21-10/23	Todd Zywicki	Chair follows up in fall to share and refine recommendations.
3	Initial engagement	7/13-8/10	Todd Zywicki	Chair joins a summer call to share Taskforce scope and initial outline of federal issues in scope. Offers an email address for individuals to share areas of jurisdictional overlap that they would be interested in seeing included in the report.
4	Share and refine state recommendations	8/24-10/30	Todd Zywicki	Chair follows up in fall to share and refine recommendations.

# Taskforce RFI Responses

Summary Report

# Table of Contents

<b>TABLE OF CONTENTS.....</b>	<b>2</b>
<b>INTRODUCTION.....</b>	<b>4</b>
<i>Background and Purpose.....</i>	4
<b>1. RFI RESPONSES.....</b>	<b>5</b>
<i>Overview.....</i>	5
<i>Our Approach.....</i>	6
<i>Representative Sentiments.....</i>	9
1. Banking Services.....	9
2. Payments.....	11
3. Promoting Competition in Banking.....	12
4. Short-Term, Small Dollar Credit.....	13
5. Alternative Data .....	15
6. Disparate Impact.....	16
<i>Disagreement between Industry Groups.....</i>	17
CONSUMER DATA.....	19
<i>Representative Sentiments.....</i>	20
7. Protecting Consumer Data.....	20
8. Accuracy of Consumer Data.....	23
9. Data Breach Laws.....	24
10. FinTech .....	25
<i>Disagreement between Industry Groups.....</i>	26
THE REGULATIONS.....	27
<i>Representative Sentiments.....</i>	28
11. Regulatory Gaps.....	28
12. Regulations to Clarify .....	30
13. Regulatory Modernization.....	33
14. Regulatory Principles.....	36
FEDERAL AND STATE COORDINATION.....	38
<i>Representative Sentiments.....</i>	39
15 and 16. Overlapping Federal Jurisdiction and Changes to Jurisdiction.....	39
17. Federal and State Cooperation.....	41
18. Overlapping Federal and State Law Effects on Small Institutions.....	43
IMPROVING CONSUMER PROTECTION.....	44
<i>Representative Sentiments.....</i>	45
19. Market Performance.....	45

**DRAFT DELIBERATIVE / CONTAINS SPECULATIVE MATERIAL, NOT FOR DISTRIBUTION**

20. Disclosures.....	47
21. Remedies for Law Violations.....	49
22. Bureau Tool Choice.....	50
23. Assessing Success.....	52
ADDITIONAL NOTES.....	53

**APPENDIX A:..... INDEX OF COMMENTER ACRONYMS**

**54**

# 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:

<b>Commenter Type</b>	<b>Number of Comments</b>
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

---

<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.

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?

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 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

---

**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

Individual  
Financial  
Institutions or  
Service  
Providers

**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

---

**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

Academic

**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
	<p><b><u>Facilitating transactions cannot be separated from the banking system:</u></b></p> <p>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.</p> <p>– Innovative Payments Association</p>
Trade groups	<p><b><u>Faster payment services are needed:</u></b></p> <p>"[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</p>
	<p><b><u>Splitting the banking / transaction services systems is risky:</u></b></p> <p>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</p>
	<p><b><u>Real-time payments are essential to modernization of financial services market:</u></b></p> <p>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</p> <hr/> <p><b><u>No jurisdiction:</u></b></p> <p>Academic The Bureau does not have jurisdiction over whether payments services should be tied to banking system. – Susan Block-Lieb</p>

### 3. PROMOTING COMPETITION IN BANKING

Commenter Type	Representative Sentiments
	<b><u>Data portability can help:</u></b>
	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
Trade groups	<b><u>FinTech regulation gap hurts competition:</u></b>
	"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
	<b><u>Focus on law-breakers:</u></b>
Academic	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
	<b><u>No jurisdiction:</u></b>
	The Bureau does not have jurisdiction to promote competition in banking services. – Susan Block-Lieb
Individual	
Financial	<b><u>Third-party applications are risky:</u></b>
Institutions or Service Providers	The Bureau must look at risks posed to consumers surrounding the use of third-party applications and cybersecurity/fraud. – Suncoast Credit Union
Individual Consumers	<b><u>Competition by itself does not produce consumer benefits.</u></b>
	- Lea Williams

## 4. SHORT-TERM, SMALL DOLLAR CREDIT

Commenter Type	Representative Sentiments
<b><u>Credit Unions and Payday lenders are not the same:</u></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	
<b><u>APR is a meaningful measure:</u></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	
“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	
<b><u>End disparate treatment of prepaid products:</u></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.	
Trade groups	– Innovative Payments Association
<b><u>Encourage experimentation with terms and pricing / APR is not meaningful:</u></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	
“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	
<b><u>Ability to Repay is good:</u></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 Netwrk	

**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%.<sup>32</sup> 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)

---

**No jurisdiction:**

Academic

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><u>Congress should amend FCRA to allow for cash-flow data:</u></b>	
	<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><b><u>Modernize credit underwriting standards:</u></b></p>
Trade groups	<p>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 Institututue</p>
	<p><b><u>Provide clear rules and directives:</u></b></p>
	<p>"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</p>
	<p><b><u>Do not regulate alt data in credit models:</u></b></p>
Individual	<p>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</p>
Financial	<p><b><u>Consider alternative factors using ECOA framework:</u></b></p>
Institutions or Service	<p>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.</p>
Providers	<p>– Mastercard</p>
	<p><b><u>Do not address alt data:</u></b></p>
Academic	<p>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</p>

## 6. DISPARATE IMPACT

Commenter Type	Representative Sentiments
<b><u>Disparate Impact is not legitimate:</u></b>	
	<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	<b><u>Bureau should adopt Inclusive Communities holding:</u></b>
	<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>
<b><u>Do not clarify or otherwise change position on Disparate Impact</u></b>	
	<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>

## DISAGREEMENT BETWEEN INDUSTRY GROUPS

Topic	Disagreement
	<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>
	<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>

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
	<b><u>GLBA is sufficient:</u></b>
	“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
	<b><u>GLBA can be improved:</u></b>
	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
	<b><u>Update FCRA:</u></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
Trade groups	“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
	“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
	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

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

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:**

"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)

Consumer advocacy groups

"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)

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

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:**

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

**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

---

## 8. ACCURACY OF CONSUMER DATA

Commenter Type	Representative Sentiments
	<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>
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>
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><u>Create a national 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>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><u>Create a national standard:</u></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><u>The Bureau cannot preempt state law:</u></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><u>Issue a specific RFI on data breaches:</u></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>

## 10. FINTECH

Commenter Type	Representative Sentiments
	<b><u>Bureau should increase supervision and exams of Fintechs:</u></b>
	"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
	<b><u>Subject data aggregators to regulation:</u></b>
Trade groups	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
	<b><u>Update FCRA to include cash flow data:</u></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
	<b><u>States can innovate without federal intervention:</u></b>
Consumer advocacy groups	"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)

## DISAGREEMENT BETWEEN INDUSTRY GROUPS

Topic	Disagreement
<b><u>Strength of GLBA:</u></b>	
Protecting consumer data	<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

Topic	RFI Question
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
	<b><u>The Bureau should create a consumer financial data right under section 1033 of the DFA:</u></b>
	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
	<b><u>Prepare for next crisis:</u></b>
Trade groups	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
	<b><u>Subject data aggregators to regulation:</u></b>
	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
	<b><u>Close gaps in proposed FDCPA rule:</u></b>
	“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
	<b><u>Define larger participants in more markets:</u></b>
Consumer advocacy groups	“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)
	<b><u>There are major gaps to be filled:</u></b>
	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
	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

Individual consumers	<p><b><u>Do not reduce consumer protections:</u></b></p> <p>We need strong enforceable regulations to protect consumers. No changes should be made that reduce consumer protection especially during the pandemic. – Carol Kenner</p>
Academics	<p><b><u>Cost / Benefit analysis is not possible:</u></b></p> <p>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</p>

## 12. REGULATIONS TO CLARIFY

Commenter Type	Representative Sentiments
<u>Clarify auto rules:</u>	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
<u>Create a national data privacy standard:</u>	“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
<u>ATR/QM discriminates against affiliate business arrangements (AfBAs):</u>	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
<u>Clarify TRID confusion:</u>	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
<u>Clarify definitions within and across regulations:</u>	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

**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)

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)

**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)

---

**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

---

**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

---

## 13. REGULATORY MODERNIZATION

Commenter Type	Representative Sentiments
	<b><u>Modernize or eliminate E-SIGN:</u></b>
	<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 Institututue</p>
	<b><u>Modernize Reg E:</u></b>
	<p>Modernize Regulation E and all other existing rules and statues 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>
	<b><u>General Recommendations:</u></b>
Trade groups	<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 faciliate 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 appriopiate use of alternative data to determine credit worthiness. – US Chamber of Commerce</p>
	<b><u>Update and harmonize rules with e-disclosure or advertisement requirements:</u></b>
	<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>
	<b><u>Don't restrict payday:</u></b>
	<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>

**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)

Consumer advocacy groups

**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)

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

---

**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>          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>          “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>          - US Chamber of Commerce</p>
Consumer advocacy groups	<p><b><u>Preference safe harbors:</u></b>          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>          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>
Individual Financial Institutions or Service Providers	<p><b><u>Precise rules are best:</u></b>          “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>
	<p><b><u>Avoid “one size fits all” rules:</u></b>          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>

**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
-

# 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?

## 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
Trade groups	<p><b><u>Leave credit union supervision to the National Credit Union Administration.</u></b></p> <ul style="list-style-type: none"> <li>- Credit Union National Association</li> </ul> <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> <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>

**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)

---

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

---

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
	<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>
Trade groups	<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 in 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>

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>

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

Commenter Type	Representative Sentiments
----------------	---------------------------

*No RFI responses to this question were recorded*

---

# 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

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.

## 19. MARKET PERFORMANCE

Commenter Type	Representative Sentiments
	<p><b><u>The auto market is fair, transparent, competitive and self regulating.</u></b></p> <ul style="list-style-type: none"> <li>- Association of Dealership Compliance Officers</li> </ul>
Trade groups	<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>

**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

---

Academics

## 20. DISCLOSURES

Commenter Type	Representative Sentiments
	<p><b><u>Revise overall approach to oral disclosures:</u></b>  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>  (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> <p>Trade groups  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>  “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>  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> <p>Consumer advocacy groups  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>  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>  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 guidelines 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

---

**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

**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

---

Academics

## 21. REMEDIES FOR LAW VIOLATIONS

Commenter Type	Representative Sentiments
<b><u>Do not fine small businesses:</u></b>	
	<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." – National Federation of Independent Businesses</p>
<b><u>UDAAP policy is good:</u></b>	
Trade groups	<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>
<b><u>Do not limit remedies:</u></b>	
Consumer advocacy groups	<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>
<b><u>Criteria for remediation:</u></b>	
Academics	<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">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-rfi-comment-bcfp-external-engagement">https://www.consumerbankers.com/cba-issues/comment-letters/cba-rfi-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>

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)

---

**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.”

Academics  
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>
	<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>
Individual Consumers	<p><b><u>Review consumer complaints to assess success.</u></b></p> <p>- Linda Schneider</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

Acronym	Definition
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.msbassociation.org/">https://www.msbassociation.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.

<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>

# Taskforce RFI Public Research

Summary Report

# Table of Contents

<b>TABLE OF CONTENTS.....</b>	<b>2</b>
<b>INTRODUCTION.....</b>	<b>4</b>
<i>Background and Purpose.....</i>	4
<b>1. PUBLIC RESEARCH.....</b>	<b>6</b>
<i>Overview.....</i>	6
<i>Our Approach.....</i>	7
<b>EXPANDING ACCESS.....</b>	<b>9</b>
<i>Representative Sentiments.....</i>	11
1. Banking Services.....	11
2. Payments.....	12
3. Promoting Competition in Banking.....	13
4. Short-Term, Small Dollar Credit.....	14
5. Alternative Data.....	16
6. Disparate Impact.....	18
<i>Disagreement between Industry Groups.....</i>	19
<i>Agreement between Industry and Consumer Advocacy Groups.....</i>	19
<b>CONSUMER DATA.....</b>	<b>20</b>
<i>Representative Sentiments.....</i>	21
7. Protecting Consumer Data.....	21
8. Accuracy of Consumer Data.....	24
9. Data Breach Laws.....	25
10. FinTech.....	27
<i>Agreement between Industry and Consumer Advocacy Groups.....</i>	28
<b>THE REGULATIONS.....</b>	<b>29</b>
<i>Representative Sentiments.....</i>	30
11. Regulatory Gaps.....	30
12. Regulations to Clarify.....	31
13. Regulatory Modernization.....	32
14. Regulatory Principles.....	33
<b>FEDERAL AND STATE COORDINATION.....</b>	<b>34</b>
<i>Representative Sentiments.....</i>	35
15. Overlapping Federal Jurisdiction.....	35
16. Changes to Jurisdiction.....	36
17. Federal and State Cooperation.....	37
18. Overlapping Federal and State Law Effects on Small Institutions.....	38

DRAFT DELIBERATIVE / CONTAINS SPECULATIVE MATERIAL, NOT FOR DISTRIBUTION

IMPROVING CONSUMER PROTECTION.....	39
<i>Representative Sentiments</i> .....	40
19. Market Performance .....	40
20. Disclosures.....	41
21. Remedies for Law Violations.....	43
22. Bureau Tool Choice.....	44
23. Assessing Success.....	45
<b>APPENDIXA:</b> .....	<b>ENTITIES</b> 46

# 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 commented on

**DRAFT DELIBERATIVE / CONTAINS SPECULATIVE MATERIAL, NOT FOR DISTRIBUTION**

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

## 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

---

<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.

**DRAFT DELIBERATIVE / CONTAINS SPECULATIVE MATERIAL, NOT FOR DISTRIBUTION**

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?

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

Entity Type	Representative Sentiments
	<b><u>Repeal the Durbin Amendment:</u></b>
Trade groups	"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
	<b><u>Oppose "negative" CRA reforms:</u></b>
Consumer advocacy groups	"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
Individual financial institutions or service providers	<b><u>Expanding Access:</u></b> 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
	<b><u>Establish universal basic accounts for all Americans:</u></b>
Research institutions	"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 <b><u>Strengthen CRA:</u></b> "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

## 2. PAYMENTS

Entity Type	Representative Sentiments
<b><u>Keep transaction services tied to banking system:</u></b>	
Trade groups	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&T, CapOne, Chase, and Wells Fargo). – American Bankers Association
<b><u>Small businesses suffer from reduced mainstream capital, must use fintechs:</u></b>	
Consumer advocacy groups	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
<b><u>Let banks offer short-term, small-dollar credit:</u></b>	
Individuals associated with organizations	“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)

### 3. PROMOTING COMPETITION IN BANKING

Entity Type	Representative Sentiments
Trade groups	<b><u>Repeal the Durbin Amendment:</u></b>
	“[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
Consumer advocacy groups	<b><u>Licensure is good:</u></b>
	ABA runs its own certification program for trust and financial advisors, suggesting they advocate for licensure or certification at some level. – American Bankers Association
Consumer advocacy groups	<b><u>Lower switching costs:</u></b>
	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

## 4. SHORT-TERM, SMALL DOLLAR CREDIT

Entity Type	Representative Sentiments
<b><u>Cap loans at 36%:</u></b>	
Consumer advocacy groups	<p>"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."</p>
Individuals associated with organizations	<p>As with anything that must pass Congress and be signed by the President, a legislative fix to the predatory lending problem won't happen overnight, and some households are already experiencing a cash crunch due to the COVID-19 crisis. Many more families see a cash crunch on the horizon or are at high-risk for a major loss of income in the near future due to job loss or due to having to close their small business.</p> <p>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 than if they took some different steps before and when seeking a loan." – Woodstock Instituteue</p>
<b><u>APR is not an appropriate measure:</u></b>	
Individuals associated with organizations	<p>"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)</p>
<b><u>Innovation can help expand healthy short-term lending:</u></b>	
Individuals associated with organizations	<p>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)</p>
<b><u>Small-dollar credit usage is a symptom of poor financial health:</u></b>	
Individuals associated with organizations	<p>"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 continuoususe, 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.</p> <p>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</p>

DRAFT DELIBERATIVE / CONTAINS SPECULATIVE MATERIAL, NOT FOR DISTRIBUTION

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	
<u>Alternative data can be good for consumers:</u>	<p>Alternate data in credit reporting can help the unbanked and other thin credit file individuals if managed correctly. – Consumer Data Industry Association</p>	
<u>Provide compliance guidance:</u>	<p>Regulators should provide guidance on how banks can demonstrate compliance with fair lending laws when using alt data. – American Bankers Association</p>	
<u>There are big risks for consumers:</u>	<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	<u>Role for Regulators:</u>	<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 defendible. 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>	

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:**

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:**

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
<b><u>DI should apply to alternative loan data:</u></b>	<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><u>DI is a bad standard:</u></b>	<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>
<b><u>American Bankers Association</u></b>	<p>"ABA believes that neither the text nor history of the ECOA support disparate impact liability"</p>
Trade groups	<p>– American Bankers Association</p>
<b><u>Regulators need to clarify DI standards:</u></b>	<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>
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

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

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 decisionmaking, 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

	Topic	RFI Question
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 thirdparty application providers, we believe that the CFPB should also encourage appropriate risk mitigation policies, including third-party liability insurance." – Financial Health Network</p>

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

Consumer advocacy groups

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

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

---

**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

"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

Research Institutions

"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:**

"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

**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>
Individuals associated with organizations	<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> <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>CRA reform should strengthen consumer protections:</u></b></p> <p>CRA 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
	<p><b><u>Aggregators should be held to the same standards as banks:</u></b></p> <p>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> <p><b><u>The Bureau should clarify 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 thirdparty 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	<p><b><u>National data breach and security standards rule:</u></b></p> <p>"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>
Research Institutions	<p><b><u>Congressional action for data protection:</u></b></p> <p>"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><u>Data breach policy proposal:</u></b></p> <p>"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>

DRAFT DELIBERATIVE / CONTAINS SPECULATIVE MATERIAL, NOT FOR DISTRIBUTION

## 10. FINTECH

Entity Type	Representative Sentiments
<b><u>Require fintechs seeking a federal charter to have robust financial inclusion plans:</u></b>	
Consumer advocacy groups	<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>
<b><u>Potential for reduced consumer choice and other risks:</u></b>	
Research Institutions	<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 behaviour by dominant institutions, for example, by enabling them to extract too much consumer surplus.” – Centre for the Study of Financial Innovation</p>
Research Institutions	<p>“Consumers could suffer from material damage caused by the theft of sensitive data – especially as institutions collect and centralise 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>

## AGREEMENT BETWEEN INDUSTRY AND CONSUMER ADVOCACY GROUPS

Topic	Agreement
Protecting Consumer Data	<p><b><u>The Bureau should clarify Reg E to prevent liability for fraudulent transfers:</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 thirdparty 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>

# The Regulations

Topic	RFI Question
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

Entity Type	Representative Sentiments
Trade groups	<b><u>Reg P should cover Data Aggregators</u></b>
	<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	<b><u>1033 Rule for Data Privacy:</u></b>
	<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>
Individuals associated with organizations	<b><u>Section 1071 Rulemaking:</u></b>
	<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>
	<b><u>Special-interest credit program:</u></b>
	<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>

## 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>
	<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 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 thirdparty 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	<p><b><u>Protect older Americans:</u></b></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>

## 13. REGULATORY MODERNIZATION

Entity Type	Representative Sentiments
	<u><b>Update Reg Z (TILA) to fix E-SIGN:</b></u>
	<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	<u><b>Update Reg Z (TILA) Reasonable Demonstration requirements:</b></u> <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>
	<u><b>The Bureau should review all disclosure requirements:</b></u> <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	<u><b>Extend consumer protections to small business loans:</b></u> <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>

## 14. REGULATORY PRINCIPLES

Entity Type	Representative Sentiments
	<p><b><u>The Bureau should promulgate a principles-based 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><b><u>Provide flexible guidance on disparate impact liability:</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>

# 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?

## 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.*

### 15. OVERLAPPING FEDERAL JURISDICTION

Entity Type	Representative Sentiments
-------------	---------------------------

*No content was identified that answered the Bureau’s RFI question on this topic.*

## 16. CHANGES TO JURISDICTION

Entity Type	Representative Sentiments
-------------	---------------------------

*No content was identified that answered the Bureau's RFI question on this topic.*

## 17. FEDERAL AND STATE COOPERATION

Entity Type	Representative Sentiments
Consumer advocacy groups	<b><u>Consumers benefit from overlapping state / federal jurisdiction:</u></b>
	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
	<b><u>Stop federal preemption of heightened state protection laws:</u></b>
	Congress should reverse the law that preempts states' ability to enact their own credit freeze laws. – Americans for Financial Reform

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

Entity Type	Representative Sentiments
-------------	---------------------------

*No content was identified that answered the Bureau's RFI question on this topic.*

# 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

*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.*

### 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
	<b><u>Reg P should cover Data Aggregators</u></b>
	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
	<b><u>Update Reg Z (TILA) to fix E-SIGN:</u></b>
	"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
Trade groups	"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
	<b><u>Update Reg Z (TILA) Reasonable Demonstration requirements:</u></b>
	"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
	<b><u>The Bureau should review all disclosure requirements:</u></b>
	"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
	<b><u>Extend consumer protections to small business loans:</u></b>
Consumer advocacy groups	"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

**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." – Gary Reeder (Financial Health Network)

---

## 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>

## 22. BUREAU TOOL CHOICE

Entity Type	Representative Sentiments
Trade groups	
	<p><b><u>Strengthen Examinations:</u></b></p> <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	<p><b><u>Oppose Regulatory “Sandbox” Schemes:</u></b></p> <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>
	<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> <p><b><u>Restore OFLEO’s previously-strong role in combatting discrimination:</u></b></p> <p>“CFPB should Empower its Office of Fair Lending with enforcement authority to combat discrimination in financial services.” – Consumer Action</p>

## 23. ASSESSING SUCCESS

Entity Type	Representative Sentiments
-------------	---------------------------

*No content was identified that answered the Bureau's RFI question on this topic.*

## 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 individual

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

<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**

Adam Levitin\*

Anna Laitin

Celia Winslow

Chi Chi Wu

Christopher Odinet\*

David Pommerehn

Duane Pozza\*

Ed Mierzwnski

Francis Creighton

Garry Reeder

Gary Cunningham

Ginny O'Neill

Jesse VanTol

Julie Stitzel

Kathleen Engel

Lauren Saunders

Laurie Goodman

Lisa Donner

Luz Urrutia

Michael Barr

Mike Calhoun

Naeha Prakash

Ruth Susswein

Scott Talbott

Sylvia Alvarez

*\*signifies unaffiliated academic  
or practitioner*



## Taskforce on Federal Consumer Financial Law Public Hearing

*July 16, 2020  
3:00pm to 5:00pm Eastern*

**Participants:** Professor Mehrsa Baradaran, University of California, Irvine; Professor Vicki Bogan, Cornell University; Dean Marcus Cole, University of Notre Dame; Professor Vernon Smith; Chapman University

**Taskforce Participants:** Todd Zywicki (Chair), J. Howard Beales III, Thomas Durkin, William Macleod, Jean Noonan

**Taskforce Staff Participant:** Matt Cameron

**Readout:** On Thursday, July 16, 2020, the Taskforce on Federal Consumer Financial Law (Taskforce) met with a panel of four academics to hear ideas and perspectives on the consumer protection legal framework, information and education, competition and innovation, inclusion, and modernizing the financial regulatory framework. Highlights from the meeting included:

*Opening Statements:*

- **Prof. Smith**
  - The fundamental problem we face in asset markets stems from the retringing ability of durable assets.
  - Asset markets can be a problem because they have value in use and value in exchange. These values can become disconnected. Sometimes, for long periods which can lead to price collapse of durable goods (thereby hurting those who have built wealth in the investment of durable goods).
  - When this value disconnects from exchange value, crisis become subject to rational trend based on momentum trading. Disconnected from rationality based on expected fundamental use value, rational expectations are not long, but they are simply trumped by trained volume.
  - Severe sessions like the depression the great recession are balanced sheet recessions because most people's wealth is in their homes.
  - Securities market collapses yield far less fallout, partly because they are less widely held, but much more importantly because margin loan purchases of securities are against call loan debt.

- **Prof. Baradaran:**
  - Accessing money without significant costs or surcharges is an issue hurting poorer people
  - Currently delays in stimulus funding or tax returns are also costly to the poor. For those who finance tax return preparations through refund anticipation checks, evidence suggests they will turn to payday lenders, title loans, pawnshops because these always fill the void where the banking sector fails to do so.
  - The crisis highlighted communities that these issues affect more dramatically, specifically black and brown communities, low income communities, rural communities. Over the last 10 years, as bank mergers have sped up, over 93% of bank closures were in these communities. Rural America has lost over half of its banks. The higher costs on both lenders and financial transaction providers and filling the void, which means that individuals into spending about 10% of their income on financial transactions.
  - 20-25% of the population is unbanked or underbanked. The U.S. banking system is only available to banks with customers, but the banks don't have a mandate to serve in the community. In recent history banks have simply shut down their lower profit branches, which has hit low income communities especially hard. And, if you are outside of the banking system, you must pay a toll to use it.
  - Some of the solutions that have been offered, visual banking, mobile banking, are essential services and will certainly fill needs, but to truly reach the underbanked, you need a physical location. The ability to deposit your cash or take out cash to pay for goods. Until you have that digital account, you are going to rely on these high-cost ATMs or check cashers.
  - One of the ideas that I promoted in a policy solution I think could work is opening up the payment system that is already there and allowing the physical grants. I've suggested the post office as a possibility, there could be others. The idea would be to have a simple checking account. When a small town loses a bank, the University of Delaware estimates the town loses about 20% of their business income. People are innovative and will find resources at hand to do their financial transactions (example of buying one stamp with large check).
  - To go back to first principles, the Fed payment system, the banking system is federally supported, both through FDIC insurance, through the Fed's mandate to serve the public, the fact that many people are left out and they are left out because either their income, or the place that they live is quite frankly undemocratic. That is a problem I believe that this agency could fix.
- **Prof. Bogan**
  - 3 most important kinds of capital are: Human, Social, and Financial capital
  - Important for households to have access to financial markets to build wealth, but there needs to be safeguards
  - One express area of focus for CFPB is regulation is how consumers can access financial markets
  - The manner and frequency of engagement with markets is evolving with the democratization of stock markets via stock trading on smart phones etc.

- Lots of opportunities create a necessity to regulate fintech and changing interactions with financial markets
- **Dean Cole**
  - In the past, some have suggested within the American economy, consumers are affected by each of the legs of a three-legged school stool: market competition, the common for common property, and consumer protection law.
  - There is a 4th leg: jurisdictional competition. This is the defining characteristic of the American economic advantage that no other country has. Jurisdictional competition presents clear advantages in the realm of regulation because regulators don't need to be perfect in order to take action. You can learn both from their own successes, but also from the successes and the states of other regulators. Several of the greatest regulatory achievements in history have been the product of this pattern of regulatory growth through their continual feedback group afforded by jurisdictional competition. Nowhere are the benefits of jurisdictional competition and regulatory learning more evident than in the financial sector, with jurisdictional competition between states, jurisdictional competition between the state and the federal government, and financial markets, the jurisdictional competition does not stop there. Within the federal government there is jurisdictional competition between financial regulators such as the office of the control of the currency, Federal Reserve, FDIC, treasury department at large, and the CFPB. Each of these regulators has a role to play. In other words, monopoly and regulation is just as bad, perhaps even worse than a monopoly in the private sector because regulatory monopolies crowd out regulatory innovation.
  - Tech advances have strengthened each of these four legs, but if one gets out of balance this can be disastrous for consumers. Tech advances have allowed massive advances for lay consumers to make better decisions than ever before. Tech advances and competition have also solved issues in contract law/torts. People get caught being bad. Tech also reinforces data and disclosure requirements, identifying sources of abuse.

*Are there areas in which existing consumer protection laws are inadequate or need to be strengthened to ensure consumers are adequately protected? How can the Bureau use its regulatory tools of rulemaking, enforcement, supervision, and education effectively to maximize consumer welfare?*

- **Dean Cole:** In the realm of consumer protection, particularly with regards to financial regulation, is the scaling back of consumer protection regulation. This is particularly in the area with regard to small lending and payday lending, and what we are seeing more frequently referred to as French tech. It is FinTech apply to the fringes in the economy, things like small dollar loans, payday loans, and those types of devices that are used to help fund the day-to-day activities of low income Americans. One of the advantages that are being afforded by technology is that technology is reducing the cost of borrowing and credit (or wage advances more accurately).

- Historically, brick and mortar payday lenders, small dollar loan facilities have required extensive human capital and extensive labor in order to provide these services. FinTech is now dramatically reducing the cost of this. One of the things we need to have more thoughtful approaches to our how we scale back regulation that was originally designed to protect consumers where they did not have access to information, they did not have access to intermediaries, and the cost of accessing these kinds of resources were very high. Now, the reduction in cost and the availability of information, those regular theory--with regulatory bases will impose costs on low income consumers that are unnecessary and were not helpful and not protecting them from anything other than access to capital.
- One of the things that payment FinTech platforms like WeChat and Alipay, have in common is that they serve poor people without any brick and mortar access to banks. They are the largest movements of capital in the world. And they do it all without brick-and-mortar banks. They were a grassroots development from people circumventing the difficulties of life and in sub-Saharan African by people first using top up vouchers to move money around to convert into cash to the cell phone companies recognizing that this was a mechanism for banking as it applies to low income populations of Africa. If this had been regulated at the outset, poor people in Africa would not have had access to money. Today, the governments in Africa recognize that this is an incredible support to their economy. Some studies have shown anywhere from 10 to 15% increases in GDP for sub-Saharan Africa, directly are tied to mobile money transfer platforms. The same thing could be true in the United States, if we give it a chance. In other words, it would suggest that a state-by-state regulatory approach to FinTech, we can actually learn what are the most effective way of promoting money to low income people, rather than taking a top-down approach from federal regulators that impose solutions that may or may not be optimal, and there is no way to find out if it is optimal without the experiment station of the states.

*What actions can the Federal government take to enhance financial mobility? Do you think that providing information for consumers in disclosures are adequate for protecting consumers? How should disclosures be updated for the electronic age?*

- **Prof Bogan:** There have been several articles in popular press about the 'gameification' of investing. Regular, unsophisticated consumers are playing gamefied sophisticated stock and financial transactions. People are losing tons of money because they don't know what they're doing. One college student killed himself after losing nearly \$750,000. It is critical to provide more education and disclosure to consumers who engage in these fintech apps. We also need more responsibility for management these types of accounts. We need more information for consumers about potential risks. These apps can't be promoted or managed like a gambling app. And there should be some restrictions, like based on age. Furthermore, the Federal government should consider something like the 2009 Credit Card Act. Previously, when you went to a broker, you got advice and expertise. Now, on these apps, you get recommendations to trade against your best interest. It is good if these apps promote access, but it is bad if consumers aren't protected from poor decisions or nudges, based on behavioral economics, subtly matching one to certain trades. The thing about these apps, it is good and bad. It is good

in that transaction costs are low. People have more access. It is bad if they are not regulated such that consumers are protected from being encouraged to make financial choices that are not in their best interest but the best interest of the firm.

- **Prof Smith:** Economist and traders alike already strongly recommend against trend chasing, but no one pays attention. Not certain new disclosures will help resolve this issue.
- **Prof Baradaran:** Millennials have more debt than other generations, burdened with student loans, exposed to two crises, under more pressure, a lot of people that are taking risks and taking out payday loans are acting rationally. Our focus must be on making bad decisions less catastrophic.

*Are there markets where competition is not effective as it could or should be? Are there financial markets where competition does not create beneficial outcomes for consumers? What conditions are limiting competition among financial institutions responding to consumer needs? Are there restrictions, legal barriers, or any other factors that limit financial service organizations providing services to consumers? What trends in FinTech are you seeing today? What studies or regulatory reforms are needed to protect consumers while enhancing competition over the next ten to fifteen years?*

- **Prof Smith:** Incentives of individuals have to be compatible with the objective of the institutions/markets. Supply chains in housing markets have incentive incompatibilities. The Bureau should look into incentive misalignment. For example, loan originators paid upfront fee for a loan, rather than quality. Maybe they should be paid as a percentage of principle payments over time? Shouldn't provide tax incentives for specific assets and not others. Want consumers to be able to make their own judgements and find ways for them to protect themselves.
- **Prof Smith (on general thoughts on behavioral economics in consumer protection):** There's been a lot of talk about try to help consumers make better decisions. Trying to protect them from themselves. I prefer to emphasize the development -- I would like to have consumers able to make their own judgments. And be able and find means of protecting themselves. Because if you will always look for ways to protect consumers from themselves, you are not addressing the problem. It must be in the form of better-informed consumers who are better able to make decisions. Okay. I think at least some part of the Bureau's activities should be directed to that, rather than sort of fix ups.

*Are there regulatory issues that should be addressed at the federal level to promote greater access to consumer financial products and/or services to underserved or unbanked individuals? What do we know about why consumers are outside the financial system? What do you think are the primary barriers to inclusion, and what public policies would reduce them? How do potential new entrances (e.g. Fintechs or traditionally non-financial companies) play a role to increase inclusion?*

- **Prof. Baradaran:** Historically, we've bundled the banks' two services: lending/deposits, and payments. Payments: even FinTech apps use banks on the backend. Deposits: small

accounts aren't good for banks or consumers because they lose money or incur fees. Banks focus on higher profits and larger loans.

- **Chair Zywicki:** Is unhooking transactional/payment systems from banking the answer?
- **Prof. Baradaran:** Depends on which non-bank. Need some oversight. Money-laundering laws raise some barriers to entry, but one would need to see data on how those laws work before saying that non-banks should be able to do payments without complying with AML.
- **Prof Bogan:** I'm beginning to do some work on the unbanked and underbanked population, looking at the FDIC survey of them. One of the things that strikes me: it's not just an issue for lower income household. Over 35% of middle-income households are underbanked (meaning they access alternative financial services). Data suggest that fees are a big way that households are discouraged from interacting with the financial markets. CFPB should consider fee regulation.
- **Dean Cole:** I think the term un/underbanked is psychologically restraining as it elevates the status of banks in our economy. They've been historically important, but they're increasingly under pressure and constrained (largely from brick and mortar populations). Most of the world is increasingly cashless (China and much of sub-Saharan Africa). Mobile money transfer is much more secure, less possibility of theft. Fintech puts banks all around the world under tremendous pressure. You also mentioned Walmart. They have effectively become a bank for the poor in America. It's not a depository, but that's where financial services and transactions are offered. Walmart looks an awful lot like a bank now when you walk in the store. Banks are increasingly focusing on segments of the economy where they have less competition in transactional services, and they are ceding territory where there is high competition. We need to think broadly of how to protect consumers in a more global market.

*How do we protect consumers from new threats while enabling providers to develop new and better ways to serve their needs? The pandemic highlights the need to ensure the Federal government can quickly adjust and provide regulatory flexibilities. How do we create a system that is responsive to acute market disruptions (i.e. 9/11, the 2008 financial collapse, COVID) while providing a stable regulatory framework for consumers?*

- **Prof. Smith:** The Bureau came about addressing endogenous issues. We need to think about addressing exogenous threats. What can CFPB contribute to that beyond a secondary/supplemental role? Though this may require expertise beyond your main function, but you should seek to acquire them.
- **Prof. Bogan:** I agree completely with Prof. Smith. People view CFPB as a resource, which is a good position. The organization must then be nimble enough to respond to disasters. It may be outside the purview to create a system that is responsive to everything catastrophic though. The organization must remain nimble.
- **Prof Baradaran:** You can't predict massive crises, but you can predict events that affect the most vulnerable people. Any major disruption affects those who are vulnerable the hardest. Do not be reactive, create systems that can help the vulnerable before the crisis hits. For example, we did not have a system to send payments to every American before

this, which caused problems when we tried. Pay attention to payments and inclusion issues now, so that the problems can be mitigated in crisis later.

- **Dean Cole:** I agree with all of this. There is something instructive from the COVID crisis for CFPB and all regulators—do we want to be Florida, or do you want to be Illinois? If there were a federal response like the response of Florida, this would be an utter disaster. If we had the federal response like IL, we could look like South Korea right now. We need to use the learning laboratory that is the states and the federalist system. If we try to build a huge system that solves all these issues, we could end up looking like FL rather than IL. We need to learn from federalism.

# Taskforce on Federal Consumer Financial Law

---

## Key points

**Key Point 1: The Taskforce on Federal Consumer Financial Law (Taskforce) will examine the existing legal and regulatory environment facing consumers and financial services providers.**

- The Taskforce expects to take one full year in order to produce new research and analysis of Federal consumer financial laws in the United States, focusing specifically on:
  - harmonizing, modernizing, and updating Federal consumer financial laws, including implementing regulations;
  - analyzing ways to improve consumer understanding of markets and products; and
  - identifying potential conflicts or inconsistencies in existing regulations and guidance.

**Key Point 2: The Taskforce will develop a report containing recommendations for ways to improve and strengthen consumer financial laws and regulations.**

- The report will include an analysis of the eighteen enumerated consumer laws and their implementing regulations currently under the Bureau's jurisdiction.
- Report recommendations will seek to:
  - resolve conflicting requirements or inconsistencies in existing consumer financial laws and regulations;
  - reduce unwarranted regulatory burdens in light of market or technological developments;
  - improve consumer understanding of markets and products; and,
  - identify gaps in knowledge that should be addressed through future Bureau research.

**Key Point 3: The Taskforce is in part inspired by an earlier commission established by the Consumer Credit Protection Act (Act) in 1968.**

- The Act established the National Commission on Consumer Finance (NCCF) to conduct original research and provide recommendations relating to the regulation of consumer credit.

- The Commission's report contained original empirical data, information, and analyses—all of which undergird the report's final recommendations. The data, findings, and recommendations from the Commission were all made public and the report led to significant legislative and regulatory developments in consumer finance.
- The establishment of the Bureau follows decades of growth and innovation in financial offerings and credit products available to consumers nationwide since the 1972 NCCF report. Similar to the NCCF, the Taskforce provides an opportunity to provide a new perspective on consumer financial law within the context of recent developments and current products in the United States consumer finance markets.

## Recent Bureau actions or announcements

- On June 8, 2020, the Bureau released a blog post that outlined the Taskforce's commitment to public engagement. <https://www.consumerfinance.gov/about-us/blog/taskforce-federal-consumer-financial-law-charting-path-ahead/>
- On March 27, 2020, the Bureau issued a Request for Information to Assist the Taskforce on Federal Consumer Financial Law. The comment window is 60 days and closes on June 1, 2020. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rfi-to-assist-taskforce-on-federal-consumer-financial-protection-law/>
- On January 17, 2020, the Bureau announced the appointment of one additional member to the Taskforce via press release. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-additional-member-to-taskforce/>
- On January 9, 2020, the Bureau announced the appointment of four members to the Taskforce via press release. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-membership-taskforce-federal-consumer-financial-law/>
- On October 11, 2019, the Bureau announced its intent to form the Taskforce via press release. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-taskforce-federal-consumer-financial-law/>

## Key Q&A

**Q1: How were the Taskforce members selected? More specifically, why are there no consumer advocates on the Taskforce?**

**A1:** Consistent with Section 11 of the Taskforce's Charter, the Bureau sought to assemble members who were experts in consumer financial law with diverse points of view, such as attorneys, economists, and academics with significant experience researching and analyzing consumer financial markets, laws, and

regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, the Bureau sought members who were prominent experts recognized for their professional achievements and objectivity, including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics, and experts from social sciences related to the Bureau’s mission.

The Bureau established and followed a robust selection process, which included a public application period. The Bureau created an internal cross-divisional committee that consisted of Bureau civil servants who reviewed applications, conducted interviews, and made recommendations to the Director for appointment to the Taskforce. Consistent with the criteria established by Section 11 of the Taskforce Charter, the individuals selected are highly skilled and respected professionals who have a wide range of experience, including past public service within the federal government. For example, four Taskforce members served in leadership capacities at the Federal Trade Commission, and the fifth member was a civil servant at the Federal Reserve. Multiple Taskforce members have also served their communities through academia, such as teaching courses on consumer protection law and related subjects.

**Q2: Is this Taskforce a Federal Advisory Committee? What is the Taskforce members employment status with the Bureau? How did the Bureau determine their compensation, how much does the Bureau expect to pay in total salaries for Taskforce members, and are you providing them with benefits?**

**A2:** The Taskforce is an intragovernmental committee and not subject to the Federal Advisory Committee Act (FACA). The Taskforce is focused on producing a comprehensive set of recommendations to the Bureau that the Director may or may not accept. Given the scope, timeline, and time commitment required of Taskforce members, the Bureau determined that it was most appropriate to have the Taskforce members serve as federal employees.

Taskforce members’ compensation was formulated in accordance with the Intergovernmental Personnel Act (IPA) and the Bureau’s standard compensation process. Taskforce members serve on an intermittent schedule and are paid at a set hourly rate, so their total compensation depends on the number of hours they work. The Chair of the Taskforce will not receive compensation from the Bureau, but, pursuant to the IPA, the Bureau will reimburse his employer directly for the hours of work he performs, at an hourly rate of \$141.84. The other four Taskforce members are appointed through the Bureau’s expert hiring authority, and they serve as Special Government Employees (SGEs). As SGEs, their service for the government is limited to 130 days within a one-year period. Their pay was determined through the Bureau’s standard compensation process and is at the CN-71 pay band. They are paid at an hourly rate of \$103.39, including locality pay.

**Q3: Are you concerned about conflicts of interest given that most of the Taskforce members are continuing with outside employment? Did any members receive ethics waivers?**

**A3:** Taskforce members must comply with the applicable conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch, including the provisions governing outside employment and other outside activities found in 5 C.F.R. Part 2635, subpart H. The Bureau is confident that Taskforce members will perform their duties consistent with the highest ethical standards in government service.

One Taskforce member was detailed to the Bureau under the Intergovernmental Personnel Act (IPA) and is considered a regular government employee for purposes of federal ethics statutes and regulations. Four Taskforce members were appointed as Special Government Employees (SGEs) through the Bureau's expert hiring authority and are considered intermittent employees of the Bureau. Agencies benefit from outside perspectives and expertise that would not be possible to obtain if experts were required to forego their private professional lives as a condition of limited government service. Therefore, Congress created the SGE category in 1962, when it recognized the need to apply limited conflict of interest restrictions to experts, consultants, and other advisers who serve the government in an important but limited basis.

Two members of the Taskforce on Federal Consumer Financial Law have received an ethics waiver under 18 U.S.C. § 208(b)(1). As required by 5 C.F.R. § 2640.303, the Bureau formally consulted with the U.S. Office of Government Ethics (OGE) prior to the issuance of each of the waivers. OGE did not object to the issuance of these two waivers from the financial conflict of interest statute. Neither of the Section 208(b)(1) waivers issued to Taskforce members waives conflicts arising from the financial interest of the Taskforce member's non-federal employer. Additionally, all Taskforce members will be prohibited from making a communication to or appearing before the Bureau on behalf of another person or entity to seek official action on any matter, for one year after their Bureau service terminates.

**Q4: What is your response to the consumer groups' lawsuit alleging that the Taskforce violates the Federal Advisory Committee Act (FACA)? How will this lawsuit affect the Taskforce's work?**

**Q4:** The Bureau followed the law in establishing the Taskforce, and we are confident that the court will agree. The Taskforce is an intragovernmental committee and not subject to the Federal Advisory Committee Act (FACA). The Taskforce remains focused on its mission—to develop a comprehensive set of recommendations regarding consumer protection laws.

**Q5: How does the Taskforce plan to engage with the public?**

**Q5:** The Taskforce has engaged and will continue to engage the public to obtain information that will help inform its report and recommendations. For example, on March 10, 2020, the Taskforce engaged in a listening session with members of approximately 12 consumer advocacy groups, industry trade groups, and market participants, representing a cross-section of Bureau stakeholders. In addition, on March 27, 2020, the Bureau issued a Request for Information to Assist the Taskforce, which seeks input from the public to help identify areas of consumer protection on which it should focus its research and analysis during the balance of its one-year appointment. Looking forward, the Bureau intends to

announce details for a public hearing later this summer, at a time and in a format that enables participation consistent with the safety of all participants. The Taskforce also intends to participate in a public listening session with the Bureau’s four advisory committees, which will take place this fall. Insights from the RFI, the public hearing, independent research, and the advisory committee listening session will help inform the recommendations that will ultimately be in the Taskforce’s final report.

**Q6: Why hasn’t the Bureau paused the Taskforce’s work given the impacts of COVID-19?**

**A6:** The Director established the Taskforce to objectively and independently evaluate the current regulatory framework, and the Bureau will use the Taskforce’s analyses and recommendations to, among other things, help inform the Bureau’s discretionary research and rulemaking agendas. Consistent with those goals, the Taskforce Charter provides that the Taskforce is expected to deliver its findings to the Director no later than January 2021. The Taskforce is working diligently to meet this target date.

The Taskforce’s independent status within the Bureau enables it to continue its analysis while the Bureau’s full-time resources are devoted to addressing the Covid-19 pandemic’s immediate effects on the consumers and the market for consumer financial products and services. Thus, the Taskforce has been analyzing and will continue to analyze consumer financial law generally, while at the same time the Bureau has devoted and will continue to devote substantial resources to addressing the pandemic’s economic effects. The Bureau recognizes that many stakeholders have limited resources that they can currently devote to engaging with the Taskforce and may not, for example, have been able to submit as detailed comments to the Request for Information as they would have in normal circumstances. The Bureau is planning additional public engagements, including a public hearing and advisory committee listening session, to ensure that stakeholders have additional opportunities to provide feedback. In addition, the Taskforce’s research includes reviewing and analyzing prior reports, comments, and other analysis that stakeholders have released publicly.

**Q7: How do you foresee the Taskforce conducting a thorough review of all Federal Consumer Financial Laws given the one-year timeline and limitation on the number of days the Taskforce members are able to work? And what will be the cost?**

**A7:** The Taskforce, as led by a Chair and a full time Staff Director, will allocate its time and resources efficiently and effectively and continually prioritize its work. Bureau resources and a core group of Bureau employees will assist in the development of the report. The original cost estimate was approximately \$2.5 million, but we are tracking to come in under budget.

## Bureau timeline

**10/11/2019:** Bureau announced Taskforce and opened application window.

**10/25/2019:** Application window closed.

**1/9/2020:** Bureau publicly announced Taskforce members.

**1/29-31/2020:** Bureau orientation conducted for Taskforce members.

**3/27/2020-6/1/2020:** RFI to assist Taskforce is open for public comment.

**6/8/2020:** Taskforce released a blog outlining its public engagement plan.

**11/24/2020:** Initial draft of Taskforce report to be completed.

**1/31/2021:** Taskforce report will be delivered to the Director.

## Statutory authority

- The Director established the Taskforce pursuant to the Bureau's executive and administrative powers under Sections 1013(a) and 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

## Factsheets & quick references

- [CFPB Announces Taskforce on Federal Consumer Financial Law](#)
- [CFPB Announces Membership of Taskforce on Federal Consumer Financial Law](#)
- [CFP Announces Additional Member of Taskforce on Federal Consumer Financial Law](#)
- [Consumer Financial Protection Bureau Issues Request for Information to Assist Taskforce on Federal Consumer Financial Protection Law](#)
- [Taskforce on Federal Consumer Financial Law charting a path ahead](#)

## Other recent activity

- **Not applicable**

## Background

The Taskforce members are:

*Sensitive and Predecisional Internal Briefing Document DRAFT*

- Dr. J. Howard Beales, III, Emeritus Professor of Strategic Management and Public Policy at the George Washington University and former Director of the Bureau of Consumer Protection at the Federal Trade Commission;
- Dr. Thomas Durkin, Senior Economist (Retired) at the Federal Reserve Board;
- William MacLeod, partner at Kelley Drye & Warren, LLP, Immediate Past Chair of the Antitrust Section of the American Bar Association, and former Bureau Director at the U.S. Federal Trade Commission;
- L. Jean Noonan, Partner at Hudson Cook, former General Counsel at Farm Credit Administration, and former Associate Director the Bureau of Consumer Protection's Credit Practice at the Federal Trade Commission; and
- Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia Law School, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center.

Todd Zywicki is serving as the Chair of the Taskforce. Matt Cameron, Assistant Director of the Office of Stakeholder Management, serves also as Staff Director of the Taskforce.