- **Recent major advances in speech recognition**: In 2010, speech recognition algorithms were only 84% accurate, which is not enough to support natural human conversations. By 2017, advances in deep learning[4] allowed for speech recognition tools to reach human level performance (95% accuracy).[5]
- **Major tech companies have invested heavily in conversational tools.** In 2010. Apple introduced Siri. IBM introduced Watson in 2011. Amazon's Alexa entered the market as in 2014 and Google Assistant appeared in 2016.[6] Now, all the major tech companies- Facebook, IBM, Google Amazon, IBM, Samsung - have invested in chatbots.
- **Consumer are rapidly adopting social messaging applications**: Social messaging applications (e.g. Facebook Messenger) form the infrastructural backbone for many chatbots and consumers have massively adopted these tools. In the U.S. alone, between 2014 and 2019, the number of mobile messaging users has doubled from 83 million to 165.7 million.[7]

Building off of these technological and social trends, the chatbot market appears poised for rapid growth. A recent report by Research and Markets forecasts a 24.43% compound annual growth rate in revenue growth for the sale of chatbots over the next four years, with self-service applications driving adoption.[8] Use of chatbots is still confined to a minority of financial consumers; only 15% percent of consumers have communicated with a business via chatbot in the last 12 months.[9]

Description of leading product

Over the past two years, almost all major multi-line national U.S. banks have started building and deploying chatbots. We've seen fewer offering from the superregional banks, smaller banks, and credit unions.[10] Chatbots have business appeal as a cost-cutting tool and as a means to improve operational efficiencies. Due to heightened interest in artificial intelligence, larger institutions also may feel market pressure to have a viable chatbot to demonstrate their competence and competitiveness in the use of these cutting edge technologies.

Early chatbots have focused on basic services that a consumer generally could obtain by visiting a financial institution's website. They convey information such as the location of the nearest bank or ATM and can give consumers descriptions of available products. Authenticated consumers can retrieve transaction history, account balance, or report lost or stolen cards. For example, Erica, Bank of America's chatbot, permits consumer to view account balances, reset

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[4] Deep learning refers to algorithms, typically neural networks that have multiple hidden layers. The "deepness" of the learning reflects its multiple layers.

[5] ARTIFICIAL INTELLIGENCE INDEX, 2018 ANNUAL REPORT 61 (2018)

[6] Galert, supra note 1.

[7] *Number of mobile phone messaging app users in the United States from 2014 to 2020*, STATISTA.COM, https://www.statista.com/statistics/558300/number-of-mobile-messaging-users-usa/) (last visited May 19, 2019)

[8] Robert Williams,, *Study: Global Chatbot market to grow 24.4% in next 4 years*, MOBILE MARKETER (July 2, 2018), https://www.mobilemarketer.com/news/study-global-chatbot-market-to-grow-244-in-next-4-years/526937/

[9] Alex Debecker, *2019 Chatbot Statistics – All the data you need*, UBISEND.COM, (August 23, 2018, 5:00 PM), https://blog.ubisend.com/optimise-chatbots/chatbot-statistics.

[10] Our current hypothesis is that budget and technological constraints are causing the regionals to lag behind the major multi-line national U.S. banks in chatbot development.

their password, pay bills, locate the nearest ATM, review spending, and search for a specific merchant transaction.

Consumer and business benefits of product

Cost-savings and service efficiencies are driving the current investment in chatbots. According to Juniper Research, a U.K. based consultancy, chatbots save financial institutions between $0.50 and $0.70 per caller interaction[11] by handling calls or portions of calls that a human agent would otherwise have to handle. Chatbots are adept at managing many basic consumer inquiries such as replacing a lost debit card or reviewing transaction history without the intervention of human agent. Chatbots can also help manage more complex calls by highlighting relevant information before turning the interaction over to an agent. Juniper estimates chatbots can save, on average, four minutes of an agent's time. [12] Industry analysts predict that bank cost savings via chatbots will reach $7.3 billion by 2023 as automated customer experience evolves.[13]

Besides offering cost savings, chatbots can also improve the quality of the customer experience. Chatbots enable consumers to have 24-hour, seven days a week conversational contact with their financial institution. When consumers engage with a financial institution's chatbot, they do not need to navigate service menus or suffer through being placed on hold. Instead, the consumer gets instant access to the financial institution. Chatbots do not have the inherent variability of customer service agents (they never get mad or have a bad day) and offer consistent advice when asked similar questions offered by different customers. Some services are simply faster with a chatbot, such as confirming a bank's routing number. Consumers positively associate chatbots with speedy issue resolution. According to a 2018 survey, 61% of respondents thought chatbots resolved an issue or answered a question faster than a live person.[14]

Chatbots can be programmed to track and completely recall a previous customer conversation. This capability can reduce customer friction -- a consumer doesn't have to restart a purchasing or service conversation with a new agent every time the consumer contacts a financial institution.

For some consumers, chatbots, are less intimidating than a live representative. As psychologist Liraz Margalit notes, "a chatbot doesn't need the emotional involvement and interpretation of nonverbal cues required by humans, thus making our interaction with it much easier …." [15] Ken Dodelin, Capital One's VP of Conversational AI, has similarly argued that chatbots provide consumers a "judgment-free zone" to share information with a financial

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[11] Barb Darrow, *Those Annoying Chatbots an Save Business Billions*, FORTUNE (May 10 2017), available at http://fortune.com/2017/05/10/chatbots-business-billions-savings/.
[12] Press Release, Juniper Networks, Chatbots, a game changer for Banking & Healthcare, saving $8 billion annually by 2022 (May 9, 2017), available at https://www.juniperresearch.com/press/press-releases/chatbots-a-game-changer-for-banking-healthcare.
[13] Press Release, Juniper Networks, Bank cost savings via chatbots to reach $7.3 billion by 2023, as customer experience evolves (February 20, 2019), available at https://www.juniperresearch.com/press/press-releases/bank-cost-savings-via-chatbots-to-reach.
[14] Erik Devane, *The 2018 State of Chatbots Report: How chatbots are reshaping online experiences 23*, DRIFT et al., (January 23, 2018), available at https://www.drift.com/blog/chatbots-report/. The report was conducted by Drift, SurveyMonkey, Audience, Salesforce, and myclever. Findings based on a survey of 1,051 adults aged 18-64
[15] Liraz Margalit, The Psychology of Chatbots, Psychology Today, July 8, 2016, available at https://www.psychologytoday.com/us/blog/behind-online-behavior/201607/the-psychology-chatbots.

institution.[16] If a consumer is embarrassed by a financial decision or their debt status, they may feel more comfortable sharing this information with a chatbot than a person.
Finally, chatbots do not depend on any particular platform to function. Chatbots' machine learning algorithms do not need a particular software or hardware, working equally well on a website, a mobile app, or by text.

Product limitations

Chatbots have constraints which are limiting faster deployment.

- **Problems understanding diverse dialects**: Chatbots are trained on a limited number of dialects, so they may not work well for some consumers.
- **Chatbot expertise is typically targeted:** Chatbots have narrow ranges of expertise and it takes a lot of time and data to develop new expertise. For example, Capital One Eno understands over 2,200 terms and emojis people use to ask about their account balances.[17]
- **Lack of available technical talent:** Chatbots also face the same shortage of technologic expertise facing other facets of AI products – namely, companies have problems finding experts to build, maintain, and improve offerings.[18]
- **Some consumers uncomfortable with chatbots:** According to a 2018 survey of chatbot users, 43% of respondents preferred dealing with humans because they worry the chatbot will make a mistake.[19]
- **Chatbots not ready for emotionally nuanced conversations:** Current chatbot technology suffers from weaknesses in understanding human emotions and intent. As Steve Ellis, head of Wells Fargo' Innovation group noted, "[w]hen you get into emotional conversations – [s]omething's wrong with my account, I don't understand this, why can't you do this for me?? – that's different, and most chatbots aren't ready for that."[20]

Future product developments:

Financial institutions are just beginning to explore chatbot use cases. There are significant growth opportunities to expand into conversational banking, predictive AI, and, ultimately, to converting chatbots into true financial digital assistants.

Today's chatbots typically cover a narrow slice of banking and are mostly used as information retrieval tools. Going forward, we can expect banks to increase uses chatbot functionality so that the bots can implement more actions – like money transfers, bill payments, opening new accounts, and setting up appointments. Chatbots also are at the forefront of voice-driven banking. It is not unrealistic to assume that in the near future consumers could use a

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[16] *Artificial intelligence is providing "judgement free" zone to Capital One customers*, YAHOO! FINANCE (January 11, 2019), podcast available at https://finance.yahoo.com/video/artificial-intelligence-providing-judgement-free-155947230.html.
[17] *Capital One's Intelligent Assistant, Why We Built Eno's NLP Tech in House*, MEDIUM (September 26, 2018), available at https://medium.com/capital-one-tech/capital-ones-intelligent-assistant-why-we-built-eno-s-nlp-tech-in-house-8c0007c3c102.
[18] Jim Marcus, *Meet 11 of the most interesting chatbots in banking*, THE FINANCIAL BRAND (MARCH 14, 2018), available at https://thefinancialbrand.com/71251/chatbots-banking-trends-ai-cx/.
[19] Devane, supra note 18, at 28
[20] Brian Patrick Eha, *This is how financial services chatbots are going to evolve*, AMERICAN BANKER (May 26, 2017).

chatbot or Alexa/Siri equivalent to conduct banking while they are driving home from work or jogging or cooking in the kitchen.

After mastering conversational banking, chatbots are next expected to move to predictive AI, where the AI engine makes personalized recommendations to consumers based on their unique financial circumstances. Here are some possible scenarios for an AI engine recommendation:

- Encourage the consumer to cut expenses or request a short-term loan after observing a drop in a consumer's account balance.
- Recommend a travel rewards cards to a consumer who is flying frequently;
- Offer the consumer a loan after observing that the consumer is shopping for a big ticket item;
- Suggest investment options for a consumer who has spare cash at the end of the month.[21]

As chatbots mature, industry experts expect them to evolve into virtual financial assistants that function on the consumer's behalf. For example, a consumer might tell a virtual assistant that it wants to invest $10,000 in a portfolio with medium risk. The virtual agent would then proceed to execute a range of investments meeting this criteria. Alternatively, a consumer could ask the assistant to seek and obtain a loan for $10,000 on competitive terms. The AI would then compare and obtain a loan on the consumer's behalf.

Interviews with Bank of America, Wells Fargo and Citi

As part of this review, Markets staff interviewed the executives at Wells Fargo, Citi, and Bank of America responsible for developing chatbot and related products. Markets conducted its interview with Wells Fargo on April 12, 2019, with Citi on May 9, 2019 and with Bank of America on June 3, 2019. Each interview lasted one hour. The conversations revealed varied business strategies for building out the next-generation customer engagement tools.

Bank of America[22]

Bank of America's (BofA) chatbot program is perhaps the leader in the field. BofA launched its chatbot, Erica, in the spring of 2018. As of May 2019, Erica had seven million users, with 500k+ users adding every month. During this first year, Erica interacted 50 million times with consumers, 47% by tap (touching screen on mobile app), 40% via text, and 13% by voice.

BofA attributes the rapid growth of Erica to strong internal company guidelines and guardrails for implementation. BofA stated that its key principles for its digital users are (1) having the customer's best interest in mind, (2) providing an experience that is relevant and timely, and (3) giving the consumer a choice of a next best step (not prescribing only one action).

BofA identified five stages of chatbot development.

[21] Webinar: The ROI for AI: Converting Conversational AI into Revenue for Banks, delivered by FinTech Futures, Finn AI, and Juniper Research (February 20, 2019)

[22] This section relies on call notes from an interview with Bank of America staff and should be considered business confidential, and is not for external citation or reference.

- **Level 1**: chatbot can answer basic questions (balance inquiry, change of address, and location of ATM or branch). These answers are often similar to what a consumer could find surfing the bank's website. The chatbot operates in a read-only mode, sharing information with the customer, but not performing transactions.
- **Level 2**: chatbot enables consumers to do core banking transactions (bill pay, authorize, transaction, money transfers).
- **Level 3**: chatbot personalizes consumer experience. It proactively prompts user based on activity, providing relevant and timely information, offers, and advice.
- **Level 4**: chatbot provides guidance/strategy based on historical user information (e.g., "you told me six months ago that you were saving for a home with a budget of X, but you're not saving as much as you want"). Proactive feedback on attainment of goals.
- **Level 5**: Full concierge service. The chatbot evolves into a personalized, proactive virtual assistant who can help the customer get the most relevant and timely information, and provide a full range of next step options.

BofA sees all financial institutions moving through this five-level technology progression over the next five to ten years. While almost all other banks are currently no more advanced than level 1, BofA's 2019 roadmap has it moving well into Level 3. BofA attributes Erica's rapid roll-out of features to the company's ability to leverage capabilities from across multiple business units.

- In May 2018, at Erica's public launch, the chatbot offered Level 1 functions such as (i) enabling consumers to search for specific transaction, (ii) offering credit scores, (iii) providing routing number and banking location, (iv) scheduling face-to-face meetings with financial specialists, (v) viewing bills, (vi) scheduling payments, and (vii) locking/unlocking debit cards.
- In October 2018, BofA added several new personalized capabilities:
    - Spendpath: – provides a weekly snapshot of month-to-date spending;
    - FICO Score Tracker: Tracks month-to-month changes to FICO Scores;
    - Subscription monitor: – flags upcoming recurring charges;
    - Credit card bill reminders: Sending alerts for upcoming Bank of America credit card payments due.
- In March 2019, the Bank added (i) recurring charge increase flags, (2) notifications for eligibility for preferred rewards, and (iii) enhanced bill reminders.
- In June 2019, the bank will continue its move into personalized advising by adding "Balance Watch," a feature in which Erica will notify clients when typical spending has the potential to take their balance below $0 in the next seven days
- Forthcoming features in 2019 will include (1) monitoring statements for duplicate charges and (2) "return monitor", which will help consumers see when returns hit their account.

BofA sees chatbots offering business value at Levels 1 and Level 2 by promoting customer ease and convenience. At higher levels, BofA see chatbots generating value by promoting customer trust. BofA said it is not bypassing any of the traditional methods for confirming consumer transaction and consumer intent. For example, if Erica is paying a bill, it will repeat the request back to the consumer (e.g. "You said you would like to pay this bill, correct

BofA noted that customers will vary use of Erica's communication features depending on context. For example, consumers will use the voice function more likely in the home or in the car, where they have privacy and may be multitasking. In a public environment, like a hallway or a bus, text is more appealing because it lets consumers conduct their transactions privately. Some activities, like scanning for a specific credit charge transaction, are simply more efficient via a chatbot. BofA expects that, over time, consumers will reserve phone calls and in-bank visits for high stakes transactions or unusual or expedited requests.

In sum, BofA sees chatbots as a new, innovative platform that will give rise to massive economies that will benefit the consumer and financial institutions.

Wells Fargo:[23]

Wells Fargo advised Bureau staff that the bank is very early in the chatbot product lifecycle. They have rolled out chatbots slowly, starting with a pilot mobile application for a select user base. Wells Fargo recently put the pilot on hold as they prepare to go live with a combination live agent/chatbot offering.

Wells Fargo is farther along in using chatbots for its own employees. Specifically, Wells Fargo has piloted an internal chatbot to assist call representatives during customer service calls. The chatbots reportedly cut down service time by allowing the reps to query the internal bot to retrieve product or customer specific information. For example, the chatbots can help call representatives with calls involving bereavement planning by helping the representative instantly locate state specific information about consumer assets and properties as well as information about type of account, amount, etc.

Wells Fargo staff noted that they internal technical expertise to move quickly on chatbots, but have elected to move deliberately. As part of a highly regulated industry, they want to have the appropriate model governance systems in place and do not want to make mistakes with the roll-out of the program. At the same time, Wells Fargo also suggested that predictive AI, where AI gives personalized product recommendations, is imminent. Just like Amazon and Netflix offer consumer recommendations, Wells Fargo stated that chatbots and other digital assistants will start "surfacing next best actions….We see X, would you like to do Y?"

In the near term, Wells Fargo anticipates conversational interactions becoming a major platform for consumer banking. Wells Fargo noted that Alex, Google Home, are already touching the edges of conversational banking. Eventually, they see AI as the new user interface. Someday, consumers will no longer navigate websites. Instead, consumers will tell digital assistants/chatbots what they want.

Citi[24]

Like Wells, Citi's chatbot program is at the pilot stage. Citi's current chatbot works with "text" only and is compatible with IOS (Apple platform), digital web and Android. The chatbot

[23] This section relies on call notes from an interview with Wells Fargo staff and should be considered business confidential, and is not for external citation or reference.
[24]This section relies on call notes from an interview with Citi staff and should be considered business confidential, and is not for external citation or reference.

handles basic account inquiries (e.g. location of ATMs, banking hours, etc.) as well as limited personalized information such as recent account balance and routing number. The bot is "read-only," meaning that a consumer can't use it to process transactions. Citi decided to limit its chatbot to "read-only" because the company believes voice technology adds significantly to complexity and the technology "isn't ready yet." Citi has run the test chatbot through 100,000 digital conversations generated from 100 employee users and 20,000 consumers with chatbot capabilities turned on. Citi expects their bots to go live by the end of 2019.

Citi's chatbot design is notable for its tight integration of human customer service agents into the chatbot experience. Citi has determined that its current bot version can handle an estimated 30% of consumer inquiries. The workflow keeps the agents tied to the conversation. Because the chatbots interact only through texts, agents can step in and answer the texts asynchronously (not in real time). So, if a question takes some time to answer, an agent can research the question, and send the answer when ready – just as people do with ordinary texts. Citi staff described the model as a "tango between a bot and an agent."

Citi views chatbot communication as a platform, like the phone or web, which will support a variety of purposes across the bank. Because they view this technology as central to their long term business success, Citi plans to build the technology itself with some outside assistance. In the last year, Citi ran a company-wide RFP to support their chatbot platform, considering over 30 vendors. It is notable that the chatbot team is organized differently from other teams in order to accommodate the cross-functional routing that may take place in a bot conversation (i.e., consumer actions may impact the bill payment function managed by one team and shift to a credit card transaction feed managed by another team).

Citi staff also had strong views about the privacy protections offered by the leading digital assistant platforms from Apple, Amazon, and Google. Citi reported Apple's digital assistants encrypt voice information end-to-end and do not store conversations. Citi stated Amazon and Google do not have comparable privacy protections. Citi indicated they would want to protect sensitive parts of conversations in implementing voice technology for their chatbots.

Consumer Protection issues:

Privacy

Chatbots pose potential privacy issues for consumers. Chatbots' perfect recall of conversations means that when consumers share extremely sensitive information with chatbots, that data will be memorialized in the bank's data stream.

Consider the perspective of Aike Muller of Venture Beat, *"Let's just accept the fact that we will tell chatbots our secrets. We will share information with them that we would never share with our friends. We will use them as repositories for important data that we know we need to remember. The problem is that all that personal, sensitive, and confidential information will get stored on some server somewhere."*[25] In a recent blog, Capital One acknowledged that consumers who use chatbots veer conversations into matters entirely unrelated to banking, noting that

[25] Aike Muller, *Be careful what you tell a chatbot – it could come back to bite you*, VENTURE BEAT, (April 23, 2016).

"[w]e've found many customers just like talking to Eno. They often send Eno personal questions or ask about the meaning of life." In fact, Capital One reports 14% of customer texts to Eno are completely unrelated to banking."[26]

Security

Chatbots, like any new technology, will change the landscape of security risks and open new vectors of attack. Chatbots will save new streams of data about consumers such as conversational history, personally identifiable information, and other financial data. Compiling this data will increase its utility for the financial institution, but will also create a tempting target for fraudsters and hackers. Financial institutions will need to address the risks that bad actors could get access to chatbots through social manipulation or a security breach.[27] Chatbots could also be a medium for "man-in-the-middle attacks," where a fake chatbot could appear to be reputable but actually operates as a trap to obtain sensitive information.[28] If a computer or phone is stolen, and a chatbot is left open, bad actors now have new data streams to misappropriate. Additionally, in order for chatbots to be useful, they must have maintain many touchpoints into a company's data ecosystem, creating security risks.

Other policy considerations;

As chatbots/digital assistants evolve into platforms for voice-driven and predictive banking, the technologies will likely surface new complex regulatory and policy issues.

In the context of voice-driven banking, for example, the CFPB and other financial regulators may need to consider how to translate notifications designed for other media into the context of voice. Voice also presents technical challenges that could trigger consumer protection operational and security concerns. One could imagine that background noise in a room could accidently cause a chatbot to hear a request to do a transaction. What steps would be necessary to minimize or prevent consumers from authorizing transactions via chatbot when they did not mean to? Another security risk in voice-driven banking is that a third-party could spoof the voice of the legitimate consumer and fraudulently initiate transactions. There are also issues with respect to the populations covered. Do we have concerns if chatbots work better for certain consumers with certain accents, but not for others?

Similarly, as chatbots start engaging in predictive banking, a cluster of new policy challenges will likely emerge.

- Imagine if a bank observes that a consumer is trending towards an overdraft based on the consumer's pace of expenditures. What, if any, constraints should be imposed on the advice a chatbot can give?
- Can a chatbot use sentiment analysis (using various analytics to detect consumer moods and subjective states), to decide when and how to present a consumer a credit offer?

[26] Capital One, supra note 21.
[27] Rise of the Bots: Chatbot technology for financial firms, DATACOMM, (December 3, 2018), available at https://info.datacomm.com/rise-of-the-bots-chatbot-technology-for-financial-firms.
[28] Todd Wasserman, CHATBOTS ARE ALL THE RAGE – AND SOMETHING OF A RISK, SecurityRoundtable.org (March 21, 2018), available at https://www.securityroundtable.org/chatbots-rage-something-risk/.

- Similarly, if a bank sees from a new direct deposit that a consumer has a rise in income, what kind of advice can a bank give to the consumer about the investments a consumer can or should make?
- What happens if a chatbot gives different advice to different consumers based on different personal characteristics?
- How will the integration of chatbots affect financial institutions compliance managements systems?

The purpose of identifying these issues is not to resolve them, but merely to note that these new technologies will present compelling policy challenges meriting the Bureau's attention.

The rest of the documents comprises appendices which include in

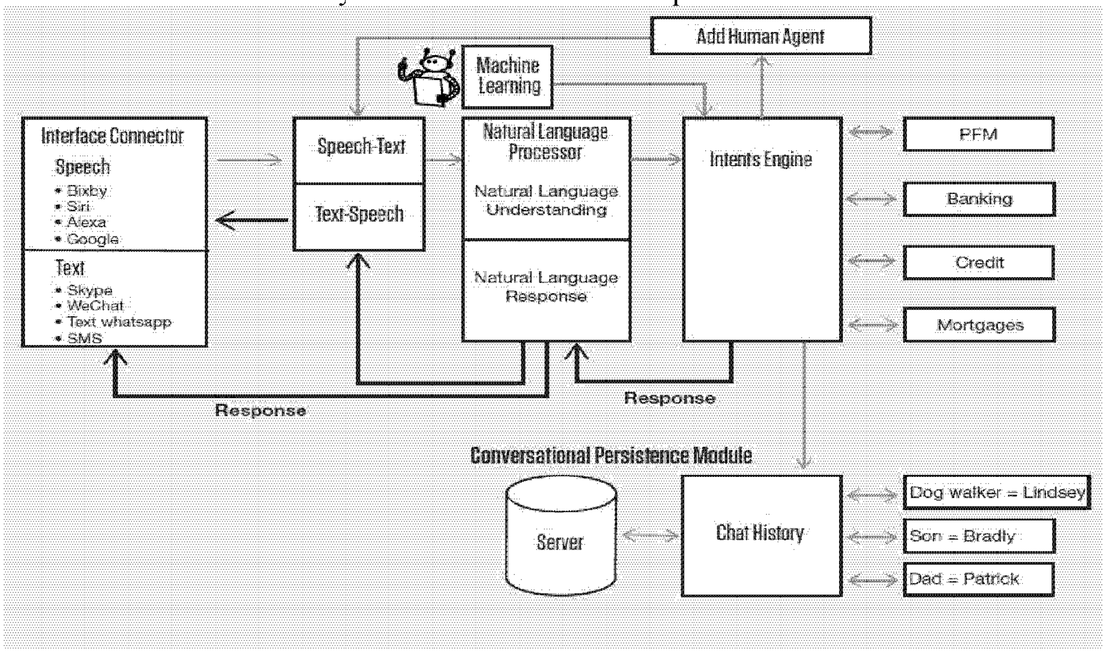
- Appendix 1, a more technical description of how chatbots function;
- Appendix 2, a description of key financial institutions use of chatbots and their vendors; and
- Appendix 3, screenshots of leading chatbot products.

Appendix 1: Technical overview of chatbots:

A typical chatbot has several core features:

- **Conversational Interface**: Chatbots typically support a selection of standard interfaces with a consumer via speech (Siri, Google, or Alex) or text (Skype, WeChat, Text Whatsapp, SMS).
- **Natural Language Processor** (NLP): The bot will typically use a natural language processor driven by machine learning to understand a consumer inquiry and to help formulate a natural language response.
- **Intents Engine:** Chatbots have an "intents engine" that maps the intent determined by the NLP module to scripts or other services designed to respond to the request.[29] For example, if a consumer states that she wants to check her bank balance, the intents engine links that request to a script, providing a bank balance.
- **Context:** Chatbots often have a module that allows the chatbot to respond to a consumer in the appropriate context (e.g. varying responses to better mimic the flow of a natural conversation).[30]
- **Human-Handoff**: Chatbots are typically designed to hand-off the conversation to a human when the bot reaches the limit of its conversation or senses that it is struggling.
- **Conversational Persistence**: Chatbots typically have some mechanism to record and track conversations, called a conversational persistence module.[31]

Below is an example of a chart depicting the core components of a chatbot. Truly versatile chatbots must handle a variety of consumer intents and possible actions.[32]



Source: CAPCO

[29] Craig Borysowich and Sunil Bansal, FINANCIAL CHATBOTS: A LANDSCAPE OF WHITE LABEL BANKING PRODUCTS, (2017)
[30] Id.
[31] Id.
[32] Id.

Appendix II: Description of Market Participants:

1. **Chatbots in use at Banks**

These large banks all have deployed chatbots in the past two years. Each of these services focus on retrieving basic banking information, the type of information commonly available on the company's website (e.g. locating ATMs, answering FAQs, and reviewing transaction history). For the most part the largest banks are not building their chatbots from scratch; they have partnered with Fintech start-ups that specialize in machine learning and natural language processing.

Institution	Market adoption	Notable Features
Ally Bank (Ally Assist)	Announced May 2015.[33]	Basic account info. Use voice or text. Can initiate cash transfers. Offers help topics based on customer transactions.
American Express	Amex bot launched in September 2016[34]	Basic account info. Link card to Facebook Messenger for payments. Handles FAQ using natural language understanding.
Bank of America (Erica)	Soft launch on March 19, 2018. 4 million users by November 18; 7 million users as of May 28, 2019[35]	Basic account services. Interesting features including helping schedule meetings with advisors, lock/unlock debit cards transfer money using Zelle. Offers help topics and messages based on customer patterns
Capital One (Eno)	Launched in March 2017 at SXSW 2017 as a pilot. 100,000 pilot users by October 2017.	Text-based. Basic account services. Transfer money between accounts.
HSBC (Amy)	Launched April 13, 2017	Basic account services. Chatbot has an avatar. (See Appendix)
Discover	Launched 4Q18	Virtual assistant servicing 11% of customer conversations. Takes payments.
RBS (Luvo)	Launched September 28, 2016[36]	Webchat tool. Focuses on easily addressed questions. Built using IBM's Watson Conservation tool
USAA	Launched in March 2013, average 20,000 interactions per week[37]	Basic info. Also can activate cards, change PIN, report lost card
Wells Fargo	Launched bot for messenger April 2017 for 5,000 users.	Basic account services. Handles FAQs. Claims it is first bank to use Facebook messenger as its chatbot.[38] Built by internal team.

[33] Press Release, Ally Bank, Ally Bank Introduces Ally Assist (SM) Customer Voice Interaction (May 18, 2015), available at https://media.ally.com/2015-05-18-Ally-Bank-Introduces-Ally-Assist-SM-Customer-Voice-Interaction
[34] Khari Johnson, *American Express has launched its Facebook Messenger bot*, VENTURE BEAT, (September 9, 2016).
[35] Penny Crosman, *How 6 million Bank of America customers are using Erica*, AMERICAN BANKER (March 22, 2019).
[36] Oscar Williams-Grut, RBS is launching an A.I. chatbot called 'Luvo' to help customers, BUSINESS INSIDER, (September 28, 2016).
[37] Borysowich and Bansal, supra note 2, at 13.
[38] Press Release, Wells Fargo, Wells Fargo Testing Bot for Messenger Featuring New Customer Service Experiences, available at https://newsroom.wf.com/press-release/community-banking-and-small-business/wells-fargo-testing-bot-messenger-featuring-new.

2. Vendors
No dominant vendor has emerged as a supplier of chatbots to finanical institutions. Abe.AI, Finn.AI, and Kasisto appear to be the market leaders from a review of their named clients.

Company	Clients	Customer Service	Retail Banking	Personal Financial Management	Notable Features
Abe. AI	Bank of America, Wells Fargo, American Express, Ally Bank, and Capital One.		✓	✓	Purchased by Envestment Yodlee, January 2019.
Aivo (Agent bot)	BBVA Compass				Omnichannel AI product
Clinc	Pilot with USAA		✓	✓	Founded by professors from University of Michigan. Claims 98% accuracy in NLP.[39]
Finn.AI	ATB Financial, BMO, Banpro, Fidor, Tyme Bank	✓		✓	Basic account info, handle transaction inquiries, spending insights and alerts, pay bills, provide consumer education. Pipeline includes personalized product and service recs.
IBM Watson Conversation/Service virtual agent	RBS	✓	✓		IBM building a platform where partners can build solutions. Out-of-box solutions for common queries.
Kasisto	DBS Bank, Mastercard, Standard Chartered, TD Bank, Wells Fargo		✓	✓	Has simple out-of-the-box chatbot. Investors include Harvard Business School, Wells Fargo, BBVA, and DBS. Works on Facebook Messenger, Amazon Alexa, and Google Home.[40]
Texteller	Brooklyn Coop Federal Credit Union	✓	✓	✓	Offers white-labeled chatbots.

B. Platform Interoperability.

The chart below describes vendor capabilities to deploy chatbots on various messenging platforms as of late 2017. Most of the platforms at the time of the study could work on Facebook

[39] Clinc, https://clinc.com/platform/, (last visited May 19, 2019).
[40] Borysowich and Bansal, supra note 2, at 12.

messenger, SMS text, and embedded web platforms. We hypothesize that interoperability has improved since this study.

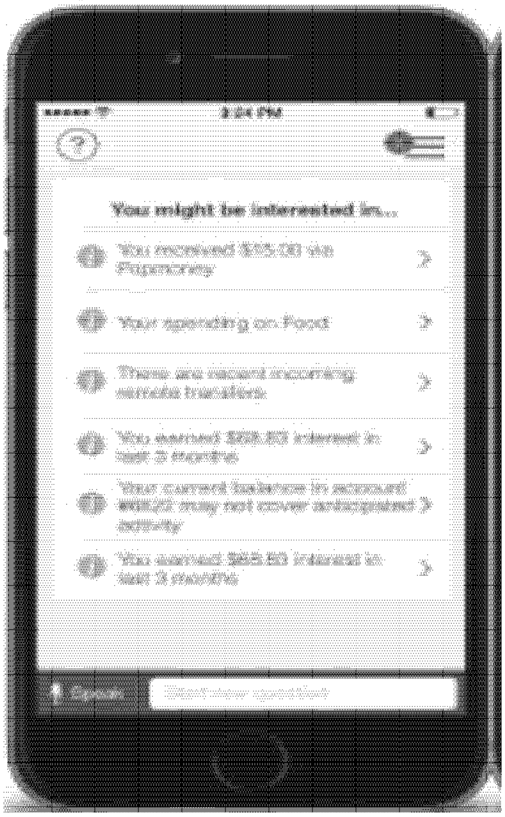
Vendor	Alexa	Facebook Messenger	SMS Text	Embedded Web	KIK messenger	WeChat	Slack	Skype
Finn.AI	✓	✓	✓	✓	✓	✓		
Kasisto MyKai		✓	✓	✓			✓	
Abe.AI		✓	✓	✓			✓	
Texteller		✓	✓	✓				✓
CLINC		✓	✓	✓				

Source: CAPCO

APPENDIX III

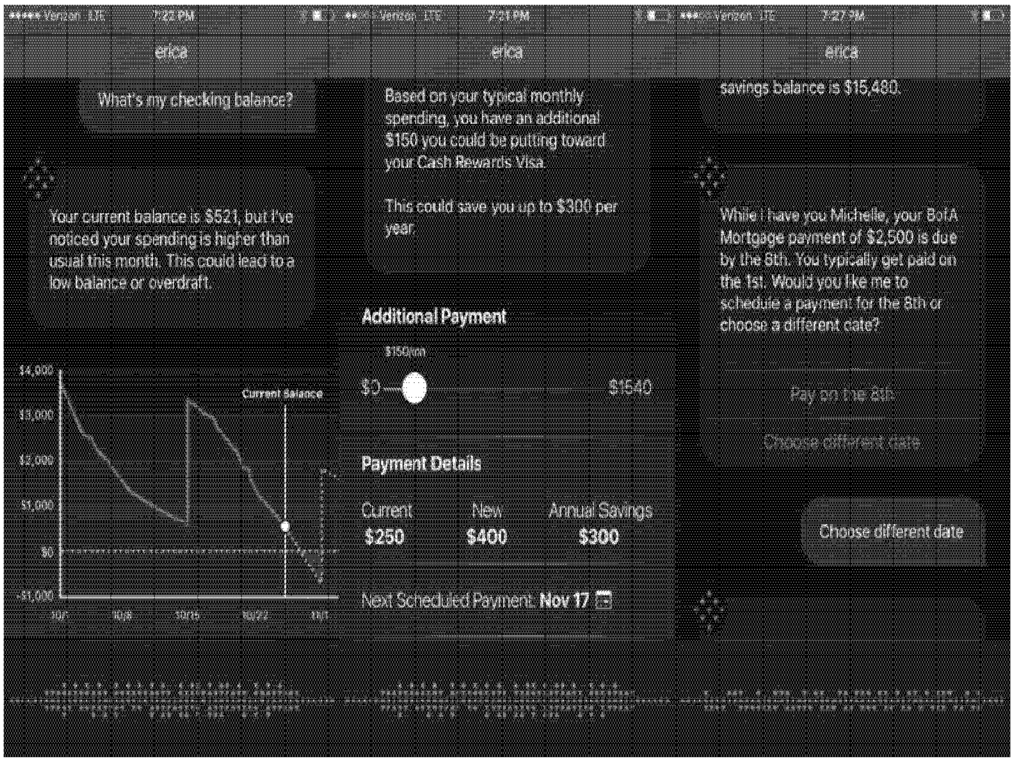
This Appendix provides screen shots of notable features of various chatbot apps offered by leading banks. For a more complete inventory of screen shots, please check out the paper, Banking and Finance chatbot case studies, July 2018, by Chatdesk Research.[41]

Ally Assist: Ally Assist uses machine learning to analyze accounts and transactions offer help topics and messages

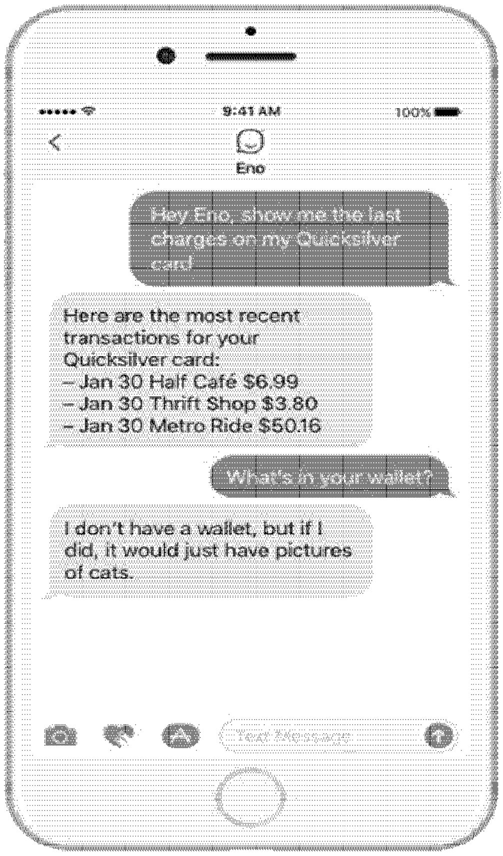


[41] *Banking and Finance chatbot case studies*, CHATDESK RESEARCH (July 2018) (available from Tom Oscherwitz on request).

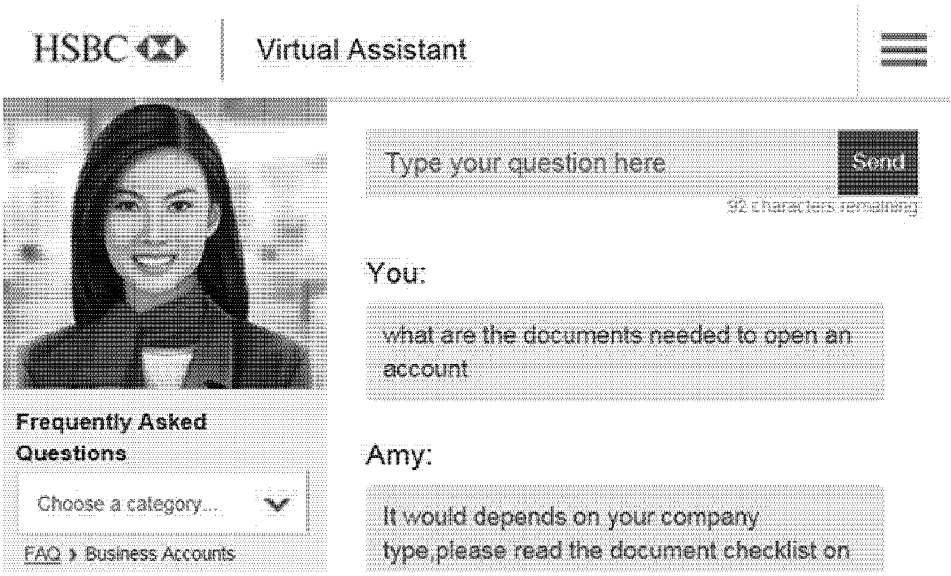
Bank of America (Erica):
Erica, the Bank of America chatbot, gives advice based on personalized info in accounts. In the picture below, Erica gives advice about maintaining a minimum account balance, paying more of one's credit card balance, or suggesting the scheduling of a mortgage payment



<u>Capital One</u> (Eno): As show below, Eno handles basic transactions like paying bills. Also note the non-financial question, "What is in your wallet?" asked of Eno. Fully 14% of questions Eno gets are non-financial.



HSBC (Amy): HSBC's chatbot is notable for use of a digital avatar, a woman with a red scarf, that appears every time you use the chatbot.



September 2018

Market Intelligence

Market Information from RMR Markets Teams

Spotlight: Federal Student Loan Servicing, Framework and Practice

BCFP Office of Consumer Lending, Reporting and Collections Markets

Patricia Scherschel with Vanessa Megaw, Michael Furey, and Sinead Noga

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

*Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent of the view of the Bureau.

Introduction

The U.S. Department of Education (ED) is self-described as "the largest special purpose consumer bank in the world."[1] The agency currently owns and actively manages a portfolio that, as of March 31, 2018, totaled $1.196 trillion in loans owed by tens of millions of student and parent borrowers.[2] In comparison, as of March 2018, consumers owed $815 billion in credit card debt to all of the nation's banks, credit unions and finance companies combined.[3] The Department's student loan portfolio is far greater than the individual consumer lending portfolios of the nation's largest retail banks.[4]

In addition, as of March 31, 2018, the outstanding balance of government-owned education loans has expanded by more than 1,018 percent, from $107 billion at the end of September 2007. The number of borrower accounts that the government administers has more than quintupled, from 7 million at the end of September 2007[5] to approximately 41 million at the end of March 2018.[6]

The $1.196 trillion includes $1.104 trillion in Direct Loans, which were issued by ED,[7] and $92 billion in federally-guaranteed loans issued by banks and other private lenders under the Federal Family Education Loan Program (FFELP) and subsequently purchased by ED.[8] The 41 million accounts include newly enrolled students whose loan payments are

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[1] U.S. Department of Education, "Secretary DeVos Announces Intent to Enhance FSA's Next Generation Processing and Servicing Environment," Press Release, August 1, 2017; available online at https://www.ed.gov/news/press-releases/secretary-devos-announces-intent-enhance-fsas-next-generation-processing-and-servicing-environment.

[2] The $1.196 trillion includes only federal education loans that are owned by the Department of Education; approximately $200 billion in federally-guaranteed loans held by banks and other private entities and Federal Perkins loans, which are issued by postsecondary institutions, are not included. See: U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, Tab: *Federally Managed*, March 31, 2018; available online at: https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[3] Federal Reserve Bank of New York, Center for Microeconomic Data, *Quarterly Report on Household Debt and Credit*, May 2018, p. 3; available online at https://www.newyorkfed.org/microeconomics/databank.html.

[4] For size of federal portfolio, see U.S. Department of Education, Office of Federal Student Aid, *Federal Student Aid Portfolio Summary*; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio. For size of retail bank consumer loan portfolios, see "A Breakdown Of The Loan Portfolios Of The Largest Banks," *Forbes*, June 27, 2018; available online at https://www.forbes.com/sites/greatspeculations/2018/06/27/a-breakdown-of-the-loan-portfolios-of-the-largest-u-s-banks-2/#1faa7d44126b.

[5] U.S. Department of Education, Office of Federal Student Aid, *Federal Student Aid Portfolio Summary*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[6] U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, Tab: *Federally Managed*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[7] U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, Tab: *Direct Loan*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[8] Direct and FFELP loans include subsidized and unsubsidized Stafford, Parent and Graduate PLUS, and Federal Consolidation loans. More than $100 billion in guaranteed Stafford and PLUS loans issued under the Federal Family Education Loan Program (FFELP) between 2007 and 2010 were purchased by ED under the Ensuring Continued Access to Student Loans Act (ECASLA). See U.S. Department of Education, Office of Federal Student Aid, *ECASLA Annual Report 2011*; available online at https://studentaid.ed.gov/sa/about/data-center/lender-guaranty/ecasla. In 2010, Congress terminated the authority of private lenders to issue federally-guaranteed loans, effective July 1, 2010.

deferred, recent college graduates whose loans have been placed in a grace period, borrowers in repayment, borrowers who have postponed their monthly payments by electing a deferment or forbearance, and borrowers who have defaulted on their federally owned or federally guaranteed loans. [9]

The Department of Education relies on a network of contractors to administer its student loan portfolio, awarding contracts for three key segments of the student loan timeline: Origination, post-origination servicing, and collection of defaulted loans. This spotlight focuses on the post-origination servicing framework for *non-defaulted*, federally owned loans, which totaled $1.066 trillion as of March 31, 2018.[10] (See Table 1.) The 34 million borrower accounts in the government's active servicing portfolio[11] are currently assigned to nine separate servicers.[12]

Table 1 – ED's Trillion Dollar Student Loan Business

Total Outstanding Portfolio as of 03/31/2018 *Includes more than $130 billion in defaulted loans*	**$1.196 trillion**
Total Borrower Accounts *Includes 7 million defaulted loan accounts*	**41 million**
Federally-Managed Servicing Portfolio *Includes $1.011 trillion in Direct Loans, $55 billion in government-owned, guaranteed loans*	**$1.066 trillion**
Borrower Accounts Placed with Servicers	**34 million**
Primary Servicers	**9**
Specialty Servicing Contracts	**4**
Payments Processed Per Month	**17 million**
Monthly Communications to/from Borrowers	**> 89 million**
Monthly Borrower Account Transactions	**> 1 million**
Annual Fees Paid to Servicers *Monthly average is approximately $2 per borrower account.*	**> $900 million**
Sources: U.S. Department of Education, 2018 Federal Budget Appendix.	

This report also provides a brief guide to key servicing functions and the servicer compensation model, which pays account-based fees based on the status of the

See *Health Care and Education Reconciliation Act of 2010*, Section 2201; available online at https://www.congress.gov/bill/111th-congress/house-bill/4872/text.

9 The number of accounts serves, at best, as a proxy for the number of borrowers. Data published by the Department of Education tracks accounts by loan recipients. For subsidized and unsubsidized Stafford loans and Graduate PLUS loans, the recipients are the borrowers. For Parent PLUS loans, the recipients are the student beneficiaries of the loan proceeds. Source: U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

10 U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, Tab: *Federally Managed*. March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

11 U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, Tab: *Federally Managed*. March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

12 U.S. Department of Education, Office of Federal Student Aid, *Servicing Update*, 2016 FSA Training Conference, slide 4; available online at https://fsaconferences.ed.gov/conferences/library/2016/2016FSAConfSession14.ppt.

underlying loans. These fees roughly average $2.00 per month per borrower,[13] requiring an annual ED servicing expenditure that is approaching $1 billion.[14]

The Servicing Framework for Federally owned Student Loans

The Department's Office of Federal Student Aid (FSA) employs third-party entities to manage the post-origination servicing of its federal student loan portfolio.[15] The Department has developed a process that automatically assigns each newly originated loan[16] to one of nine servicing contractors, based on a performance-based allocation methodology.[17] Allocation percentages reflect servicer performance as measured by the Department's scorecard.[18] However, only "new" borrower accounts are assigned under the allocation quotas. All of a borrower's loans are placed with the same servicer, with limited exceptions. Thus, once a borrower has been assigned to a specific servicer, any serial loans are to be assigned to that same servicer.[19]

At present, nine companies are responsible for handling the post-origination servicing of non-defaulted, federally owned student loans[20] (see Table 2, on page 8), although ED has had as many as 16 servicers.[21] The nine include four of the nation's largest student loan servicers, which

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13 U.S. Department of Education, Office of Federal Student Aid, *2016 Annual Report*, p. 171; available online at https://studentaid.ed.gov/sa/sites/default/files/FY_2016_Annual_Report_508.pdf.

14 Office of Management and Budget, *FFY 2018 Federal Budget Appendix*, p. 356; available online at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/appendix.pdf.

15 Alexandra Hegji, *Administration of the William D. Ford Federal Direct Loan Program*, Congressional Research Service, Washington, D.C., May 11, 2017, pp. 18-23; available online at https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-congresearch$2f3$2f2$2fa$2fa$2fcrs-2017-aml-0099_from_1_to_39.pdf/entitlementkeys=%201234%7Capp-gis%7Ccongresearch%7Ccrs-2017-aml-0099.

16 U.S. Department of Education, Office of Federal Student Aid, *Direct Loans 101*, presentation at meeting of South Carolina Association of Student Financial Aid Administrators, April 2017, slides 58-59; available online at https://www.scasfaa.org/resources/Pictures/DirectLoans101.pdf.

17 U.S. Department of Education, Office of Federal Student Aid, "Explanation of Allocation and Performance Measure Methodology," Quarter Ending 12/31/2017; available online at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing/servicer-performance.

18 "Servicer Performance Metrics and Allocations" are published quarterly by the U.S. Department of Education at the Office of Federal Student Aid website at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing/servicer-performance.

19 U.S. Government Accountability Office, *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight*, May 2016, p. 10; available online at https://www.gao.gov/products/GAO-16-523.

20 U.S. Department of Education, Office of Federal Student Aid, *Servicing Update*, 2016 FSA Training Conference, slides 3-4; available online at https://fsaconferences.ed.gov/conferences/library/2016/2016FSAConfSession14.ppt.

21 Between the inception of the Direct Loan program in 1994 and 2009, the Department Education relied on just one primary servicing contractor. At the beginning of 2009, the sole servicer was ACS Education Services, which had become a division of Xerox. Between 2009 and early 2013, the ED-owned loan portfolio grew rapidly (largely due to the termination of the guaranteed loan program), and ED issued contracts to 15 additional servicers, bringing the total to 16. For a number of reasons, seven contractors, including ACS and six not-for-profit servicers, exited the program between August 2013 and August 2016. See Alexandra Hegji, *Administration of the William D. Ford Federal Direct Loan Program*, Congressional Research Service, Washington, D.C., May 11, 2017, p. 23; available online at https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-congresearch$2f3$2f2$2fa$2fa$2fcrs-2017-aml-0099_from_1_to_39.pdf/entitlementkeys=1234%7Capp-gis%7Ccongresearch%7Ccrs-2017-aml-0099. For a list of ED's 16 active servicers in February 2013, see "Washington's

were brought under contract in 2009[22] and are referred to as the Title IV Additional Servicers.[23] The four so-called TIVAS are:

- FedLoan Servicing, a division of the Pennsylvania Higher Education Assistance Agency, a state-affiliated non-profit organization,[24]
- Navient, a publicly traded corporation that was once known as Sallie Mae,[25]
- Nelnet, a publicly traded corporation,[26] and
- Great Lakes, a former non-profit company that is now a wholly-owned subsidiary of Nelnet.[27]

According to a Department report that tracks servicer portfolio volume based on loan status, as of March 31, 2018, the four TIVAS were administering 29.4 million accounts – 84 percent of the servicing portfolio of federally owned loans. The remaining 5.5 million borrower accounts were assigned to five, state-affiliated, not-for-profit organizations,[28] which were awarded contracts under a program required by federal legislation.[29] These so-called "NFPs" include Cornerstone (Utah), HESC/EdFinancial (Texas), Granite State (New Hampshire), Missouri Higher Education Loan Authority (MOHELA), and Oklahoma Student Loan Authority.[30]

Birthday Federal Holiday Processing and Customer Service Hours," a Direct Loan program notice published by the Office of Federal Student Aid's iLibrary website at https://ifap.ed.gov/eannouncements/020813WashingtonFedHolidayClosings.html.

[22] U.S. Department of Education, "U.S. Department of Education Expands Its Student Loan Servicing Capacity," news release, June 17, 2009; available online at https://www2.ed.gov/news/pressreleases/2009/06/06172009b.html.

[23] U.S. Department of Education, Office of Federal Student Aid, "Loan Servicing Update," presentation at NASFAA National Conference, July 2012; available online at: https://ifap.ed.gov/presentations/attachments/2012FSAConfSession15FederalLoanServicingUpdate.ppt.

[24] Pennsylvania Higher Education Assistance Agency, "About PHEAA"; http://www.pheaa.org/about/index.shtml.

[25] In May 2014, Navient was spun off from Sallie Mae as a wholly separate company. See: Navient, "Who We Are/History"; https://www.navient.com/about/who-we-are/history/.

[26] Nelnet, Investor Relations website; http://www.nelnetinvestors.com/home/default.aspx.

[27] In February 2018, Nelnet completed its acquisition of the non-profit servicing company, Great Lakes Higher Education Loan Corporation. Both Nelnet and Great Lakes continue to service ED-owned loans under their individual contracts. See Nelnet, "Nelnet Completes Acquisition of Great Lakes Educational Loan Services, Inc.," news release, February 8, 2018; available online at https://www.prnewswire.com/news-releases/nelnet-completes-acquisition-of-great-lakes-educational-loan-services-inc-300595308.html.

[28] U.S. Department of Education, Office of Federal Student Aid, *Servicer Portfolio by Loan Status*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio. Note: This report tracks volume by the status of the loan; some loan recipients may have loans in more than one status.

[29] Under the Student Aid and Fiscal Responsibility Act of 2010, which was enacted as part of the Health Care and Education Reconciliation Act of 2010, the Department of Education was required to award servicing contracts to eligible not-for-profit servicers. See Public Law 111-152, Title II, Section 2212; available online at https://www.gpo.gov/fdsys/pkg/PLAW-111publ152/pdf/PLAW-111publ152.pdf. See also Cassandra Dortch, David P. Smole, and Shannon M. Mahan, *The SAFRA Act: Education Programs in the FY2010 Budget Reconciliation*, Congressional Research Service, April 14, 2010; pp. 9-10; available online at https://doyle.house.gov/sites/doyle.house.gov/files/documents/Education%20SAFRA%20summary%20CRS%20report%20R41127.pdf. And see U.S. Department of Education, Office of Federal Student Aid, "Loan Servicing Information – New Servicers Join Federal Loan Servicer Team, October 2011 – January 2013," September 23, 2011; available online at https://ifap.ed.gov/eannouncements/092311LSINFPNewServicersJoin.html.

[30] These NFPs were under contract as of September 2018; see "Loan Servicing Information –Performance Metrics and Allocation Information Now Available on the FSA Data Center," U.S. Department of Education, Office of Federal

Several key servicing functions are managed under separate contracts. As shown in Table 2, these include processing disability discharge applications and handling the accounts of borrowers who are seeking to qualify for public service loan forgiveness (PSLF).[31]

Servicers provide the functions needed to support borrowers from the time the loans are originated through repayment. These activities include staffing call centers, counseling customers about their repayment plans and other debt management options, and processing a wide range of borrower requests, including a borrower's enrollment into an income-driven repayment plan. That said, only the four TIVAS – FedLoan Servicing, Great Lakes, Navient, and Nelnet – operate their own transaction processing systems and online account services. Each of the five smaller NFPs license one of the TIVAS' technology platforms. Three rely on Nelnet, and two use the FedLoan Servicing system,[32] as indicated in Table 2.

The nine contract servicers administer student loans before and during repayment and also provide default prevention services, performing outreach efforts to borrowers who become delinquent.[33] The TIVAS and NFP servicers, however, are not responsible for post-default collections. After a Direct Loan or federally owned FFELP account reaches the 360th day of delinquency, the servicer must start the process for transferring the defaulted loan(s) to the Department's Debt Management and Collections System (DMCS).[34]

Student Aid, available online at https://ifap.ed.gov/eannouncements/050718LSIPerformMetricsAllocInfoAvailFSADataCntr.html. State affiliations are shown in the membership directory of the Education Finance Council, which represents non-profit lenders and servicers; available online at: www.efc.org. Note: HESC is based in Texas and partners with Tennessee-based EdFinancial to service loans under the ED contract.

[31] Not all of the specialty servicing contracts are held by the TIVAS or NFPs; for example, Educational Credit Management Corporation (ECMC) has a contract to manage bankruptcy discharges for ED-owned loans. This spotlight focuses on the primary servicing contracts. See U.S. Department of Education, Office of Federal Student Aid, "Servicing Update," presentation at 2016 FSA Training Conference, slide 4; available online at https://fsaconferences.ed.gov/conferences/library/2016/2016FSAConfSession14.ppt. See also U.S. Department of Education, Office of Inspector General, Final Audit Report, "Educational Credit Management Corporation's 2006 Agreement with the United States Department of Education," March 3, 2011, pp. 1-2 and 19; available online at https://www2.ed.gov/about/offices/list/oig/auditreports/fy2011/a05k0001.pdf.

[32] U.S. Department of Education, Office of Federal Student Aid, "Next Generation Financial Services Environment," a presentation given during the GS4 keynote address by Dr. A. Wayne Johnson, at the 2017 FSA Training Conference, slide 3; viewable online at https://youtu.be/5bE3ucnxQp8I. See also U.S. Department of Education, Office of Federal Student Aid, "NextGen Request for Advanced Market Research Information," December 18, 2017, p. 4; available online at https://www.fbo.gov/utils/view?id=29d1c491a10e1c21d274a1467e86fb55.

[33] U.S. Department of Education, Office of Federal Student Aid, "The Changing Data Landscape of Cohort Default Rates," presentation delivered at 2013 NASFAA National Conference, slides 64-65; available online at ifap.ed.gov/presentations/attachments/NASFAA2013ChangingLandscapeCDRFINALSession79.pptx.

[34] DMCS, which is managed under a separate third-party servicing contract, is responsible for collecting on $130.3 billion in defaulted Direct and ED-owned FFELP loans (as of March 31, 2018); the DMCS contract is managed by MAXIMUS Federal Services, Inc. The DMCS assigns defaulted loans to one of the private collection agencies (PCAs) that operate under contracts awarded by the Office of Federal Student Aid. See U.S. Department of Education, Office of Federal Student Aid, *Portfolio by Loan Status*, Tab: *Federally Managed*. March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio. See also U.S. Department of Education, Active Contracts, Excel file; available online at https://www2.ed.gov/about/offices/list/ocfo/contracts/active_contracts_list.xls. And see Alexandra Hegji,

The four TIVAS platforms are, essentially, legacy FFELP processing systems that previously had not serviced any Direct Loans. Prior to 2009, the entire Direct Loan portfolio was serviced under a single contract with ACS, whose contract was canceled in 2013.[35] These legacy FFELP systems initially were built years ago and have been continually updated to meet new loan requirements or regulatory changes for both Direct and FFELP loans. The systems can interface with the Department's origination service and DMCS. The Department of Education funds system updates that are required to fulfill ED servicing requests, via so-called "change orders."[36] Major, unilateral system overhauls are infrequent. However, ED is planning to modernize federal student loan servicing by developing a comprehensive, "Next Generation" financial aid delivery and servicing platform.[37]

Scope of Servicing Functions

Federal student loan servicers provide a wide range of services due to mandated communications and an increasingly complicated set of calculations and reporting requirements that must be supported by the servicing systems. Each month, ED's primary contract servicers together process more than 100 million transactions and communications – roughly three activities per account on average.[38] (See Table 3.)

Administration of the William D. Ford Direct Loan Program, Congressional Research Service, Washington, D.C., May 11, 2017, p. 22; available online at https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-congresearch$2f3$2f2$2fa$2fa$2fcrs-2017-aml-0099_from_1_to_39.pdf/entitlementkeys=1234%7Capp-gis%7Ccongresearch%7Ccrs-2017-aml-0099. This transfer is required by ED's servicing contracts, which are available online at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.

[35] U.S. Department of Education, Office of Federal Student Aid, "Loan Servicing Information – Upcoming Federal Loan Servicer Team Changes," July 12, 2013; available online at https://ifap.ed.gov/eannouncements/071213LSIUpcomingFederaLoanServicerTeamChanges.html. At the time of the DL contract cancellation, ACS was a subsidiary of Xerox Corporation. See Xerox Corporation, "Frequently Asked Questions: Xerox Completes Acquisition of Affiliated Computer Services"; available online at https://www.xerox.com/downloads/usa/en/n/nr_Xerox_Acquisition_ACS_FAQ.pdf. In early 2017, ACS became part of the Xerox spin-off, Conduent. See Conduent Education Services, "ACS is now Conduent Education Services," October 2017; available online at: https://www.conduenteducation.com/CS/Jsp/infocenter/cdtfaq.jsp?NavBarId=csm_enu457. In 2017, Conduent began notifying clients that it would exit the student loan servicing business by the end of 2018. See Coalition of Higher Education Assistance Organizations. "An Announcement from COHEAO on Conduent's Decision to Exit the Campus Loan Servicing Market"; available online at http://www.coheao.com/an-announcement-from-coheao-on-conduents-decision-to-exit-the-campus-loan-servicing-market/.

[36] U.S. Department of Education, Office of Inspector General, *Federal Student Aid's Award and Administration of the Title IV Additional Servicers Contracts*, Final Audit Report, August 2013, p. 32; available online at https://www2.ed.gov/about/offices/list/oig/auditreports/fy2013/a02l0006.pdf.

[37] U.S. Department of Education, Office of Federal Student Aid, "NextGen Request for Advanced Market Research Information," December 2017; available at https://www.fbo.gov/utils/view?id=29d1c491a10e1c21d274a1467e86fb55.

[38] U.S. Department of Education, Office of Federal Student Aid, "NextGen Request for Advanced Market Research Information," December 2017, p. 17; available online at https://www.fbo.gov/utils/view?id=29d1c491a10e1c21d274a1467e86fb55.

Table 2 – Primary Federal Contract Servicers – March 2018

ED's Contract Servicers Include 4 Title IV Additional Servicers and 5 Not-for-Profit Servicers

	ED Contract Servicer	Corporate Status	State Affiliation	Contracts with Office of Federal Student Aid	Platform	Portfolio Balance (*$ in Billions*)	Accounts (*in Millions*)*
TIVAS	FedLoan Servicing /PHEAA	Not-for-Profit	Pennsylvania	Servicing Public Service Loan Forgiveness	Proprietary System	$331.0	8.21
TIVAS	Great Lakes†	Subsidiary of Publicly Traded Company	N/A	Servicing Collections Management	Proprietary System	$241.7	8.18
TIVAS	Navient	For-Profit/Publicly Traded	N/A	Servicing	Proprietary System	$219.2	6.61
TIVAS	Nelnet	For-Profit/Publicly Traded	N/A	Servicing Disability Discharge	Proprietary System	$185.4	6.39
NFPs	Cornerstone	Not-for-Profit	Utah	Servicing	PHEAA	$8.5	N/A
NFPs	HESC/EdFinancial‡	Not-for-Profit	Texas	Servicing	Nelnet	N/A	N/A
NFPs	Granite State	Not-for-Profit	New Hampshire	Servicing	Nelnet	N/A	N/A
NFPs	Missouri Higher Education Loan Authority (MOHELA)	Not-for-Profit	Missouri	Servicing Closed School Discharge	PHEAA	$37.6	2.12
NFPs	Oklahoma Student Loan Authority	Not-for-Profit	Oklahoma	Servicing	Nelnet	N/A	N/A

Note: The Department of Education does not publish detailed volume information for the NFPs; the volume data for Cornerstone and Missouri Higher Education Loan Authority (MOHELA) are based on company documents released by MOHELA and PHEAA, which provides the servicing platform used by MOHELA and Cornerstone. As of March 31, 2018, the combined, estimated volume for the five NFPs was $86.9 billion; the number of NFP accounts totaled 5.5 million. FedLoan Servicing/PHEAA is a state-affiliated not-for-profit organization but is categorized by ED as a Title IV Additional Servicer.

*The Office of Federal Student Aid (FSA) reports account numbers based on the number of loan recipients, based on loan status. A recipient is the student who benefits from a student loan. Students are the recipients of Stafford and Graduate PLUS loans. The recipient of a Parent PLUS loan is the student beneficiary of the loan proceeds. Thus, FSA's recipient counts serve as proxies for the number of loan accounts. Because borrowers can have loans in more than one status category, the number of unduplicated borrowers would be lower than the total number of accounts.

†Great Lakes was a non-state-affiliated, non-profit company until its acquisition by Nelnet in February 2018; Great Lakes is continuing to operate its servicing platform and maintain its servicing contract with ED.

‡EdFinancial is a Tennessee-based, privately held company that services on behalf of the Higher Education Servicing Corporation, a state-sponsored, non-profit organization affiliated with the North Texas Student Loan Authority.

Sources: U.S. Department of Education, Office of Federal Student Aid; MOHELA; *PHEAA*; Nelnet, National Association of Student Financial Aid Administrators, Education Finance Council; Bloomberg Private Company Directory.

Key servicing functions currently include:

- Tracking interest accrual from the date of the initial disbursement through repayment.
- Notifying borrowers when repayment is to begin.
- Informing borrowers about their repayment options.
- Facilitating enrollment in an income-driven repayment plan.
- Establishing monthly repayment schedules, based on consumer choice and federal eligibility rules.
- Maintaining online account management services.
- Processing monthly payments including posting payments to the appropriate accounts and adjusting balances (ED's servicers do not impose any fees for late payments[39]).
- Processing borrower requests to postpone payments under a deferment or forbearance. Servicers currently administer more than two dozen types of deferment and forbearance.[40]
- Facilitating borrowers' enrollment in auto debit payment services.
- Furnishing borrower loan status to national credit reporting agencies.
- Providing customer support services – for example, handling inbound and outbound calls, responding to email and other correspondence.
- Reporting loan data to the National Student Loan Data System (NSLDS) and the Department of Education.
- Ensuring eligible servicemembers receive special interest rate and deferment benefits.
- Generating annual 1098-E forms that borrowers need to deduct student loan interest.
- Combining individual federal student loans, including non-ED-owned loans, into a new Direct Consolidation Loan, which establishes a new interest rate and repayment term.[41]

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39 Federal rules allow late fees to be charged on federally owned loans, but ED has never instructed its servicers to impose late fees on delinquent accounts. See Alexandra Hegji, *Administration of the William D. Ford Direct Loan Program*, Congressional Research Service, Washington, D.C., May 11, 2017, p. 22; available online at https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-congresearch$2f3$2f2$2fa$2fa$2fcrs-2017-aml-0099_from_1_to_39.pdf/entitlementkeys=1234%7Capp-gis%7Ccongresearch%7Ccrs-2017-aml-0099. Also see *34 CFR 685.202*, available online at https://www.gpo.gov/fdsys/granule/CFR-2013-title34-vol4/CFR-2013-title34-vol4-sec685-202, and *CFR 682.202*, available online at https://www.gpo.gov/fdsys/pkg/CFR-2017-title34-vol4/pdf/CFR-2017-title34-vol4-sec682-202.pdf.

40 Navient, "Navient Response to the Consumer Financial Protection Bureau Request for Information Regarding Student Loan Borrower Communications and the 'Payback Playbook,'" June 12, 2016, p. 7; available online at https://news.navient.com/static-files/f378cb51-5d48-45ae-9f4b-a5fcf304bf55. Note: Not all borrowers are eligible for all of the types of deferment and forbearance; some deferment and forbearance options are not available for new Direct Loans.

41 A borrower seeking to consolidate his or her eligible federal loans can choose any of the TIVAs or NFPS to service the new Direct Consolidation Loan, but only the four TIVAs currently provide the origination function. Navient has been designated as the origination processor for borrowers who choose an NFP. See U.S. Department of Education, Office of Federal Student Aid, www.studentloans.gov website. Note: Follow links to view the instructions for submitting a paper application for a Direct Loan Consolidation: "Please note: If you choose Cornerstone, EdFinancial, Granite State, MOHELA, or OSLA Servicing as your servicer, the initial processing will be handled by Navient. During this initial process, you will work with and receive communication from Navient." (Current as of September 19, 2018.)

- Performing default prevention services.
- Transferring nonperforming loans (those that have reached 360 days past due) to the government's debt collection service.
- Researching and resolving consumer complaints and account disputes.[42]

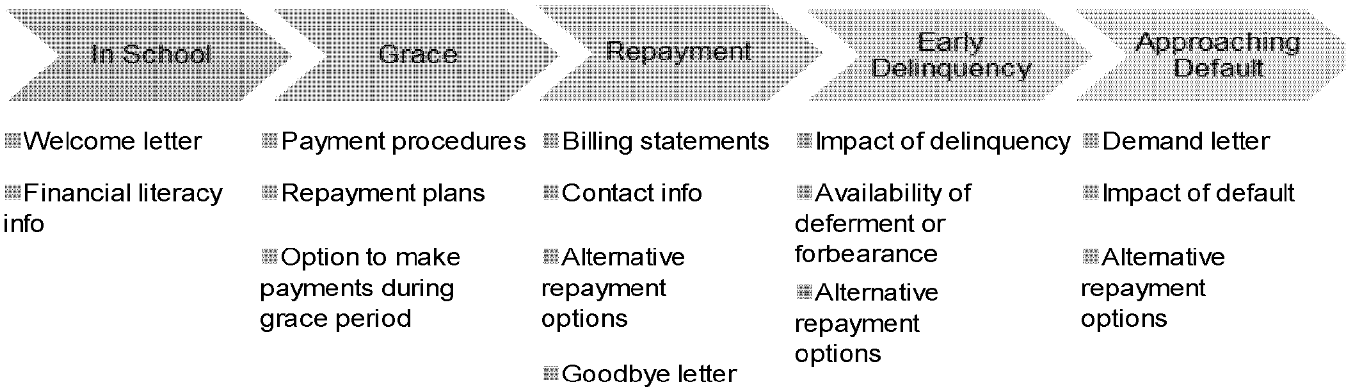
Table 3 – Average Monthly Servicing Activities

ED's contract Servicers process more than 100 million account actions per month.	
Payments Processed Per Month	**17 million**
Monthly Communications to/from Borrowers *> 2 million inbound calls* *> 15 million logins to online accounts* *– 500,000 pieces of incoming mail* *> 180,000 incoming emails* *> 35 million outbound emails* *> 30 million outbound calls* *> 7 million pieces of outbound mail*	**> 89 million**
Monthly Borrower Account Updates/Changes *> 450,000 IDR recertifications* *> 300,000 closed accounts due to pay off or discharge* *> 250,000 requests to change repayment plans* *– 70,000 consolidation loan originations* *– 35,000 PSLF employment certification submissions*	**> 1 million**
Annual Fees Paid to Servicers *Monthly average is approximately $2 per borrower account.*	**> $900 million**
Sources: U.S. Department of Education, 2018 Federal Budget Appendix.	

[42] Alexandra Hegji, *Administration of the William D. Ford Direct Loan Program*, Congressional Research Service, Washington, D.C., May 11, 2017, pp. 19-21; available online at https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-congresearch$2f3$2f2$2fa$2fa$2fcrs-2017-aml-0099_from_1_to_39.pdf/entitlementkeys=1234%7Capp-gis%7Ccongresearch%7Ccrs-2017-aml-0099.

Mandated communications. Federal rules and the Department's servicing procedures stipulate the timing and delivery of numerous communications as well as key account actions at specific points in time. Figure 1 highlights key communications required over the lengthy life cycle of a student loan account.[43] Servicers will attempt dozens of outreach attempts, including letters, emails, text messages, and telephone calls to reach a seriously delinquent borrower who is heading toward default.[44]

Figure 1 -Sample Communication Schedule Over Direct Loan Life Cycle



Source: U.S. Government Accountability Office.

Increasingly complex servicing requirements. Over the past decade, operational procedures and data processing demands – particularly for loans in repayment – have become significantly more complicated:

- In 2007, Congress authorized the Public Service Loan Forgiveness (PSLF) program, which, after a borrower has made 10 years' worth of qualifying payments and met other eligibility rules, will discharge the remaining Direct Loan balances owed by

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43 U.S. Government Accountability Office, *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight," May* 2016, p. 12; available online at https://www.gao.gov/products/GAO-16-523 .
44 The number of borrower communications in excess of required contact attempts varies among servicers; in addition, the number of contacts will be affected by the contact options available for that borrower (e.g., lack of a working email address), and the length the borrower's delinquency. Great Lakes says it averages 67 contact attempts over a delinquency period of 359 days; see "Learn How Great Lakes Contacts Students Struggling in Repayment," Great Lakes Higher Education Corporation, April 16, 2018; available online at https://home.mygreatlakes.org/web/FAP/content/sharedcontent/support_docs/Great_Lakes_Reaches_Out_to_Students_Struggling_in_Repayment.pdf. In a January 20, 2017, letter to the Securities and Exchange Commission, Navient stated that it averages "230 to 300 contacts via email, mail, telephone and text message" over the one-year period that precedes default; this letter is provided as an attachment to the SEC's February 13, 2017, response to the Navient, which is available online at https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2017/heavygeneralrhodeislandcrptf021317-14a8.pdf.

borrowers who are pursuing careers in public service.[45] The eligibility rules require servicers to carefully track borrowers' payments. To qualify, PSLF candidates must make 120 on-time payments; these payments also have to be made under one of the six expressly PSLF-eligible payment plans[46] or be an otherwise eligible payment amount.[47] Borrowers must meet other program rules as well. For example, eligible payments must be made while the borrowers are working full-time for qualifying employers. The payments do not have to be consecutive, however, and borrowers can work for different eligible employers. Borrowers can periodically submit forms to document their eligible payment history but cannot formally apply for forgiveness until they have made the 120th qualifying payment.[48] In short, all of ED's servicers need to be able to accurately capture and maintain payment histories and be able to transfer this information to FedLoan Servicing, which handles the accounts of known PSLF candidates, under a specialty servicing contract.[49]

- Between 2009 and 2015, ED established four, new income-driven repayment (IDR) plans.[50] Many, if not most, Direct Loan borrowers can now choose among 10 different repayment plans, including five income-driven plans.[51] The FFELP program offers six

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[45] *College Cost Reduction and Access Act of 2007*, Public Law 110-84, Title IV, Section 401; available online at https://www.gpo.gov/fdsys/pkg/PLAW-110publ84/content-detail.html.

[46] The six, expressly eligible plans are: 10-year Standard Repayment; Income-Contingent Repayment; the first Income-Based Repayment plan; the second Income-Based Repayment plan, which is available only to borrowers who received their first Direct Loans on or after July 1, 2014; Pay As You Earn, and Revised Pay As You Earn. The Office of Federal Student Aid website details PSLF rules at https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service; details about IDR plans are provided at https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven.

[47] An on-time, scheduled monthly payment that is equal to or greater than the payment required under a standard, 10-year plan, counts toward PSLF, regardless of the type of repayment plan. Thus, it's possible for a borrower to make PSLF eligible payments on a consolidation loan that is being repaid over a 10-year term or during the latter years of a graduated repayment schedule. The Office of Federal Student Aid website details PSLF rules at https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/questions#qualifying-repayment-plans; details about IDR plans are provided at https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven.

[48] The Office of Federal Student Aid website details PSLF rules at https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/questions#qualifying-payments.

[49] Pennsylvania Higher Education Assistance Agency, "PHEAA's FedLoan Servicing to Manage Public Service Loan Forgiveness Program," news release, February 2, 2012; available online at https://www.pheaa.org/about/press-releases/2012/feb-2.shtml.

[50] U.S. Department of Education Office of Inspector General, *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs*, January 31, 2018, pp. 6-8; available online at https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf.

[51] Direct Loan repayment options include: (1) Standard Repayment with equal installments for up to 10 years; (2) Graduated Repayment, with payments made over a 10-year term; (3) Extended Repayment with level payments for up to 25 years; (4) Extended Repayment with graduated payments for up to 25 years; (5) Income-Contingent repayment with payments based on income for up to 25 years, (6) Income-Based Repayment with payments limited to no more than 15 percent of discretionary income for up to 25 years; (7) Income-Based Repayment with payments limited to no more than 10 percent of discretionary income for up to 20 years; (8) Pay As You Earn, which limits payments to no more than 10 percent of discretionary income for up to 20 years; (9) Revised Pay As You Earn, which limits payments to no more than 10 percent of discretionary income for up to 20 years for those with only undergraduate loans or up to 25 years for those with graduate school loans; and (10) Alternative Repayment, which

different repayment options but only one of the new IDR plans.[52] ED's servicing contractors must be able to handle borrowers who have both Direct Loans and government-owned FFELP loans, even when the Direct and FFELP loans cannot be repaid under the same repayment plan.[53]

- To help borrowers manage the repayment of their loans and avoid delinquency, customer service representatives (CSRs), in essence, have to be able to explain all of the repayment options, including IDR plans that are available to borrowers with federally owned loans.[54] This includes explaining the varying rules regarding borrower eligibility, payment formulas, maximum number of payments, interest subsidy benefits, interest capitalization events and other key terms.[55] Most FFELP borrowers can gain access to most but not all of the plans available to Direct Loan borrowers by consolidating their FFELP loans into a Direct Consolidation loan.[56] Thus, the CSRs have to be able to coach FFELP borrowers, including those with privately-owned FFELP loans as well as those with ED-owned FFELP loans, on how to navigate the Direct Loan consolidation process, and then through IDR enrollment.

can give borrowers who demonstrate exceptional circumstances up to 30 years to repay their loans (in addition, the loans of borrowers who fail to recertify their eligibility for REPAYE are transferred to the Alternative Repayment plan). Not all plans are available to all Direct Loan borrowers or for all Direct Loans. See *34 CFR 685.208 - Repayment plans; 34 CFR 685.209 - Income-contingent repayment plans;* and *34 CFR 685.221 - Income-based repayment plan*. The CFR 685 language is available online at https://www.gpo.gov/fdsys/search/pagedetails.action?collectionCode=CFR&browsePath=Title+34%2FSubtitle+B%2FChapter+VI%2FPart+685%2FSubpart+B%2FSection+%26sect%3B+685.208&granuleId=CFR-2015-title34-vol4-sec685-208&packageId=CFR-2015-title34-vol4&collapse=true&fromBrowse=true.

[52] FFELP repayment options include: (1) Standard Repayment with equal installments for up to 10 years; (2) Graduated Repayment with payments scheduled over a 10-year term; (3) Extended Repayment with level payments for up to 25 years; (4) Extended Repayment with graduated payments for up to 25 years; (5) Income-Sensitive Repayment, which allow servicers to adjust payments based on the borrower's income and extend the repayment period for an additional five years under a special forbearance provision; and (6) Income-Based Repayment with payments limited to no more than 15 percent of discretionary income for up to 25 years. Not all plans are available to all FFELP borrowers or for all FFELP loans. See *34 CFR 682.209 - Repayment of a loan*. The CFR 682 language is available online at https://www.gpo.gov/fdsys/pkg/CFR-2017-title34-vol4/pdf/CFR-2017-title34-vol4-sec682-209.pdf.

[53] National Association of Financial Aid Administrators, "ED's Loan Transfer Initiative to Consolidate Borrowers' Servicers and Payments," December 1, 2010; available online at http://www.nasfaa.org/news-item/2246/ED_s_Loan_Transfer_Initiative_to_Consolidate_Borrowers_Servicers_and_Payments.

[54] U.S. Department of Education, "U.S. Department of Education Strengthens Federal Student Loan Servicing," news release, August 29, 2014; available online at https://www.ed.gov/news/press-releases/us-department-education-strengthens-federal-student-loan-servicing.

[55] Alexandra Hegji, *Administration of the William D. Ford Direct Loan Program*, Congressional Research Service, Washington, D.C., May 11, 2017, pp. 18-21; available online at https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-congresearch$2f3$2f2$2fa$2fa$2fcrs-2017-aml-0099_from_1_to_39.pdf/entitlementkeys=1234%7Capp-gis%7Ccongresearch%7Ccrs-2017-aml-0099.

[56] U.S. Department of Education, Office of Federal Student Aid website: https://studentaid.ed.gov/sa/repay-loans/consolidation#should-i.

- In late 2015, the Department revised the IDR application and annual recertification form as well as the process servicers must follow when handling IDR enrollment and recertification requests.[57] The revised process allows a borrower ask a servicer to choose the appropriate IDR option on the borrower's behalf. It also imposes a specific protocol servicers must follow when selecting the payment plan on behalf of a borrower.[58]

- Borrowers enrolled in IDR must annually recertify their income in order to maintain eligibility[59] for an income-based payment, and the recertification paperwork follows essentially the same process used to document income and household size during the initial enrollment into IDR.[60] Currently, servicers must initiate the annual recertification process for up to 7.63 million ED-owned borrower accounts.[61] In contrast, the process for enrolling loans in other repayment options, including graduated or extended repayment plans, does not require any income certification and is highly automated.[62] Figure 2 below illustrates the current IDR enrollment and recertification process.[63]

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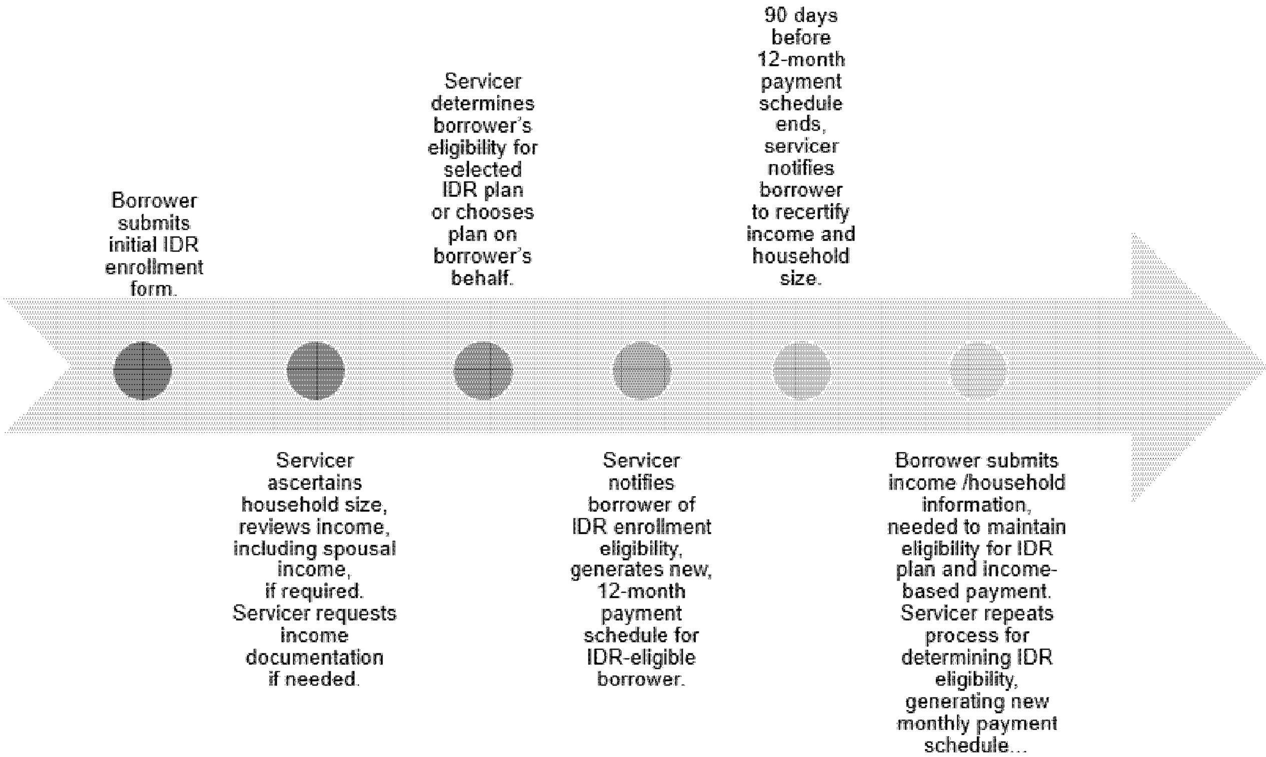
57 U.S. Department of Education, Office of Federal Student Aid, Dear Colleague Letter DCL ID: GEN 15-22, December 17, 2015; available online at https://ifap.ed.gov/dpcletters/GEN1522.html.
58 U.S. Department of Education, "Income-Driven Repayment Plan Request," OMB No. 1845-0102, p. 4; available online at https://ifap.ed.gov/dpcletters/attachments/184501021DRFINALExtended.pdf.
59 Recertification of income is necessary to maintain a payment that is based on a percentage of income. For the REPAYE plan, recertification of income is necessary to remain enrolled in the plan. Borrowers also are asked to annually update their household size. Failure to do so does not affect their ability to maintain their eligibility for an IDR plan or income-based payment, but it can affect the calculation of the income-based payment. For borrowers who do not update their household size, the payment calculation will assume a household size of one. See: U.S. Department of Education, Office of Federal Student Aid website: https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven#fail-to-recertify.
60 The IDR enrollment form also serves as the annual recertification form; the *Income Driven Repayment (IDR) Plan Request* form (OMB No. 1845-0102) is available online at https://static.studentloans.gov/images/idrPreview.pdf. Borrowers access the same government website – https://studentloans.gov – to electronically enroll or recertify.
61 Based on the number of ED-owned accounts enrolled in an IDR plan as of March 31, 2018. See U.S. Department of Education, Office of Federal Student Aid, *DL Portfolio by Repayment Plan*, Tab: *Federally-Managed*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.
62 All of ED's contract servicers offer borrowers access to online account management systems that allow borrowers to self-service a variety of account transactions, including requests to switch to different repayment plans.
63 U.S. Department of Education, Office of Federal Student Aid, *Income Driven Repayment Plans/Pay as You Earn*, presentation at 2015 FSA Training Conference, slides 20-31; See also *CFR 685.209, CFR 685.221*, and *CFR 682.209*.

Figure 2 – IDR Enrollment and Recertification Process



BCFP-produced graphic. Source: U.S. Department of Education.

Approximately 30 percent of federally owned borrower accounts in repayment are enrolled in IDR, up from 16 percent in June 2013.[64] As of March 31, 2018, the actual number of Direct Loan and ED-owned FFELP accounts in repayment totaled 25.77 million, and 7.63 million accounts were enrolled in an income-driven repayment

[64] U.S. Department of Education, Office of Federal Student Aid, *DL Portfolio by Repayment Plan*, Tab: *FedManagedPortbyRepaymentPlan*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio. Note: Datasets published by the Department of Education track accounts by loan recipients. For subsidized and unsubsidized Stafford loans and Graduate PLUS loans, the recipients are the borrowers. For Parent PLUS loans, the recipients are the student beneficiaries of the loan proceeds. Most borrowers with Parent PLUS loans, however, are ineligible for IDR.

plan.[65] The historical data series available for the Direct Loan portfolio (excluding ED-owned FFELP borrowers) shows the number of accounts being repaid under an IDR plan increased 337 percent from mid-2013 to March 31, 2018–from 1.58 million accounts to 6.91 million.[66]

- The government periodically has revised the payment formulas used to calculate the monthly payment schedules for several repayment plans. Older repayment plans, however, are not retired. Borrower accounts enrolled in the older versions will remain on those schedules unless the borrower switches to another payment option. Thus, ED's servicers currently maintain the computer programming and compliance support needed to calculate monthly payment schedules for 18 different repayment plans.[67]

- In 2008, Congress authorized a new loan benefit for servicemembers: a 6 percent rate cap on Direct and FFELP loans owed by certain deployed military personnel.[68] Administering these benefits requires servicers to establish a process to proactively tag eligible servicemember borrowers.

Student Loan Servicing Compensation Structure

Currently, the government deploys a multi-level compensation structure. The primary source of compensation is a third-party outsourcing model that pays servicers a monthly fee for each borrower account (defined by the customer's social security number[69]), based on the status of

[65] U.S. Department of Education, Office of Federal Student Aid, *DL Portfolio by Repayment Plan*, Tab: *FedManagedPortbyRepaymentPlan*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.
[66] ED's long-term data series on IDR enrollment does not include ED-owned FFELP loans. U.S. Department of Education, Office of Federal Student Aid, *DL Portfolio by Repayment Plan*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.
[67] Navient, "Navient Response to the Consumer Financial Protection Bureau Request for Information Regarding Student Loan Borrower Communications and the 'Payback Playbook,'" June 12, 2016, p. 7; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio. Note: Navient counts 16 different plans; however, the extended repayment plan actually offers two repayment schedules (equal installments and graduated payments, and the extended repayment plan rules changed in 2006. Thus, ED's servicers must support 18 different repayment plan calculation models.
[68] U.S. Department of Justice, "The Servicemembers Civil Relief Act (SCRA)"; available online at https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra.
[69] The rules for determining a borrower account are stated in the servicer contracts established in 2014. These contracts can be downloaded at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.

the loans in the account.[70] (See Table 4.) In addition, the four TIVAS can earn bonus payments for minimizing the number of delinquent accounts.[71]

Table 4 – Monthly Servicing Fee Schedule for ED-Owned Loans

Borrower Account Status	Current Fee Schedule
In-School	$1.05
Grace	$1.68
Servicemember	$2.85
Deferment	$1.68
Forbearance	$1.05
In Repayment & Current	$2.85
6-30 Days Delinquent	$2.11
31-90 Days Delinquent	$1.46
91-150 Days Delinquent	$1.35
151-270 Days Delinquent	$1.23
271-360 Days Delinquent	$0.45
361+ Days Delinquent	$0.45

Note: For borrowers with loans in more than one status, the monthly fee is based on the loans with the lowest-fee status.

Source: U.S. Department of Education, Office of Federal Student Aid.

The fee paid on an individual account can vary from month to month, based on changes in the status of the loans in the account. For borrowers with loans in more than one status, the monthly fee is based on the loans with the lowest-fee status.[72] For example, for a borrower with undergraduate Stafford loans that are in repayment and current *and* graduate school Stafford

[70] The current fee schedule is shown in the servicer contracts established in 2014. These contracts can be downloaded at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.
[71] The extra payment formula is shown in the servicer contracts established in 2014. These contracts can be downloaded at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.
[72] For accounts holding loans with different statuses, the monthly fee is based on the lowest earning status in the portfolio. U.S. Government Accountability Office, *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight*, May 2016, p. 12; available online at https://www.gao.gov/products/GAO-16-523.

loans in the six-month, post-school grace period, the monthly fee collected for that borrower is $1.68, the grace period fee and not the $2.85 fee for accounts that are in repayment and current.

To some extent, these variations in fees recognize that servicing costs vary along the life cycle of education loans. Loans that are in school or the post-school grace period are less costly to administer than loans that are in repayment. Student borrowers are not required to begin repayment until after their six-month grace period ends,[73] and loans that have not yet reached repayment, by definition, cannot be delinquent. Similarly, borrowers who have postponed their monthly payments by enrolling in a deferment or forbearance also cannot become delinquent during the deferment or forbearance period. In addition, the fee schedule recognizes the additional staffing and resources that must be assigned to support the special servicing needs of servicemembers under the SCRA.[74]

However, the fee schedule also is designed to reward servicers who minimize the delinquency rate for loans that are in repayment and who minimize the use of deferment or forbearance. Servicers receive larger monthly fees for accounts that are in repayment and in good-standing.[75] Servicers receive the lowest fees for seriously delinquent accounts, which are more expensive to manage than loans that are in repayment and current. For example, servicers must follow due diligence requirements to contact delinquent borrowers.[76] A seriously delinquent borrower who does respond to servicer outreach (e.g., letters, emails, phone calls) will typically require lengthy repayment counseling, and a successful borrower contact may result in a request to initiate the multi-step IDR enrollment process. (See Figure 2.) In effect, the higher fees paid for low-maintenance accounts – especially loans that are in repayment, are enrolled in auto debit and are current – are subsidizing the cost of servicing delinquent accounts.

Non-fee compensation. ED's contracts give servicers other incentives to keep borrowers current in their payments. Lump sum awards are made to the four TIVAS servicers who keep their delinquency rates under a stated level; improving the delinquency rate over prior quarters earns a bigger bonus. These payments can provide $200,000 to $500,000 per quarter.[77]

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73 U.S. Department of Education, Office of Federal Student Aid website: https://studentaid.ed.gov/sa/repay-loans/understand.

74 U.S. Department of Education, "U.S. Department of Education Strengthens Federal Student Loan Servicing," news release, August 29, 2014; available online at https://www.ed.gov/news/press-releases/us-department-education-strengthens-federal-student-loan-servicing.

75 Ben Miller, "Fixing the finances, not the structure, of student loan servicing," New America Foundation, September 4, 2014; available online at https://www.newamerica.org/education-policy/edcentral/student-loan-servicing/.

76 U.S. Department of Education, Office of Federal Student Aid, *The Changing Data Landscape of Cohort Default Rates*, presentation delivered at 2013 NASFAA National Conference, slides 64-65; available online at ifap.ed.gov/presentations/attachments/NASFAA2013ChangingLandscapeCDRFINALSession79.pptx.

77 The extra payment formula is shown in the servicer contracts established in 2014. These contracts can be downloaded at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.

Account allocation incentives. Servicers who do a better job in averting delinquencies will score higher on the loan allocation rankings and will thus be rewarded with a larger share of new borrower accounts[78] and thus an expanding source of revenues. As shown in Table 5 below, the most recent allocations range from a high of 17 percent of new accounts to a low of 3 percent.[79]

Table 5 – New Borrower Account Allocation Rankings

Allocations in effect through August 2018*		
MOHELA	NFP	17%
Great Lakes	TIVAS	16%
HESC/EdFinancial	NFP	15%
Nelnet	TIVAS	12%
Cornerstone	NFP	11%
Granite State	NFP	10%
Navient	TIVAS	9%
Oklahoma Student Loan Authority	NFP	7%
PHEAA/FedLoan Servicing	TIVAS	3%
Total		100%

*Based on most recently published data.
Source: U.S. Department of Education.

Because the government's Direct Loan program originates 88 percent of new student loans every year ($93.8 billion of the total in-school volume of $106.5 billion during the 2016-2017 annual award year),[80] the Department of Education is a critical source of fresh student loan servicing volume.

Fee structure for federal student loan servicing vs. fee structure for third party servicing of government-backed mortgage loans. Fannie Mae and Freddie Mac – federal

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78 U.S. Department of Education, "U.S. Department of Education Strengthens Federal Student Loan Servicing," news release issued August 29, 2014; available online at https://www.ed.gov/news/press-releases/us-department-education-strengthens-federal-student-loan-servicing. Also see ED's student loan servicing contracts for 2014; available online at the Office of Student Aid website at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing. Note: Scorecard results are published quarterly, but allocation percentages are updated semiannually.

79 U.S. Department of Education, Office of Federal Student Aid, "Servicer Performance Metrics and Allocations," Quarter Ending December 31, 2017; available online at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-dataservicing/servicer-performance.

80 The College Board, *Trends in Student Aid 2017*, pp. 4 and 9; available online at https://trends.collegeboard.org/student-aid.

government-sponsored enterprises (GSEs) that provide a secondary market for the nation's mortgage industry – rely on third parties to perform a range of servicing functions.[81] These functions include customer service, collecting/posting of payments, loan accounting, loss mitigation services, collections, escrow, bankruptcy, insurance tracking, and credit reporting.[82] The GSE compensation model is significantly different from ED's servicing fee model and offers servicers a number of revenue streams, including fees that are assessed as a fraction of the interest that accrues on each of the mortgage loans in the servicing portfolio.[83] Consider a Fannie Mae-owned mortgage with an initial balance of $70,000 and an annual servicing fee set at 37.5 basis points. In this case, a servicer could expect to receive $21.88 for the first month of servicing; as the balance declines, the monthly fee would decline.[84] In addition to collecting the monthly fees, servicers can retain late fees, fees charged for special services, and all or a portion of prepayment premiums.[85] Servicers also can receive incentive payments made in conjunction with loss mitigation programs designed to help keep borrowers in their homes in the event of default.[86] Mortgage servicing compensation is loan specific and continues until a mortgage loan is liquidated or otherwise removed from the Fannie Mae/Freddie Mac portfolio or a mortgage-backed securities pool.[87]

Servicer revenue management. An inherent challenge for student loan servicers is managing their resources to provide all of the required services, in keeping with contractual requirements and within the constraints of the compensation regime. For example, the current servicing contracts essentially prohibit the use of offshore call centers, set minimum wage schedules, pursuant to the Federal Acquisition Regulation (FAR), which requires servicers to pay wages that would be higher than some servicers might otherwise pay.[88] The mix of the servicing portfolio can present a challenge to revenue management. For example, a portfolio that experiences a rapid increase in in-school loans could exert a downward drag on the average

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81 Congressional Budget Office, "Transferring Credit Risk on Mortgages Guaranteed by Fannie Mae or Freddie Mac," December 14, 2017 p. 1; available online at https://www.cbo.gov/publication/53380.
82 See, for example, Freddie Mac, *Single Family Seller/Servicer Guide*, Topic 8100: General Freddie Mac Servicing Policies, published July 25, 2018; available online at http://www.freddiemac.com/singlefamily/pdf/guide.pdf.
83 See, for example, Fannie Mae, *Servicing Guide*, Topic A2-3-01: Servicer Compensation, published June 13, 2018; available online at https://www.fanniemae.com/content/guide/servicing/a2/3/01.html.
84 See, for example, Fannie Mae, *Fannie Mae Investor Reporting Manual*, February 14, 2018, p. 49; available online at https://www.fanniemae.com/content/guide/investor-reporting-manual.pdf.
85 See, for example, Fannie Mae, *Servicing Guide*, Topic A2-3-01: Servicer Compensation, published June 13, 2018; available online at https://www.fanniemae.com/content/guide/servicing/a2/3/01.html.
86 See, for example, Fannie Mae, *Servicing Guide*, Topic F-2-02: Incentive Fees for Workout Options, published June 13, 2018; available online at https://www.fanniemae.com/content/guide/servicing/f/2/02.html.
87 See, for example, Fannie Mae, *Servicing Guide*, Topic A2-3-01: Servicer Compensation, published June 13, 2018; available online at https://www.fanniemae.com/content/guide/servicing/a2/3/01.html.
88 ED's servicers are barred from doing any work outside the U.S. without first obtaining the Department's approval. The servicing contracts also include a number of provisions stipulated by FAR. These terms are established in ED's current servicing contracts, which can be downloaded at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.

monthly fee for the entire portfolio, increasing the pressure for servicers to minimize the delinquency rate for their accounts that are in repayment.

Revenues from the repayment portfolio can be weakened by an increase in borrower delinquencies, especially any jump in accounts that reach the 271st day of delinquency and are poised for default. As shown in Table 5, the maximum a borrower account can return over a year's time is $34.20 – 12 times the $2.85 paid for accounts that are in repayment and current. The monthly fees generated by an account over a 360-day period of delinquency range from a high of $2.11 to a minimum rate of $0.45, returning just $14.00 over a 12-month period. Servicers could modestly boost revenues by encouraging delinquent borrowers to seek a deferment (if the borrowers are eligible for a deferment[89]). An account that spends 12 months in forbearance would generate just $12.60 in fee income for the year.

Table 5 – How Borrower Status Affects Revenues

Borrower Is	Total Fees Paid to Servicer
Current for 12 months	$34.20
In Deferment for 12 Months	$20.16
Delinquent for 12 Months	$14.00
In Forbearance for 12 Months	$12.60
BCFP calculations. Source: U.S. Department of Education.	

Servicers incur additional expenses when they help borrowers switch from one repayment plan to another or enroll in a deferment or forbearance. Two of servicing's more expensive activities are handling the initial application to enroll in IDR and processing the annual income recertification required for IDR plans.[90] IDR processing costs can significantly erode a servicer's net fee income for an individual account over a year's time, even if the lower IDR payment enables the borrower to stay current and the servicer is able to consistently collect $2.85 a month. The sooner a servicer enrolls a delinquent borrower into an IDR plan, the greater the potential fee revenue, assuming the borrower is able to remain current under the IDR plan. The

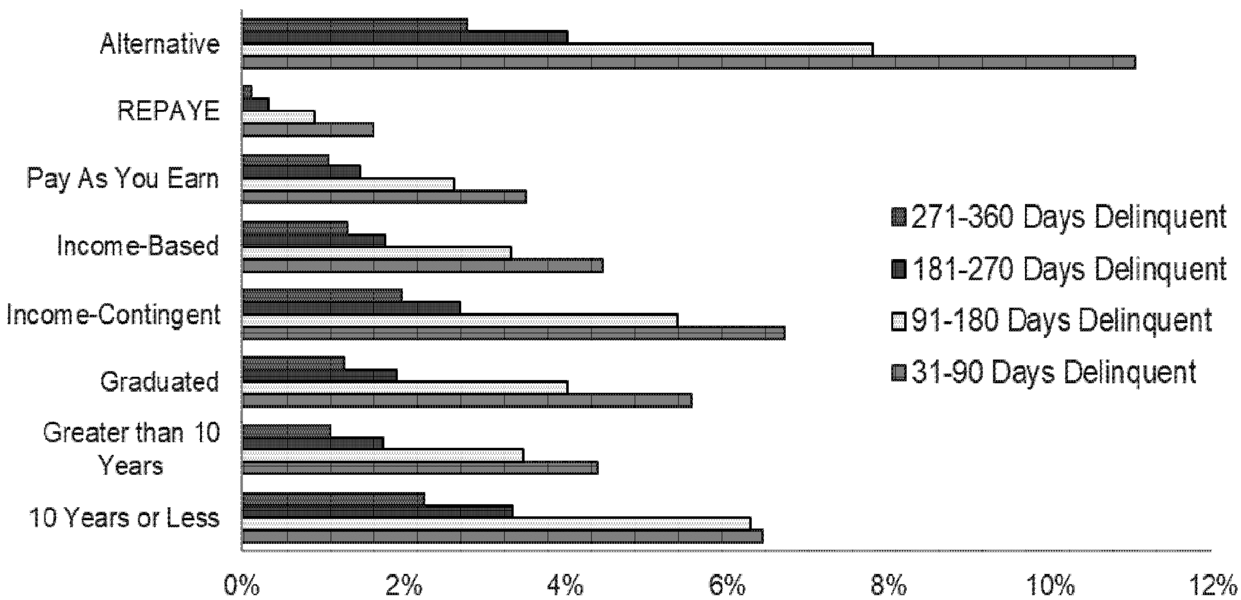
[89] Deferments are available in a number of circumstances (e.g., unemployment, economic hardship, military deployment), provided borrowers meet the eligibility requirements. See U.S. Department of Education, Office of Federal Student Aid website at https://studentaid.ed.gov/sa/repay-loans/deferment-forbearance#deferment-eligibility.

[90] Based on CLRC staff conversations with student loan servicing executives; their estimated cost of processing an initial enrollment application or a recertification is at least several times the monthly fee paid for an account that is in repayment and current.

longer it takes delinquent borrowers to respond to servicer outreach and enroll in an IDR plan, the greater the inherent subsidy provided by the servicer's performing accounts.

The available data also show that, for the Department's Direct Loan servicing portfolio, borrowers enrolled in IDR plans have lower delinquency rates than borrowers who are repaying their loans under the standard, 10-year repayment plan.[91] (See Figure 3.) Whatever the reason for the differences in delinquency rates by repayment plan, ED's servicing reports show that the number of ED-owned accounts that are in repayment and current has been rising in recent years and that the percentage of accounts that are in repayment and current has been rising as well.[92] These trends have helped increase the fee-generated revenue streams for the Department's primary contractors. The Department of Education's payments to its nine servicers are nearing $1 billion annually.[93]

Figure 3 – Direct Loan Delinquency Rates by Repayment Plan
March 2018



Source: U.S. Department of Education.

[91] U.S. Department of Education, Office of Federal Student Aid, *Direct Loan Portfolio by Delinquency Status and Repayment Plan*, March 31, 2018; available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[92] U.S. Department of Education, Office of Federal Student Aid, *Direct Loan Portfolio by Delinquency Status* March 31, 2018; available online at available online at https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[93] Office of Management and Budget, *FFY 2018 Federal Budget Appendix*, p.356; available online at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/appendix.pdf.

Looking Ahead

The Department's contracts with its nine primary servicers are set to expire in June 2019.[94] The Office of Federal Student Aid is planning to develop a comprehensive, servicing system created by integrating nine different components. The "Next Generation" project, announced in February 2018, is seeking bidders for the following functions:

- An enterprise-wide digital platform (web and mobile)
- An enterprise-wide contact center platform, including customer relationship management (CRM)
- A core processing system, including a "rules engine" – Versions 2.0 and 3.0
- Business process operations Versions 2.0 and 3.0
- An enterprise-wide data management platform
- Enterprise-wide identity and access management (IAM)
- Cybersecurity and data protection[95]

The Department's Next Generation approach represents a significant shift in the student loan servicing framework for federally owned loans. Instead of relying on multiple servicing systems that perform the same set of functions, the Department envisions an integrated servicing system that relies on multiple entities that are responsible for specific functions.[96] For example, one contract will be awarded for the development of the digital platform, and one contract will be awarded for the development of the customer contact platform. The Department has encouraged companies outside the current student loan servicing network to consider bidding for elements of the Next Generation project.[97]

In addition to the Next Gen solicitation, ED recently announced plans to establish, under a separate solicitation process, an "enhanced" servicer, which would handle accounts that become 90 days delinquent and continue to manage collection activities for any of the accounts

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94 U.S. Department of Education, "Secretary DeVos Announces Intent to Enhance FSA's Next Generation Processing and Servicing Environment, news release, August 29, 2017; available online at https://www.ed.gov/news/press-releases/secretary-devos-announces-intent-enhance-fsas-next-generation-processing-and-servicing-environment.

95 *U.S. Department of Education Office of Federal Student Aid, Phase I – Solicitation, Next Generation Financial Services Environment;* p. 1; available online at https://www.fbo.gov/index?tab=documents&tabmode=form&subtab=core&tabid=3739fa9d7219afb8db022a39a0066117.

96 The solicitation allows a single organization to win contracts to build all nine components. See *U.S. Department of Education Office of Federal Student Aid Phase I – Solicitation, Next Generation Financial Services Environment,* p.1; available online at https://www.fbo.gov/index?tab=documents&tabmode=form&subtab=core&tabid=3739fa9d7219afb8db022a39a0066117.

97 U.S. Department of Education, Office of Federal Student Aid, "NextGen Request for Advanced Market Research Information," December 2017; available online at https://www.fbo.gov/utils/view?id=29d1c491a10e1c21d274a1467e86fb55.

that subsequently default. ED said that the current role of the Debt Management and Collections System would diminish over time.[98]

Initial bids for the Next Generation contracts were due in April 2018, but as of September 19, no contract winners had been announced.[99] On August 27, ED announced that it was canceling parts of the Next Generation solicitation in favor of awarding the contracts for two components – the enterprise-wide digital platform and the enterprise-wide contact center platform and CRM system – through a government-wide technology procurement service that is managed by the National Institutes of Health.[100]

In the event that the new servicing platform is not in place by June 2019, the Department has the ability to extend contracts with its current servicers.[101]

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98 *FMS v. USA*, Case 1:18-cv-00204-TCW, Document 244 and Document 244-1, filed May 23, 2018. These court filings can be found at: https://www.harris.senate.gov/imo/media/doc/FMS_v._USA_-_EDs_reply_in_support_of_motion_to_dismiss_5.23.18.pdf.

99 The Next Generation solicitation involves a two-phase bidding process, and the Phase 1 bids were required to be submitted by April 18, 2018. See *U.S. Department of Education Office of Federal Student Aid, Phase I – Solicitation, Next Generation Financial Services Environment,* Amendment 5, pp. 1 and 27; available online at https://www.fbo.gov/index?tab=documents&tabmode=form&subtab=core&tabid=3739fa9d7219afb8db022a39a0066117.

100 *FSA Next Generation Financial Services Environment Solicitation*, Modification Amendment, August 27, 2018; available online at https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=8167b2350a49628bdde103727e01df05&_cview=0. Information about the NIH Technology Acquisition and Assessment Center (NITAAC) is available online at https://nitaac.nih.gov/.

101 The current servicing contracts contain provisions that would allow the Department of Education to seek a contract extension. The current contracts can be downloaded at https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing.

Market Intelligence

Market Information from RMR Market Offices

Spotlight: "Live Check" Loans

Office of Consumer Credit, Payments, and Deposits Markets | December 2019

Aarif Masani
Laura Udis

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*

Introduction

Background

This spotlight examines the practice of unsecured personal loan origination through the mailing of "live checks." Live check loans are preapproved personal loans extended to potential borrowers in the form of unsolicited checks. When recipients sign and subsequently cash or deposit the checks, they become obligated to repay the loans.[1]

The spotlight provides a summary of live check loan products, product history, recipient demographics, loan statistics, consumer complaints, and recent legislative actions. RMR Markets analyzed live checks by examining lenders' direct mail data in the Mintel Comperemedia direct marketing database from February 2018 through February 2019.[2] RMR Markets also relied on public filings and its own market intelligence conversations with industry participants.

Description

"Live check" loans are unsolicited, prescreened firm offers of credit in the form of a check mailed to potential borrowers. Lenders use consumer reporting agencies to select recipients based on credit scores and other credit criteria.[3] The mailing material includes disclosures of the cost of credit required by the Truth-in-Lending Act (TILA), including loan amount, finance charge, annual percentage rate (APR), total of payments, payment schedule; a promissory note, Fair Credit Reporting Act (FCRA) prescreening and opt-out notices; and other legal disclosures. The consumer becomes obligated on the loan by cashing or depositing the check. Live check loans are also known as "check loans" and "convenience checks." The direct marketing material we reviewed and our discussions with lenders indicate that the mailings offer personal loans that are typically unsecured and do not include add-on products.[4]

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[1] Government Accountability Office (GAO), *Report to the Chairman, Subcommittee on Financial Institutions and Regulatory Relief, Committee on Banking, Housing and Urban Affairs, U.S. Senate: Live Loan Checks – Information on Unsolicited Consumer Loans for Preapproved Borrowers,* at 1 (August 1998), *available at* https://www.gao.gov/products/GGD-98-176

[2] Mintel maintains a direct mail panel of 70,000 consumers, known as panelists, annually. About 1,000 of these panelists are "lifecycle" panelists who report consistently throughout the year. On the first of each month, panelists receive a packet with four envelopes, one for each week. Each week, panelists send solicitations, offers, and other communications, except bills and account statements, to Mintel. Mintel digitally scans each piece and recognizes text via optical character recognition (OCR). Panelists are provided an incentive of $20 per month. A subset of panelists also installs software on their computers to automatically forward solicitation emails to Mintel. Panelists self-report demographic information such as household income, race, and ethnicity.

[3] *See* GAO at 3.

[4] Because the promissory note and Truth-in-Lending disclosures are preprinted and included with the mailing material, the addition of collateral or voluntary add-on products would require redisclosure. However, one of the depository lender's live check campaigns stated that a completed disclosure would be provided after endorsement. The final disclosure could potentially include collateral or other products.

History

Some financial institutions, including both nondepository lenders and depository lenders, have offered live check loans since as early as the 1980's.[5] In the 1990's, large depository institutions, including Fleet Bank, Chase Manhattan, and Signet Bank, offered live check loans.[6] As of 1998, Fleet offered live check loans to borrowers with an average 730 credit score in amounts of $3,000 to $10,000. The loans had associated APRs of 12.9 to 15.9%.[7]

In 1997 and again in 1999, after the 1998 release of a GAO report on live check loans, bills were introduced in Congress to amend the Truth in Lending Act to ban the distribution of live checks. No bill was enacted.[8] Since then, depository institutions have largely pulled back from the use of live check loans—though a limited number of mostly small depository institutions still offer them. Nondepository institutions, particularly storefront installment lenders continue to offer live check loans.

Revival

Recently, live check loans have again garnered media and regulatory attention.[9] Comprehensive industry-wide data are unavailable, but at least one report claims that lenders' use of live checks has accelerated in recent years.[10] Additionally, publicly-available information from Regional Management Corp. dba Regional Finance, a state-licensed nondepository lender with 359 branches in 11 states, shows the number of live checks it mailed has increased over 100% from 2014 – 2018 and over 1,200% from 2008 – 2018.[11] Last year, live check loans accounted for ~20% of Regional's total origination volume.[12] Live check volume from another nationwide

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[5] *See* GAO at 3 and *Hearing on Debit Cards and Unsolicited Loan Checks Before the Subcomm. on Financial Institutions and Consumer Credit of the H. Comm. On Banking and Financial Services,* 105th Cong. (Sept. 24, 1997) (Statement of Frank D. Lucas, an Oklahoma Congressman), *available at* http://commdocs.house.gov/committees/bank/hba43660.000/hba43660_0f.htm.

[6] *See* GAO at 2.

[7] *Id.* at 4.

[8] The Unsolicited Loan Check Consumer Protection Act was introduced in 1997 in the 105th Congress as H.R. 2053 & S. 1163, in 1999 in the 106th Congress as H.R. 1576 & H.R. 2351, and in 2001 in the 107th Congress as H.R. 1058.

[9] *See* Whoriskey, P., *'A way of monetizing poor people': How private equity firms make money offering loans to cash-strapped Americans,* Washington Post, (July 1, 2018) *available at* https://www.washingtonpost.com/business/economy/a-way-of-monetizing-poor-people-how-private-equity-firms-make-money-offering-loans-to-cash-strapped-americans/2018/07/01/5f7e2670-5dee-11e8-9ee3-49d6d4814c4c_story.html & Shevin, M., *Guaranteed Offers of Credit Now Under Legislative Microscope,* Lexology, (Dec 13, 2018), *available at* https://www.lexology.com/library/detail.aspx?g=02b7a173-a272-485e-9ace-441bbea9fb2e.

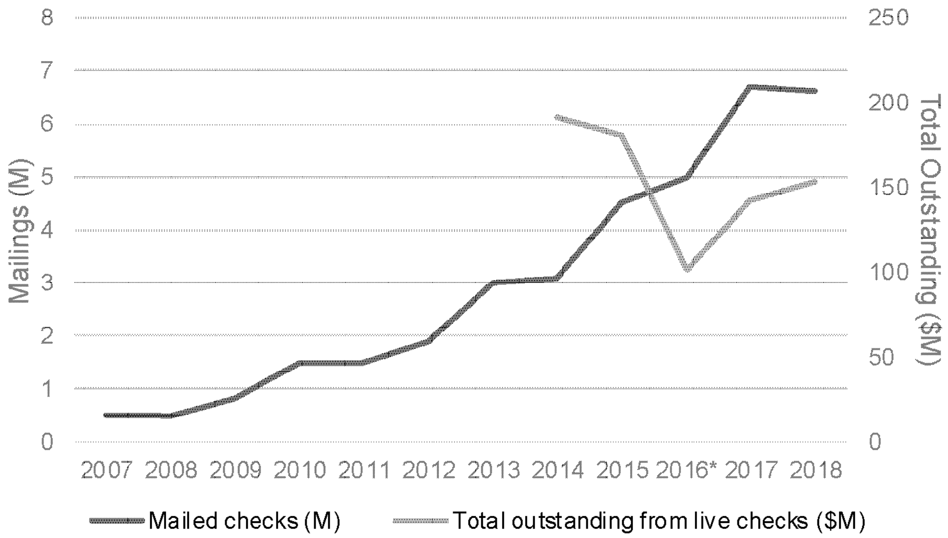
[10] *See* Peters, A., *Will Congress move to outlaw 'live' checks?* American Banker, (Dec 27, 2018), *available at* https://www.americanbanker.com/news/will-congress-move-to-outlaw-live-checks.

[11] Volume of live check mailings are based on absolute figures or growth rate figures of live check mailings provided in Regional Management Corp.'s 2012 – 2018 Annual Reports (Form 10-K) and Regional's 2011 Registration Statement (Form S-1). All filings are available through SEC Edgar or Regional's Investor Relations site at https://www.regionalmanagement.com/financials/sec-filings/default.aspx.

[12] *See* Regional Management Corp, 2018 Annual Report (Form 10-K), at 17, *available at* https://d18rn0p25nwr6d.cloudfront.net/CIK-0001519401/3348fdd7-3081-4720-b8d3-1938699e3b01.pdf.

lender accounted for 28% of loan volume in late 2017.[13] The American Financial Services Association (AFSA) notes live checks are used by some of its traditional installment lender members.[14] Mintel contains mailing campaigns from at least 17 AFSA members, who accounted for over 80% of total estimated live check loan volume.[15] A full list of institutions identified by Mintel who sent live checks during the study period is included in the Appendix.

FIGURE 1: GROWTH IN LIVE CHECK VOLUME: REGIONAL MANAGEMENT



*Regional did not specifically provide a reason for the 2016 drop in live check originations. However, in 2014 Regional experienced a 'credit quality deterioration' on its live check loans, and in 2015 a vendor error resulted in live check mailings being misdirected. During this time, Regional established a committee to oversee direct mail underwriting and subsequently tightened standards on direct mailings. *See* 2017 10-K pg. 4, 26.

Visual appearance of a live check loan

Live check loan mailings typically include an invitation to cash the check, relevant disclosure forms, and the check itself. The mailing may include an invitation to visit a branch to receive additional funds. The material typically includes disclosures required by TILA and Gramm-Leach-Bliley Act privacy regulations, FCRA prescreening and opt-out notices, and arbitration agreements. In some cases, the envelope containing the live check has the words "Check Enclosed Open Immediately" or similar language.

[13] *See* Whoriskey.
[14] *See* American Financial Services Association (AFSA), *Marketing Checks (aka live checks) Issue Brief*, (May 2019) *available at* https://www.afsaonline.org/Portals/0/SGA/Issue%20Briefs/AFSA%20Issue%20Brief%20Live%20Checks%20May%202019.pdf.
[15] AFSA Membership is as of August 2019. Full membership list is available at https://www.afsaonline.org/Portals/0/Membership/AFSA%20Membership%20List%20-%20August1%202019.pdf.

The check itself contains some unique features. The front of the check typically includes a disclosure of varying font size noting that the check is a loan. Additionally, most checks expire 30 to 45 days after mailing.[16]

The back of the live check typically indicates that the borrower's signature is required. The back of the check also asks borrowers for contact information, including phone numbers, driver's license or state ID number, and/or email addresses. In some cases, borrowers are asked to provide part of their social security number and/or present two forms of identification.[17]

Depository institutions also offered live check mailing campaigns during the time period we reviewed, including both banks and credit unions. PenFed was the largest depository institution that sent live checks.[18] Unlike other live check mailings, PenFed's offer allows the consumer to select the amount and term (up to a maximum) and includes sample disclosures. The TILA disclosure and promissory note is blank, and completed copies are mailed to the consumer after the check is negotiated.[19]

Representative examples of full live check mailings from the two largest nondepository live check mailers and the largest depository lender tracked by Mintel[20] are included as Appendices.

Benefits and Risks of Live Check Loans

Consumers

The major benefit of live checks for borrowers is convenience. The consumer receives funds at home without completing a loan application or waiting for an approval decision. This contrasts with other personal loans from nondepository lenders who typically require borrowers to close loans in-branch. According to some lenders, the other benefits and risks to borrowers are comparable to those associated with conventionally marketed unsecured personal loans.[21]

Like other types of fraudulent credit transactions, a live check loan that is fraudulently cashed could lead to a debt that is incorrectly attributed to an unwitting consumer – resulting in inaccurate credit reports and incorrect debt collection attempts. However, a 1998 GAO report on live check loans discussed fraudulently cashed live check loans, and noted that it "[did] not appear that many potential borrowers have been exposed to the risk of fraudulently cashed loan

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[16] In its review, RMR Markets visually examined a small sample of live check mailings from several issuers, including the five largest--whose total volume accounted for over half of the live checks found in the Mintel database. These issuers are (from largest volume to smallest): Republic Finance, Mariner Finance, OneMain Financial, Regional Finance, and Security Finance. According to CCPD's market monitoring, OneMain no longer uses live checks because, unlike its other loans, it cannot perform a consumer budget analysis with live checks.
[17] See appendix. Questions for partial SSN's were found on the back of live checks sent by Heights Finance.
[18] An example of PenFed's live check mailings is included in the appendix.
[19] See appendix.
[20] These institutions are the largest by live check issuance volume as estimated by Mintel.
[21] *See* GAO at 8.

checks."[22] The report went on to note that private and public sector officials, including officials from the Federal Reserve, had not seen large levels of live check loan fraud. It also noted that a recipient's rights in case of a forged endorsement are generally governed by state law, and protections have been adopted in almost every state. At the time, Consumer Federation of America noted that a consumer may experience difficulty if a live check loan is cashed by someone other than the intended recipient.[23]

More recently, a CCPD conversation with a lender that previously used live check loans revealed specific situations that could lead to fraudulently cashed checks. Most live check fraud occurred within households or by relatives with similar names (often differentiated by a suffix of "Sr." or "Jr."). Similarly, credit bureaus can mistakenly mix files of individuals with the same name but different addresses. Lastly, endorsement forgery can lead to a fraudulently cashed live check loan.[24]

The nature of a live check loan also potentially increases loan stacking risk. A borrower could receive multiple live checks from the same or multiple lenders, which could lead to credit overextension or violate state laws on multiple loans or maximum dollar amounts outstanding. Some lenders have noted that reducing the length of time that live check loans are valid could mitigate this risk.[25] Most live check loan offers reviewed by RMR Markets are valid for 30 – 45 days.

One lender also identified the potential for elder financial abuse if a third-party improperly pressures an elderly person to cash the check. An in-person branch application mitigates this risk because financial services employees are often trained to watch for such conduct.[26]

Others have associated certain risks with live check loans. For example, public and private sector officials said that live check loans could increase the possibility of default and bankruptcy if borrowers misused their credit.[27] However, this risk applies to other personal loans, and other loans in general. As with other prescreened firm offers of credit, consumers may exercise their rights under the Fair Credit Reporting Act to opt-out of these solicitations.[28]

Lenders

[22] *Id.*
[23] *Id* at 9. As of 1997, AFSA voluntary standards included the stipulation that if a live check was stolen or fraudulently cashed, the intended recipient is to have no liability for the loan obligation. *See* GAO report at 6. Whether this standard remains in place today is unclear. In addition, at least one state (North Carolina) has a law that requires lenders to investigate in the event a live check is fraudulently cashed or stolen. Required recourse includes removal of liability from the intended recipient and correction of tradelines reported to credit reporting agencies. This and other state laws are further described in the State and Federal Actions section below. *See* North Carolina G.S. § 75-20, *available at* https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_75/GS_75-20.html.
[24] Based on CCPD Markets discussion with OneMain Financial in June 2019.
[25] *Id.* and GAO report at 10.
[26] Based on CCPD Markets discussion with OneMain Financial in June 2019.
[27] *See* GAO at 8.
[28] 15 U.S.C. §1681b

Lenders appear to use live checks mainly to acquire new customers – nearly 90% of estimated total live check loan mailings tracked by Mintel were for acquisitions (rather than cross-sells or win-backs). [29] The American Financial Services Association (AFSA) notes that "the value to AFSA members of live checks comes from their marketing efficiency."[30] Additionally, Regional Management – a large nondepository lender that sent 6.6 million live check loan solicitations last year – specifically indicates that it "mail[s] convenience checks in new markets as soon as new branches are open, which develops a customer base and builds finance receivables for those new branches."[31] Regional also times its check mailings to coincide with seasonal consumer demand, typically during the second half of the year.[32]

Aside from the risk of fraudulently cashed checks (discussed above) – whose costs are typically borne by lenders themselves[33] — lenders face additional operational risks intrinsically related to the handling of large mail volumes. For example, in 2015, an error by Regional Management's check vendor resulted in live check loans being misdirected to unintended consumers, requiring Regional to notify regulators and refund certain interest and fee amounts, while exposing the company to increased credit risk.[34]

Demographic and Loan Statistics

Volume

The estimated total mail volume of live check loans based on Mintel's representative samples was ~36M from March 2018 – Feb 2019.[35] These estimates are one of the only available aggregate statistics on live check loan mailing volume.

A time series analysis of volume by month reveals an unsurprising trend: lenders send more checks from November to January, likely to coincide with holiday spending. This trend is corroborated by Regional Management's own comments.[36]

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[29] In a conversation with CCPD, OneMain confirmed it uses live checks to solicit new or former (not current) customers

[30] *See* AFSA Issue Brief.

[31] *See* Regional Management Corp, 2018 Annual Report (Form 10-K), at 5, *available at* https://d18rn0p25nwr6d.cloudfront.net/CIK-0001519401/3348fdd7-3081-4720-b8d3-1938699e3b01.pdf.

[32] *See* Regional Management Corp, 2014 Annual Report (Form 10-K), at 17, *available at* https://d18rn0p25nwr6d.cloudfront.net/CIK-0001519401/c48ab12e-0c53-4706-8269-a8f9c5ff8017.pdf.

[33] *See* GAO at 9.

[34] *See* Regional Management Corp, 2017 Annual Report (Form 10-K), at 26, *available at* https://d18rn0p25nwr6d.cloudfront.net/CIK-0001519401/c80e5bff-4276-41dd-a380-13ab500e8a05.pdf.

[35] Mintel's volume figures depend on estimations of mailing campaign size by Mintel—which can vary. To illustrate: Mintel's estimation of Regional Management's mailing volume from Feb 2018 – Jan 2019 was ~2.7M, while Regional Management reported in its 2018 Form 10-K that it mailed 6.6M live checks in 2018 – a nearly identical time period.

[36] See footnote 31.

A note on depositories

Of the 49 live-check-mailing financial institutions identified in the Mintel database, only 6 were depository institutions—five credit unions and one bank. The estimated live check loan mailings from depositories accounted for only ~1.5% of total estimated volume, with zero mailings identified from depositories in 7 of the 13 months in the review window. Because of the low number of mail campaigns identified from depositories, drawing conclusions on aggregate statistics for live check loans from depository institutions is difficult. We present depository-related statistics with the caveat that the low number of depository mail campaigns identified impairs our ability to draw conclusions on aggregate statistics of depository live check loans.

Recipient profile

About half of the live check loan mailing recipients in RMR Markets' review period earned from $35k - $75k. The age of mailing recipients was much more evenly distributed, with no age group accounting for less than 9% or more than 14% of total mailings (excluding the 18-25 age group).

Typical FICO scores of live check loan borrowers (recipients who cashed the check) at one nationwide lender ranged in the 600's, with some borrowers slightly above or below that range.[37]

Comparisons between live check borrowers and in-branch borrowers from the same institution are ambiguous. In its annual report, one lender noted that live check customers "have historically presented a higher risk of default than customers that originate loans in our branches."[38] Another live check lender said that live check loans actually performed *better* than those originated in-branch.[39]

[37] Based on a CCPD Markets conversation with Regional Management in June 2019.
[38] *See* Regional Management 2018 Annual Report at 17.
[39] Based on a CCPD Markets conversation with OneMain in June 2019.

FIGURE 2: LIVE CHECK MAILINGS BY INCOME OF RECIPIENT

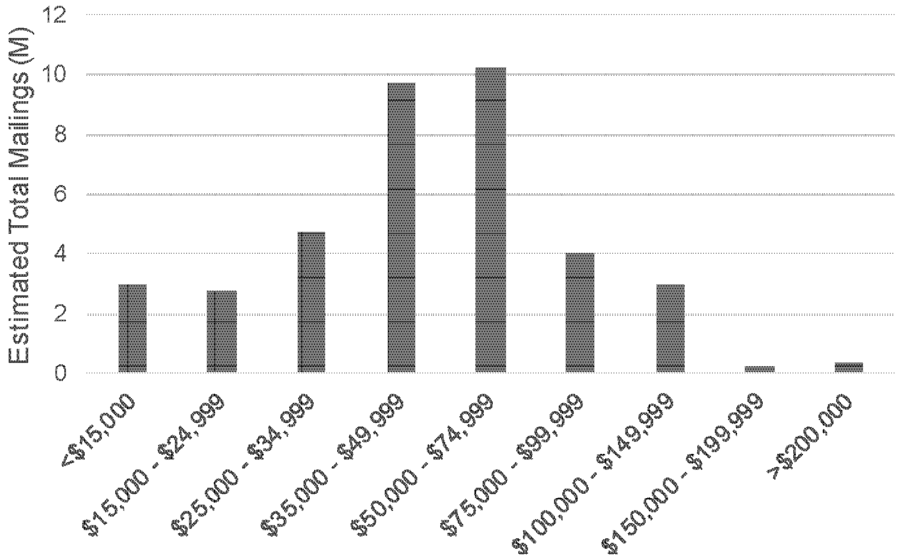
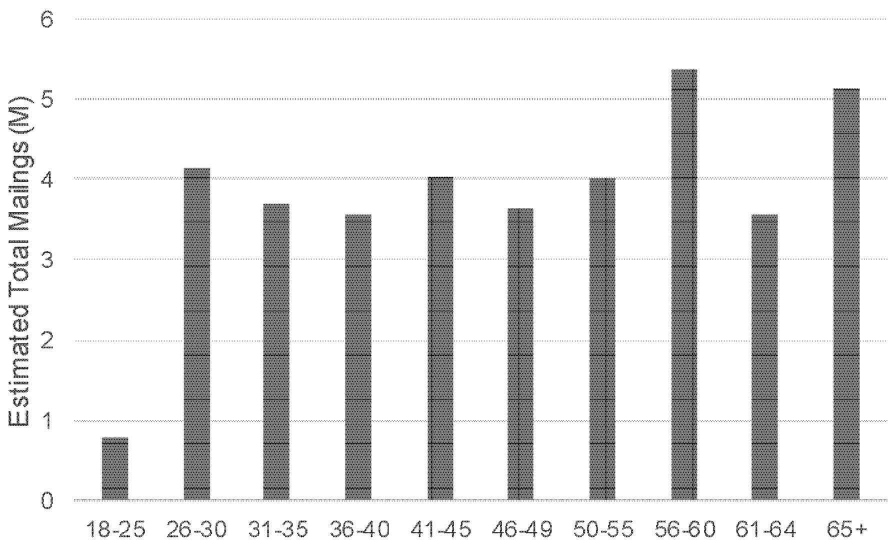


FIGURE 3: LIVE CHECK MAILINGS BY AGE OF RECIPIENT



Loss Rates

Available information on loss rates from loans originated through live checks is incomplete and conflicting. Republic Finance reported charge-offs (post-collection) on live check loans of 7%.[40] Both Mariner and Regional Management see loss rates from live check loans higher than those

[40] Based on a CCPD Markets conversation with Republic Finance in April 2019.

CFPB-0001038

of other origination methods, while OneMain – a direct competitor of Mariner and Regional – saw *better* performance from live check borrowers than walk-in applicants.[41]

Data on loss rates for depository institutions who issue live checks is also limited. Loss rates on live checks from Fleet Bank's mailings in the late 1990's reached around 5%, similar to credit card loss rates at the time and slightly higher than current credit card loss rates.[42]

Live check solicitation statistics

Note: the following statistics come from terms on all mailed live check offers RMR Markets reviewed based on live check mailings collected by Mintel during the review time period.

In general, live check loans have smaller sizes and higher APR's than other unsecured personal loans made by both depository and nondepository institutions.

Loan Terms. Practically all loan terms were evenly distributed in length from approximately one to four years.

APR. The average APR across all live check mailings tracked by Mintel was 46.5%, while the dollar-weighted average APR was 38.6%.[43] For nondepository institutions the dollar-weighted average APR was 39.1%, while for depository institutions the average dollar-weighted APR was 11.2%. In contrast, the average APR across all new personal loans during the sample window was ~11% for banks, ~13% for credit unions, and ~18% for nondepositories.[44] Most live checks include origination fees, acquisition fees, or some other type of prepaid finance charges which are included in the calculation of APRs.[45]

Loan size. Loan sizes ranged from $385 - $10,000. The average loan size was $2313 for nondepositories, $4566 for depositories, and $2,330 overall.[46] The average live check loan size from Republic Finance--the largest issuer of live checks tracked by Mintel—is $3,000.[47] In

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[41] *Id.*; CCPD Markets conversation with OneMain in June 2019. *See* Whoriskey *and* Regional Management 2018 Annual Report at 17.
[42] *See* GAO at 10 *and* Federal Reserve Bank of St. Louis, *Charge-Off Rate on Credit Card Loans, Top 100 Banks Ranked by Assets [retrieved from FRED]* (Aug 27, 2019) *available at* https://fred.stlouisfed.org/series/CORCCT100S.
[43] Dollar-weighted average APR's are generally lower than non-weighted averages, since loans that have lower APR's are generally for larger amounts than loans with higher APR's.
[44] Based on Oliver Wyman Experian MIR Q2 2018 – Q 4 2018, which covers the majority of the sample window of February 2018 – February 2019. We disaggregated average statistics for credit unions and banks because the loan profiles of both types of institutions substantially differ. In addition, most live check-issuing depository institutions identified by Mintel were credit unions.
[45] Issuers whose live checks include prepaid finance charges include Republic Finance, Security Finance, 1st Franklin Financial, Heights Finance, Mariner Finance, Regional Finance, and State Finance.
[46] Live check loan size statistics for depository institutions exclude PenFed, whose final live check loan amounts are negotiated with consumers. See earlier discussion on PenFed's live checks under 'Visual appearance of a live check loan.' PenFed accounted for an estimated 35% of total live check mailing volume from depository institutions.
[47] Based on a CCPD Markets conversation with Republic Finance in April 2019.

contrast, the average loan size across all new personal loans during the sample window was ~$15,000 for banks, $6,000 for credit unions, and ~$4,500 for nondepositories.[48]

Conversion rate

While industry-wide statistics are unavailable, conversion rates at three large nondepository lenders who issue live checks are at or slightly below 1%.[49]

Complaints

RMR Markets reviewed narratives submitted through its complaints portal from 2012 to mid-2019 regarding live checks mailed by the two largest issuers identified in the Mintel dataset (Mariner Finance and Republic Finance). There were two common themes unique to live check loans:

Receiving unsolicited loans: several consumers expressed discomfort with receiving unsolicited checks that could (in their view) be fraudulently cashed in their name by another party.

Debt from live check loans that were fraudulently cashed: Several consumers submitted complaints about live check loans that consumers claim to never have received or cashed. In some cases, consumers only found out about the debt once a debt collector had contacted them; in other cases, consumers noticed the loan on their credit reports. When issuers found that loans were opened fraudulently, they responded by canceling the debt and removing the tradeline from credit reports.

State and Federal Actions

The use of live check loans has attracted the attention of states and Congress since the 1990's.[50] More recently at the federal level, a bipartisan bill called the "Unsolicited Loan Act" was re-introduced in December 2019 and aimed to ban the use of live checks. The bill's sponsors noted that Congress banned the similar practice of mailing live credit cards nearly 50 years ago.[51]

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[48] Oliver Wyman Experian MIR Q2 2018 – Q4 2018. See footnote 43.
[49] Based on CCPD conversations with Regional Management & Republic Finance in June and April 2019, respectively. *Also see* Whoriskey.
[50] *See* footnote 5
[51] *See* Office of U.S. Senator Tom Cotton, *Senators Cotton, Jones, Merkley Reintroduce Bipartisan Legislation to Stop Predatory Unsolicited Loans* (Dec 13, 2019), *available at* https://www.jones.senate.gov/newsroom/press-releases/senators-jones-cotton-merkley-reintroduce-bipartisan-legislation-to-stop-predatory-unsolicited-loans-senators-jones-cotton-merkley-reintroduce-bipartisan-legislation-to-stop-predatory-unsolicited-loans

Several states have acted in the past to address live check loans. For example, in 2001, North Carolina passed a law that required issuers of live checks to comply with certain disclosure and fraud investigation requirements, including that checks have a statement that explains it is a solicitation for a loan, and that by endorsing the check the consumer has accepted the offer.[52] The law also required lenders to investigate claims of fraudulent use, to promptly provide a statement to the intended recipient that they did not deposit the check, and to conduct an investigation to determine if the check was fraudulently negotiated. Required recourse includes removal of liability and correction of tradelines reported to credit reporting agencies. In 2003, California implemented disclosure requirements and removal of liability provisions similar to North Carolina's law.[53] In 2004, Connecticut's Department of Banking warned consumers of the risks of cashing unsolicited checks.[54] In 2009, Wisconsin passed a law requiring, among other things, disclosures very similar to North Carolina's requirements.[55] In 2010, Minnesota passed a law that declared it a deceptive practice to solicit a Minnesota resident for the sale of a good or service by providing a live check, the presentment of which obligates the addressee to purchase a good or service. The ban does not apply to lenders who have an existing open-end credit arrangement or business relationship with the consumer.[56] And in 2013, the Georgia Office of the Industrial Loan Commissioner required lenders to follow certain conditions when using live checks, including prior approval of the format and content of live check solicitations.[57]

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[52] *See* North Carolina G.S. § 75-20, *available at* https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_75/GS_75-20.html.

[53] *See* California Financial Code (FIN) Div. 9 Ch. 2 § 22342, *available at* http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FIN&sectionNum=22342.&article=3.&highlight=true&keyword=live+check.

[54] *See* State of Connecticut Department of Banking, *"Free" Checks in the Mail May Come With Costs* (Mar. 5, 2004), *available at* https://portal.ct.gov/DOB/Newsroom/2004/Free-Check-in-the-Mail-May-Come-With-Costs

[55] In addition, the check must be attached to a detachable disclosure statement that contains APR information in 14-point type. The lender must also make verbal disclosures to the recipient within three business days following negotiation of the check.

[56] *See* id *and* Minnesota Stat § 47.605 (2016), *available at* https://law.justia.com/codes/minnesota/2016/chapters-46-59/chapter-47/section-47.605/.

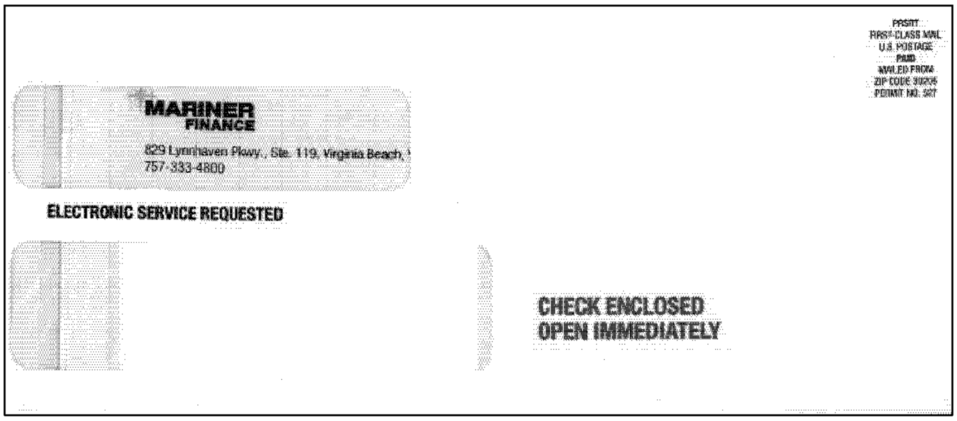
[57] *See* State of Georgia Office of Insurance and Safety Fire Commissioner, *Industrial Loan – Live Check Solicitation Procedure* (July 2012), *available at* https://www.oci.ga.gov/IndustrialLoan/LiveCheckSolicitationProcedure.aspx.

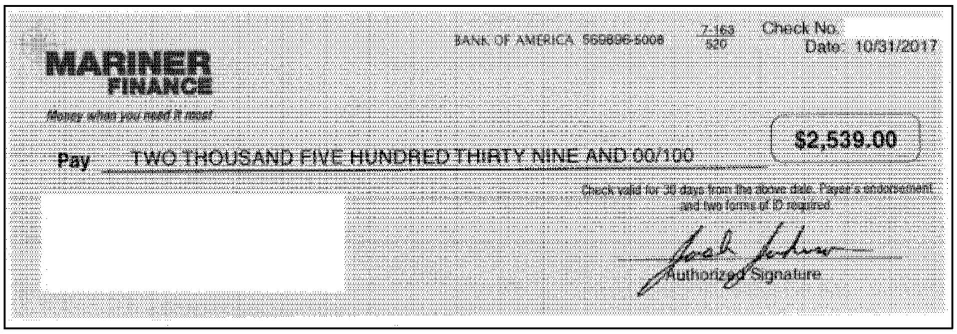
APPENDIX A: Live Check-Mailing Institutions

TABLE 1: LIVE CHECK-MAILING INSTITUTIONS IDENTIFIED BY MINTEL DURING STUDY PERIOD: FEBRUARY 2018 THROUGH FEBURARY 2019

Nondepository Institutions		Depository Institutions
1st Franklin Financial	Mariner Finance	PenFed Credit Union
1st Heritage Credit	National Finance Company	Tinker Federal Credit Union
Advantage Financial Services of Tupelo, LLC	OneMain Financial	Orange County's Credit Union
Allied Financial Services	Personal Finance Company	United Credit Union
Anchor Finance Company	Pioneer Credit Company	Credit Union of Southern California
Atlantic Financial Services	Quick Credit	First Premier Bank
Capitol Finance Company	Regency Finance Company	
Continental Loans	Regional Finance	
Covington Credit	Regional Finance Company of Missouri, LLC	
Credit Central	Republic Finance	
Custom Loans	Security Finance	
Deep South Financial Services	Southern Finance	
Empire Finance	State Finance	
Family Choice Financial Inc.	Sunset Finance	
First Financial Services	Toledo Finance	
First Heritage Credit of Mississippi, LLC	Tower Loan	
First Heritage Credit of Tennessee, LLC	Tower Loan of Huntsville	
Freedom First, LLC.	Virginia Finance, L.L.C.	
Gentry Finance Corporation	Westview Financial Services	
Heights Finance	World Finance Corporation	
Luckmore Finance Corporation	Worth Finance Corp.	
Magee Financial		

APPENDIX B: Live Check Mailing from Mariner Finance





Payable only to person whose name and address appears on Check. Check not transferable. Check void 30 days from date.

NOTICE TO BORROWER(S): BY SIGNING AND/OR DEPOSITING OR CASHING THIS CHECK, YOU AGREE TO REPAY MONIES AS STATED. DO NOT SIGN THIS BEFORE YOU READ IT, THE AGREEMENT, AND THE ARBITRATION AGREEMENT OR IF ANY DOCUMENT CONTAINS ANY BLANK SPACES.

PAYEE'S ENDORSEMENT REQUIRED: By endorsing below, and/or by depositing or cashing this Check, you agree to the terms of this Check and the Loan Agreement (*Agreement*) contained in form #VA2539 (incorporated herein by reference), and you agree to an Arbitration Agreement contained in our form #ARB404 and acknowledge receipt of completely filled in copies of the Agreement, the Arbitration Agreement and this Check.

____
Borrower's Signature

____
Home Phone #

____
Work Phone #

____
Date

Amount Financed....................$2,539.00
FINANCE CHARGE....................$1,907.04
Total of Payments....................$4,446.04
ANNUAL PERCENTAGE RATE..........35.99%
Annual Simple Interest Rate..........33.21%

In consideration of this loan, you (jointly and severally if more than 1 borrower endorses above) promise to pay to Mariner Finance of Virginia, LLC (*we*) the Amount Financed of this Loan plus a non-refundable processing fee of $100.00 (together, *Principal Amount*) plus interest on the unpaid Principal Amount at the Annual Simple Interest Rate, in 41 monthly payments of $108.44 each, beginning one month after the date our bank pays this Check and then on the same day of each following month until paid. Under certain circumstances described in the Agreement, the Annual Simple Interest Rate will reduce to 6%. You agree to pay a late charge of 5% of the amount of the scheduled payment if any payment is not received by us within 7 days after its due date.

MARINER
FINANCE

829 Lynnhaven Pkwy., Ste. 119, Virginia Beach, VA 23452
757-333-4800

You have
$2,539.00
available now!**

Dear ,

Congratulations, because of your credit history, getting money is faster and easier than ever before. **Simply cash the attached check! This is a real check just for you...** Use it however you wish. Catch up on bills, pay household expenses, or make important purchases. To get your money, take this check to your bank and cash or deposit it at your earliest convenience!

1. Before cashing the check, read the Loan Agreement and disclosure statement on the reverse side. This letter and the Loan Agreement and Federal Disclosure Statement are your Statement of Contract. Keep it for your records. Cashing or depositing this check constitutes a loan transaction that you will be expected to repay.
2. Once you deposit this check, you'll receive a welcome letter with your account details (account number, monthly due date and payment amount) and instructions for how to make your monthly payments.
3. Please complete the information on the back of the check (this enables us to confirm your identity).
4. Deposit it at your bank or anywhere you can cash a check.

If you do not plan on cashing this check, please destroy it. **This check expires 11/30/2017.**

If you need a different amount than this check, stop by our office or give us a call. Our friendly staff will be happy to assist you. You may also visit us online at www.marinerfinance.com.

Sincerely,

Angela Richardson-Brown

Angela Richardson-Brown
Branch Manager

Need more money? Visit your local branch!*

Don't delay! This offer expires **11/30/2017**

Still not sure? We offer a **15-day satisfaction guarantee.**†

You can choose to stop receiving "prescreened" offers of credit from this and other companies by calling toll-free 1-888-567-8688. See <u>PRESCREEN & OPT-OUT NOTICE</u> below for more information about prescreened offers.

*We have the right to stop payment on the check if you have open or renewed a loan with us within 60 days from the date of the check
**All loans subject to normal lending requirements
†If, for any reason, you are dissatisfied with your loan and repay it within 15 days, we will refund all finance charges with no penalties. The returned proceeds must be in the form of cash or certified funds.

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www.MarinerFinance.com

THIS IS A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.

LOAN AGREEMENT (Virginia)
CREDITOR: MARINER FINANCE of VIRGINIA, LLC *(we, us and ours)*

When you sign and/or deposit or cash the attached check (*Check*), you are taking a loan that is governed by this agreement (*Agreement*). The borrower(s) are called you in this Agreement. The name and address of the principal borrower is shown on the reverse side.

The following disclosures are required by law and are part of this Agreement. Seq# [illegible]

ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate.)	**35.99%**
FINANCE CHARGE (The dollar amount the credit will cost you.)	**$1,907.04**
Amount Financed (The amount of credit provided to you or on your behalf)	**$2,539.00**
Total of Payments (The amount you will have paid after you have made all payments as scheduled.)	**$4,446.04**
Number of payments: **41** Amount of each payment: **$108.44** Due monthly, beginning one month after the date our bank pays the Check and then on the same day of each following month.	

Prepayment: If you pay off early, you will not have to pay a penalty, and you will not be entitled to a refund of part of the prepaid finance charge.
Late Charge: If a payment is not received within 7 days after it is due, you will pay a late charge of 5% of the scheduled payment.
See below for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

The entire Amount Financed is given to you directly. Prepaid finance charge (*Processing Fee*) $100.00.

When you sign and/or deposit or cash this Check, you promise to pay us the Amount Financed of this loan plus a non-refundable processing fee of $100.00 (together, *Principal Amount*) plus interest on the unpaid Principal Amount at the simple annual rate of interest of 33.21% (*the Interest Rate*) until fully paid (including after any judgment). Under the circumstances described in the following 3 paragraphs, the Interest Rate will be reduced.

After the final payment due date, or if we declare the loan due, you agree to pay interest on the unpaid Principal Amount at the Interest Rate until 6 months after the final payment due date (as originally scheduled or deferred). After 6 months, we will charge interest at 6% per year on the unpaid Principal Amount. No other charges will be computed or collected.

If you schedule this loan in a bankruptcy case under the United States Bankruptcy Code, subject to any additional limitations of federal law, beginning 90 days after the date of adjudication, interest will accrue on the unpaid Principal Amount from time to time at 6% per year. This limitation does not apply: (a) to a co-borrower who is not a debtor in a bankruptcy case, (b) if you are not entitled to a discharge in your bankruptcy case, or (c) if the loan is not dischargeable in your bankruptcy case. For the purposes of this paragraph, "adjudication" means the date of commencement of a voluntary case or the date of entry of the order for relief in an involuntary case under the Bankruptcy Code.

If you die, beginning 90 days from the date of death, interest will accrue on the unpaid Principal Amount from time to time at 6% per year. No other charges will be computed or collected.

Interest begins when our bank pays the Check. This is the Loan Date. Your first payment is due one month after the Loan Date with all other payments due on the same day of each following month until all amounts are repaid. We apply all payments you make first to late charges, then to interest, then to other charges, and then to Principal Amount, or in any other order we want.

You may prepay this loan at any time. You will not receive a refund of the processing fee. Because interest is computed on the unpaid balance of the Principal Amount from time to time, late payments will increase the interest and prepayment will reduce interest. Adjustments will be made to the last payment.

If you make a payment with a check that is dishonored because you have no account or there are insufficient funds in your account, you agree to pay us a bad check fee of $15.00.

You will be in default if you do not pay on time. If you are in default, without notice, we may declare the unpaid Principal Amount and all accrued charges due at once. We may sue you to collect what you owe us and we may exercise other legal remedies. If we refer this Agreement to an attorney who is not our salaried employee for collection, you agree to pay our court costs and attorney's fees not to exceed 20% of the unpaid balance after default in the event suit is filed and we get a judgment against you.

Virginia law and federal law govern this Agreement. If any part of this Agreement is unenforceable, this will not make any other part unenforceable. In no event will you be required to pay more interest or charges than permitted by law. Any security interest in your property that we have under any other agreement will not secure your loan.

You understand that this Agreement, the Check that is part of this Agreement and the Arbitration Agreement (Form #ARB404) that is enclosed contain your entire agreement with us and cannot be changed except in writing signed by us. You understand that by signing and/or depositing or cashing the Check, you agree to all of the terms in this Agreement, as well as to all of the terms of the Check and all of the terms of the Arbitration Agreement and you authorize us to order credit reports on you from time to time.

Form #VA2539

YOUR COPY OF LOAN PROCEEDS CHECK (*CHECK*)

Payable only to person whose name and address appears on Check. Check not transferable. Check void 30 days from date.

NOTICE TO BORROWER(S): BY SIGNING AND/OR DEPOSITING (OR CASHING) THIS CHECK, YOU AGREE TO REPAY MONIES AS STATED. DO NOT SIGN THIS BEFORE YOU READ IT, THE AGREEMENT AND THE ARBITRATION AGREEMENT OR IF ANY DOCUMENT CONTAINS ANY BLANK SPACES.

PAYEE'S ENDORSEMENT REQUIRED: By endorsing below, and/or by depositing or cashing this Check, you agree to the terms of this Check and the Loan Agreement (*Agreement*) contained in form #VA2539 (incorporated herein by reference), and you agree to an Arbitration Agreement contained in our form #ARB404 and acknowledge receipt of completely filled in copies of the Agreement, the Arbitration Agreement and this Check.

In consideration of this loan, you (jointly and severally if more than 1 borrower endorses below) promise to pay to Mariner Finance of Virginia, LLC (we) the Amount Financed of this Loan plus a non-refundable processing fee of $100.00 (together, *Principal Amount*) plus interest on the unpaid Principal Amount at the Annual Simple Interest Rate, in 41 monthly payments of $108.44 each, beginning one month after the date our bank pays this Check and then on the same day of each following month until paid. Under certain circumstances described in the Agreement, the Annual Simple Interest Rate will reduce to 6%. You agree to pay a late charge of 5% of the amount of the scheduled payment if any payment is not received by us within 7 days after its due date.

Amount Financed	**$2,539.00**
FINANCE CHARGE	**$1,907.04**
Total of Payments	**$4,446.04**
ANNUAL PERCENTAGE RATE	**35.99%**
Annual Simple Interest Rate	**33.21%**

PRESCREEN & OPT-OUT NOTICE: *This "prescreened" offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria. If you do not want to receive prescreened offers of credit from this and other companies, contact: Experian, P.O. Box 919, Allen, Texas 75013-0919; Equifax, P.O. Box 740123, Atlanta, Georgia 30374-0123; or TransUnion, P.O. Box 505, Woodlyn, Pennsylvania 19094-0505. Or, you may notify all three agencies by calling toll free 1-888-567-8688 or go to the website http://www.optoutprescreen.com.*


Check this offer out!
RECEIVE AN
EXTRA $500
WITH THE ENCLOSED
LOAN OFFER TODAY!*


Receive an extra $500 today!*
MARINER
FINANCE
Bring this Bonus Coupon into your Mariner Finance branch today to add $500 to the enclosed loan offer!
Getting extra money has never been easier!
Our knowledgeable and friendly staff is ready to serve you. Check out all of our locations at MarinerFinance.com/branchlocations.
Have questions? We're here to help!
Call us today at 1.800.516.0139

No Class Actions, etc. ***You and we agree that the arbitrator only may resolve the claims, disputes, and controversies between you and us. You and we specifically agree that arbitration is not available and shall not be conducted on a class-wide basis and that the arbitrator may not consolidate more than one person's claims or preside over any form of representative or class proceeding. You agree not to participate in a representative capacity or as a member of any class of claimants pertaining to any Claim. If any question is raised relating to whether class actions or consolidated actions are permitted, the arbitrator is not authorized to decide that question and that question must be resolved by a court.*** If this paragraph cannot be enforced, then this entire Arbitration Agreement shall be null and void.

Conduct of Arbitration. The arbitrator is bound by the Federal Rules of Evidence, but federal and state rules of procedure or discovery shall not bind the arbitrator. The arbitrator's findings, reasoning, decision, and award must be in writing and must be based upon and consistent with the law of the jurisdiction that applies to the Loan Agreement. The arbitrator must abide by all applicable laws protecting the attorney-client privilege, the attorney work product doctrine, and any other privileges. You and we agree that any award shall be kept confidential.

Appeals. The arbitrator's decision is final (except for the right to appeal described in this paragraph), binding, and enforceable in any court having jurisdiction over the parties and the Claim. Either party may appeal any award of more than $100,000, at its own cost, except as provided by law, to a 3-arbitrator panel appointed by the AAA (or any substitute arbitration administrator). The panel will reconsider any part of the award that either you or we assert was incorrectly decided. The decision of the panel shall be by majority vote and shall be final and binding, except that the arbitrator's (or panel's) findings, decision, and award shall be subject to judicial review on the grounds set forth in 9 U.S.C. § 10, as well as on the grounds that the findings, decision, and award are manifestly inconsistent with the terms of this Arbitration Agreement and applicable law.

Limitations. The arbitrator may award punitive damages only if a court of competent jurisdiction could award punitive damages in similar circumstances. The arbitrator must follow all applicable state and federal laws regarding the amount of punitive damages, and must state the exact amount of the punitive damages award. The arbitrator must also review any punitive damages after making the award and allow you and us the same procedural rights and use the same standards and guidelines that would apply in a lawsuit in the state where the arbitration occurs. The arbitrator may award injunctive relief that would benefit either you or us in connection with resolving a Claim, but the arbitrator may not award injunctive relief for the benefit of other persons. The arbitrator may enforce any of your rights and impose any remedies available to you under any consumer protection laws or regulations.

Other Agreements. You and we agree that: this Arbitration Agreement does not affect any statute of limitations or claims of privilege recognized at law; the credit and insurance transactions between you and us are transactions involving interstate commerce, using funds and other resources from outside the state; the Federal Arbitration Act applies to and governs this Agreement and state arbitration laws and procedures shall not apply to this Agreement; this Agreement applies to and runs to the benefit of your and our respective assigns, successors, executors, heirs, and/or representatives; this Arbitration Agreement supersedes any prior arbitration agreement that may exist between you and us and can only be modified in writing signed by you and us; this Arbitration Agreement applies even if your loan has been cancelled, changed, modified, refinanced, paid in full, charged off, or discharged or modified in bankruptcy. If any portion of this Arbitration Agreement (other than the paragraph titled **No Class Actions, etc.**,) cannot be enforced, the rest of this Arbitration Agreement will continue to apply. If the paragraph titled **No Class Actions, etc.** cannot be enforced, then the entire Arbitration Agreement shall be null and void.

Rejection of Arbitration Agreement. You may reject this Arbitration Agreement by sending us a rejection notice that we receive at our notice address (and no other location) within 60 days after our bank pays the Check. You must sign any rejection notice and you must include your name, address, telephone number and Loan Agreement number. This is the **only** method you can use to reject this Arbitration Agreement.

Notice Address. Our notice address is 8211 Town Center Drive, Nottingham, MD, 21236.

MF AR

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION CLAUSE

The following provides that most disputes between you, the borrower, and Mariner Finance, LLC and its subsidiaries and affiliates (collectively "us"), at the option of either you or us, will be resolved by BINDING ARBITRATION. There are some exceptions. WHEN YOU ENDORSE AND/OR DEPOSIT OR CASH THE ENCLOSED CHECK, YOU AGREE TO THIS ALTERNATIVE DISPUTE RESOLUTION CLAUSE.

You thus GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under the loan agreement (EXCEPT for matters that may be taken to SMALL CLAIMS COURT).

In arbitration, your rights are determined by a NEUTRAL ARBITRATOR and NOT a judge or jury.

You are entitled to a FAIR HEARING, BUT the arbitration procedures are SIMPLER AND MORE LIMITED THAN COURT RULES.

Arbitrator decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT.

FOR MORE DETAILS
Review the following Alternative Dispute Resolution Clause

Alternative Dispute Resolution Clause. When you, the borrower, endorse and/or deposit or cash the enclosed Check and thereby get a loan from Mariner Finance, LLC or any of our subsidiaries or affiliates, ("we" and "us"), you agree to this Alternative Dispute Resolution Clause as well as to the loan agreement attached to the Check ("Loan Agreement"). Arbitration resolves disputes between parties without a lawsuit in court. BY ENDORSING AND/OR DEPOSITING OR CASHING THE CHECK, BOTH YOU AND WE WAIVE ANY RIGHT TO A JURY TRIAL OF ALL CLAIMS AND DISPUTES COVERED BY THIS ALTERNATIVE DISPUTE RESOLUTION CLAUSE (referred to herein for convenience as "Arbitration Agreement").

Covered Claims. ***Except for Excluded Claims (discussed below), at the election of either you or us, you and we agree to arbitrate all disputes and claims between us on an individual basis.*** "You" and "we" include our respective subsidiaries, affiliates, agents, employees, predecessors, successors and assigns. This agreement to arbitrate is intended to be broad, and includes, but is not limited to, any claim, dispute, or controversy (whether based upon contract, tort, intentional or otherwise, constitution, statute, common law, or equity and whether pre-existing, present or future), including initial claims, counterclaims, cross-claims and third party claims, arising from or relating to the loan you get from us by endorsing and/or depositing or cashing the enclosed check; whether the claim or dispute must be arbitrated; the validity and enforceability of this Arbitration Agreement and the Loan Agreement; the closing, servicing, collection, or enforcement of the Loan Agreement; or the relationships that result from the Loan Agreement ("Claim"). All Claims shall be resolved, at either your election or our election, by binding arbitration under this Arbitration Agreement and the Commercial Dispute Resolution Procedures and Supplementary Procedures for Consumer-Related Disputes of the American Arbitration Association ("AAA"); provided that if the AAA is unavailable or unwilling to serve as administrator of any arbitration, a substitute administrator shall be selected by either (a) mutual agreement of the parties, or (b) if you and we cannot agree, by a court at the request of either party. You and we retain the right to seek relief in small claims court so long as the Claim is pending only in that court, the Claim is within the scope of the court's jurisdiction and the relief is sought on an individual basis. This Arbitration Agreement does not stop you from bringing Claims to the attention of federal, state or local regulators.

Excluded Claims. Some claims are excluded from the arbitration process so that you may not elect arbitration. These claims are called "Excluded Claims" and are described in this section. We may exercise lawful self-help remedies (such as repossession of collateral) and we may proceed in court for garnishment, repossession, replevin, and foreclosure remedies. In any court proceeding, you may assert any defenses you have to the Excluded Claims, but any claim or counterclaim, cross-claim, or third-party claim, or claim you have for rescission or damages, must be arbitrated. If we exercise self-help or judicial remedies as described in this section, we do not waive our arbitration rights for other claims.

30 Days to Resolve Claims. Before you start an arbitration, you agree to write to us at our notice address at the end of this Arbitration Agreement and give us a reasonable opportunity to resolve your Claim. Your letter must tell us your name and account number, describe your Claim, including the dollar amount of your Claim, and describe any other information you need from us. Before we start an arbitration, we must write to you at your address, describe our Claim, including the dollar amount of our Claim, and give you a reasonable opportunity to resolve the Claim. If you and we do not resolve the Claim within 30 days after one of us receives notice of a Claim from the other, either you or we can start arbitration. Neither of us will disclose the amount of any settlement offer made during this 30 day period until after the arbitrator determines the amount, if any, to which you or we are entitled.

Arbitration Procedure. The party starting the arbitration will file a claim with the AAA (or any substitute arbitration administrator). The arbitrator must be a lawyer with more than 10 years experience or a retired or former judge. You may obtain the rules and forms of the AAA by writing, calling or e-mailing as follows:

American Arbitration Association
335 Madison Avenue
Floor 10
New York, New York 10017
800-778-7879
www.adr.org

If a substitute arbitration administrator is appointed we will ensure that you have contact information for such substitute administrator so that you may obtain any applicable rules and forms.

Location. The arbitration will take place in the county where you live. If you and we agree, the arbitration can take place in another location or it can be conducted by telephone.

Costs. After we receive notice at our notice address that you have started arbitration, we will reimburse you promptly for the filing fee you paid. If you are not able to pay the filing fee, we will pay it after we receive your written request at our notice address at the end of this Arbitration Agreement. We will pay the remaining costs of arbitration and the arbitrator's fees. You and we will pay our respective attorney's fees and witness and experts' expenses, except as otherwise provided by law or this Arbitration Agreement. If a law gives you the right to recover any of these fees from us, these rights apply in the arbitration. If the arbitrator issues an award in our favor, you don't need to reimburse us for any fees we paid to the arbitration administrator or for which we are responsible.

Who we are	
Who is providing this notice?	Mariner Finance, LLC, Mariner Finance of Virginia, LLC, Mariner Finance Florida, Inc., and Mariner Finance North Carolina, Inc. All references to Mariner Finance refer to the business which is maintaining your account.
What we do	
How does Mariner Finance protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Mariner Finance collect my personal information?	We collect your personal information, for example, when you: ▪ apply for a loan or give us your income information ▪ provide employment information or apply for financing ▪ give us your contact information We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.
Why can't I limit all sharing?	Federal law gives you the right to limit only: ▪ sharing for affiliates' everyday business purposes – information about your creditworthiness ▪ affiliates from using your information to market to you ▪ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See below for more on your rights under state law.
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account.
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. ▪ *Our affiliates include companies with a Mariner Finance name, Pioneer Credit Company, Pioneer Credit Company of Alabama, Inc., Personal Finance Company, LLC, Ocoee Life Insurance Company and Ocoee General, Ltd.*
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ▪ *Nonaffiliates we share with can include mortgage lenders, investment advisors, insurance companies, and retailers of consumer goods.*
Joint Marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ▪ *Our joint marketing partners include retailers of consumer goods.*

Other important information

State Privacy Laws: We comply with state privacy laws to the extent they apply. **Texas:** For questions or complaints about this loan, contact Mariner Finance at (844) 338-2080. The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. **Important Information about Credit Reporting:** We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

Rev. 06/17

MARINER FINANCE

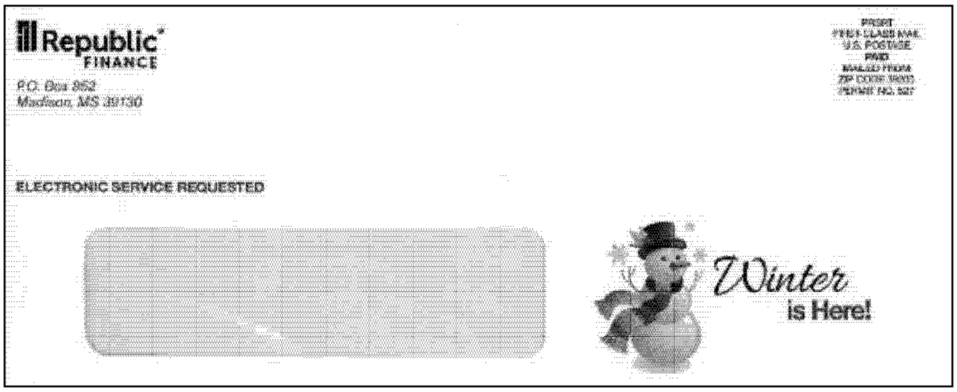
FACTS	WHAT DOES MARINER FINANCE DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some, but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: ▪ Social Security number and income ▪ account balances and payment history ▪ transaction history and credit history
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Mariner Finance chooses to share; and whether you can limit this sharing.

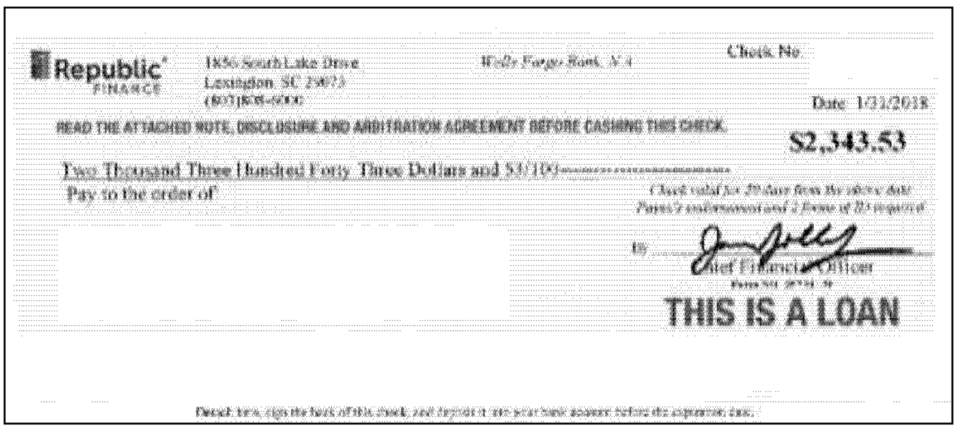
Reasons we can share your personal information	Does Mariner Finance share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	Yes	No
For joint marketing with other financial companies	Yes	No
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	Yes	Yes
For our affiliates to market to you	Yes	Yes
For nonaffiliates to market to you	Yes	Yes

To limit our sharing	▪ Call **888-540-7224** – our menu will prompt you through your choices or ▪ Visit us online: **http://www.marinerfinance.com/optout** **Please note:** If you are a *new* customer, we can begin sharing your information 30 days from the date we sent this notice. When you are *no longer* our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.
Questions?	Go to https://www.marinerfinance.com/customer-support/

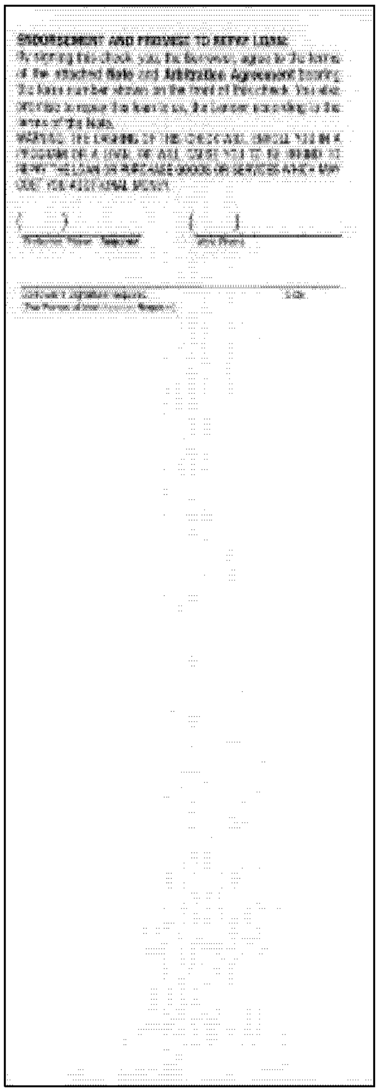
10687

APPENDIX C: Live Check Mailing from Republic Finance





CFPB-0001052



ENDORSEMENT AND PROMISE TO REPAY LOAN:

By signing this check, you, the Borrower, agree to the terms of the attached Note and Arbitration Agreement bearing the loan number shown on the front of this check. You also [illegible] to repay the loan to us, the Lender, according to the terms of the Note.

WARNING: THE CASHING OF THIS CHECK [illegible]

Republic FINANCE

Serving the Southeast
since 1955
www.republicfinance.com

Let Us Help You with *Winter Expenses*

We have good news. Your credit history allows us to offer you a guaranteed loan of $2,343.53.

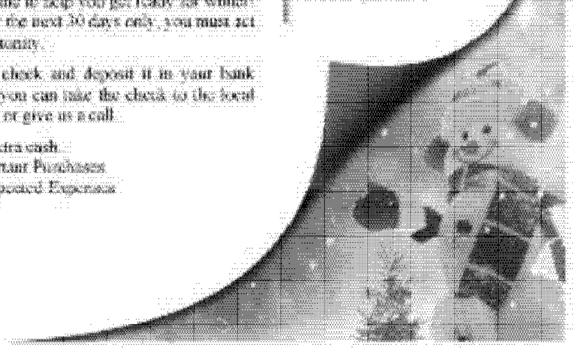
That's right—a pre-approved loan just in time to help you get ready for winter! But because this loan is available to you for the next 30 days only, you must act now to take advantage of this special opportunity.

It's easy. Just endorse the attached loan check and deposit it in your bank account. If you prefer to talk to a lender, you can take the check to the local Republic Finance office listed on the check or give us a call.

Think of all the ways you could use this extra cash...

- ✓ After Holiday Debts
- ✓ Important Purchases
- ✓ Home Remodeling
- ✓ Unexpected Expenses

Not enough?
Bring the attached check to our office and we may be able to increase your loan.



Sincerely,

Mari Ann Abad

Mari Ann Abad, Manager
1856 South Lake Drive
Lexington, SC 29073
(803)808-6000

You can choose to stop receiving "Prescreened" offers of credit from this and other companies by calling toll-free 1-888-567-8688. See ***PRESCREEN & OPT-OUT NOTICE*** *below for more information about prescreened offers.*

PRESCREEN & OPT-OUT NOTICE:

This "prescreened" offer of credit is based on information in your credit report indicating that you meet certain criteria. If you do not want to receive prescreened offers of credit from this and other companies you can call 1-888-567-8688 or write to the following consumer reporting agencies: Experian Inc. P.O. Box 919, Allen, TX 75013; TransUnion, TransUnion Removal Option, P.O. Box 505, Woodlyn, PA 19094; Equifax P.O. Box 740123, Atlanta, GA 30374-0123.

THIS IS A SOLICITATION FOR A LOAN—READ THIS ENCLOSED DISCLOSURE, INCLUDING THE ARBITRATION AGREEMENT ON THE REVERSE SIDE, BEFORE SIGNING AND CASHING THIS CHECK.

Please void and destroy the check if you are not going to use it.

Truth-in-Lending Disclosure

Annual Percentage Rate	Finance Charge	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you.	The amount you will have paid after you have made all payments as scheduled.
48.99%	$1,376.47	$2,343.53	$3,720.00

Your payment schedule will be 24 equal monthly payments of $155.00 each, beginning on [illegible].
Late Charge: If you are more than 10 days late in paying any part of an installment, you promise to pay a late payment fee of 5% of the unpaid amount, not to be less than $7.20 or greater than $15.20. These amounts will increase as provided by Section 37-1-109, South Carolina Code of Laws.
Prepayment: If you prepay in full, you may be entitled to a refund of part of the finance charge. If you prepay in part, you will not be entitled to a refund of part of the finance charge.
See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

*- means an estimate

Itemization of Amount Financed:

1. Amount Paid to Customer $2,343.53 2. Less Prepaid Finance Charge $0.00 3. Amount Financed $2,343.53 (1 less 2)

NOTICE: THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, AS AMENDED.

Pay to the order of:

Issued By: Republic Finance, LLC
1856 South Lake Drive
Lexington, SC 29073
(803)808-6030

$2,343.53

Check No
Date: 1/31/2018

Check Valid for 30 days from above date.
Payee endorsement and 2 forms of ID required.

NOTE

ARBITRATION AGREEMENT

READ this agreement carefully.

It provides that certain disputes between you and Lender, if not settled by mediation, will be resolved by MANDATORY BINDING ARBITRATION. You thus GIVE UP YOUR RIGHT TO GO TO COURT or to BRING OR PARTICIPATE IN A CLASS ACTION over those disputes. Your rights will be determined by a NEUTRAL ARBITRATOR, NOT A JUDGE OR JURY. You are entitled to a FAIR HEARING, BUT arbitration procedures are MORE LIMITED THAN RULES IN COURT. Arbitrator decisions are enforceable in court but are subject to VERY LIMITED REVIEW BY A COURT. CONSULT A LAWYER if you do not understand this agreement.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE AGREEMENT BEFORE YOU ENDORSE THE CHECK. BY ENDORSING THE CHECK, YOU ACKNOWLEDGE YOU HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND ITS TERMS AND CONDITIONS.

FACTS

WHAT DOES Republic Finance, LLC DO WITH YOUR PERSONAL INFORMATION?

[illegible]

Questions? [illegible]

[illegible]

Mail To: [illegible]

Page 3

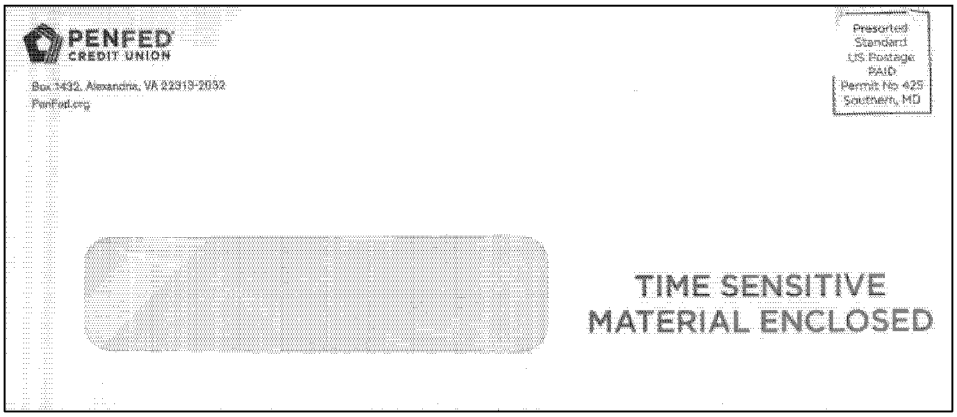
How does Republic Finance, LLC protect my personal information?	[illegible]
How does Republic Finance, LLC collect my personal information?	[illegible]
Why can't I limit all sharing?	[illegible] See below for more on your rights under state law.
What happens when I limit sharing for an account I hold jointly with someone else?	Your choices will apply to everyone on your account.
Definitions	
Affiliates	[illegible]
Nonaffiliates	[illegible]
Joint marketing	[illegible]

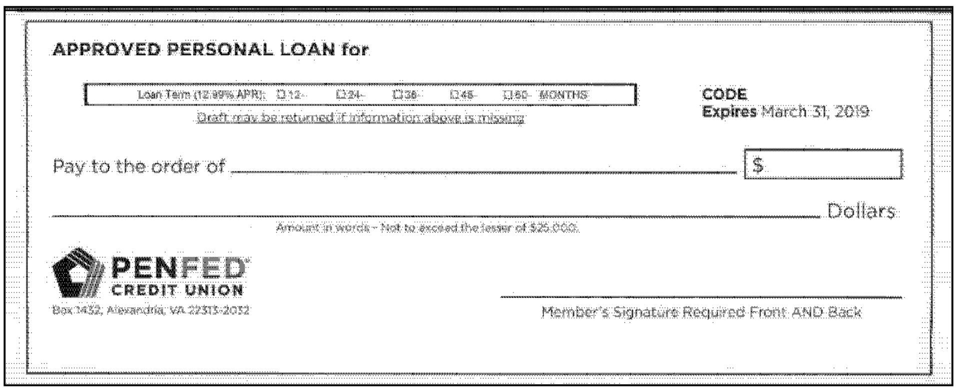
Other important information

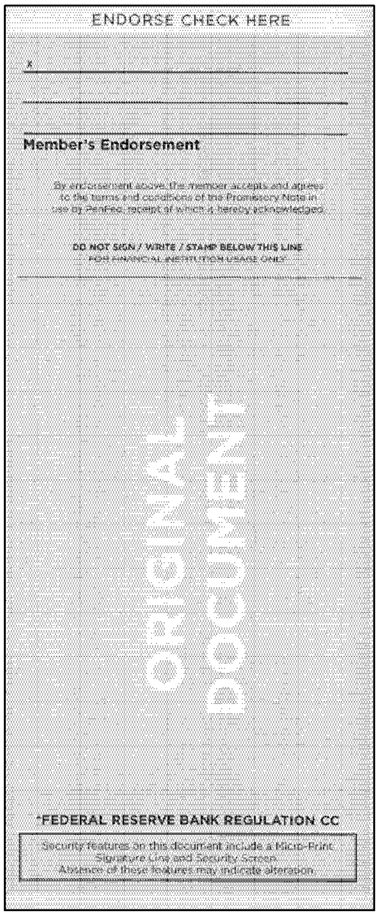
California and Vermont Residents: We will not share personal information about you without your consent.

[illegible]

APPENDIX D: Live Check Mailing from Pentagon Federal Credit Union (PenFed)






ENDORSE CHECK HERE

X

Member's Endorsement

By endorsement above, the member accepts and agrees to the terms and conditions of the Promissory Note in use by PenFed, receipt of which is hereby acknowledged.

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

ORIGINAL DOCUMENT

***FEDERAL RESERVE BANK REGULATION CC**

Security features on this document include a Micro-Print Signature Line and Security Screen.
Absence of these features may indicate alteration.

You can choose to stop receiving "prescreened" offers of credit from us and other companies by calling Experian toll-free at 1-888-567-8688. See PRESCREEN & OPT-OUT NOTICE on reverse for more information about prescreened offers.

64476

PENFED CREDIT UNION

Box 1432, Alexandria, VA 22313-2032 • PENFED.org

A VERY SPECIAL OFFER FOR:

CONGRATS!

You're **PRE-APPROVED** for a Personal Loan

UP TO **$25,000**

AT 12.99% APR

Estimated Monthly Payment[1]: $569

Offer Expires March 31, 2019.

Your PenFed Personal Loan has **ZERO origination fees!**

Congratulations — you've been pre-approved for a PenFed Personal Loan!

Whether you're looking to consolidate credit card debt or need help funding home repairs or improvements, you now have immediate access to funds with ZERO origination fees, without hidden costs other lenders may impose.

PENFED PERSONAL LOANS OUTPERFORM THE COMPETITION[2]

LENDER	PenFed	Discover	Marcus	Best Egg	Lending Club	Prosper
ORIGINATION FEE	0.00%	0.00%	0.00%	0.99-5.99%	1.00-6.00%	2.41-5.00%
WHAT YOU GET FOR $10,000	$10,000	$10,000	$10,000	$9,401-9,901	$9,400-9,900	$9,500-9,759
				OPTIONS WITH ORIGINATION FEES		

You can also use your Personal Loan for education expenses, funding travel and vacations, or even as an emergency fund in times of need. Don't miss your opportunity to take advantage of this convenient, low fixed rate today! **This offer expires March 31, 2019.**

If you have any questions, please call us at **1-800-247-5626** or visit **PenFed.org/Personal-Loans**. It really is that simple!

Use your Pre-Approved Loan Draft below like a check!

$XXX.XX Fill in the loan amount.

Select your loan term.

Sign BOTH the front and back of the check.*

*1. Estimated monthly payment is based on a loan term of 60 months. 2. Data sourced directly from website of each lender listed and is current as of January 15, 2019. *All sections must be filled in order to allow for proper processing. Members can only get approved for a total of $25,000 in Personal Loans across multiple applications. Checks should be used before the expiration date. PenFed will not be responsible for any fees or transactions associated with returned or rejected checks if they are submitted after the expiration date. This is the responsibility of the member. Please see the reverse side for important disclosure information.*

PENFED CREDIT UNION

TRUTH IN LENDING DISCLOSURE

www.PenFed.org | PenFed Credit Union, P.O. Box 1432, Alexandria, VA 22313-2032 | 800-247-5626

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
%	$ (E)	$	$ (E)

(E) = Estimate

You have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization.

Date of Loan: ____________ Member Number: ____________

Account Number: ____________

Your Payment Schedule will be:

Number of Payments:	Amount of Payment:	When Payments are due:	Beginning:
	$		
	$		

LATE CHARGE: If a payment is 5 days or more late, you will be charged 20% of the finance charge due with a minimum charge of $5 and a maximum charge of $25.
PREPAYMENTS: If you pay off early, you will not have to pay a penalty.
CONTRACT DOCUMENTS: See your contract documents for any additional information about non-payment, default and penalties.

PENFED DEBT PROTECTION PLAN
Purchase of the PenFed Debt Protection Plan is NOT required to obtain credit and will not be provided unless you complete and return the Plan application form(s), sign below and pay the fee. You may cancel the Plan at any time. Refer to your Plan Agreement for an explanation of how the Plan may be terminated.

Collateral securing other loans with the credit union may also secure this loan.
Security: You are giving a security interest in your automobile/property when marked here ☐

Property Description:

Life, Disability and Involuntary Unemployment: $
Life and Disability: $
Life Only: $

Sign Here for PenFed Debt Protection

In this Promissory Note the words "I", "me", "my" and "we" mean each person who signed the Note as maker, guarantor or borrower. The words "you" and "your" mean the Pentagon Federal Credit Union or any holder of this Note.
I promise to pay Pentagon Federal Credit Union or holder the amount financed stated above on the terms and at the rate stated.
RESPONSIBILITY. This Promissory Note covers my loan with you. When I sign my name below I accept the terms of this loan. Anyone else who signs as maker, guarantor or borrower also accepts the terms of this loan and will be responsible the same way I am.
REPAYMENT. I will make payments to you as stated above, which will include the amount you loan me, finance charge and insurance if applicable until the full amount has been paid. I understand that payments by mail will be posted to my loan as of the day you receive them. Though I need pay only the amount of the fixed payments, I understand I have the right to repay my loan in full at any time and you will not charge any penalty for prepayment. I will pay finance charge only to the date I repay my loan. You or I can cancel this Promissory Note at any time before the loan is paid to me. You can accept late payments or partial payments or payments marked "paid in full" without losing any of your rights under this Note. You may disclose information to third parties, such as credit bureaus and merchants about my account in order to advise such third parties of the existence or condition of my account.
ACH AUTHORIZATION. If indicated on my loan application my intent to pay my loan by ACH transfer, I authorize PenFed to debit the financial institution as stated on my loan application for my loan payment on the payment due date as stated above. I may revoke this authorization orally, by contacting Pentagon Federal at least 3 days prior to my scheduled payment date.
DEBT PROTECTION PLAN. The purchase of the PenFed Debt Protection Plan ("Plan") is NOT required by me as a condition of approving my application or extending credit to me. If I do purchase this Plan I may cancel it at any time by notifying you in writing. I understand I may rescind this Plan within 30 days after the date I receive the Plan Agreement. If I rescind, any fee paid will be credited to my loan. The terms of my Plan are governed by the Plan Agreement. If the Plan is added after the date of the loan, I agree that at PenFed's option, the amount of payment will change or the number of payments will increase. The total fee accrues on a daily basis and is deducted from my loan payments. If I fail to pay the fee, you can cancel the protection or, at your option, add the fee to my outstanding balance upon which it will accrue interest. Such addition may extend the term of my loan. I understand you can change the terms of the Plan Agreement, including the rates, at any time. If the terms do change, I will be provided prior notice and an opportunity to cancel my Agreement under the Plan before the change goes into effect. I understand that the Plan protects only me as the primary member-borrower against protected events while I am enrolled in the Plan. Co-borrowers, co-signers, guarantors, and non-borrower owners of collateral are not eligible for protection.
☐ **BALLOON PAYMENT/RESIDUAL VALUE.** If an X shows in this box my loan has a balloon payment which is due and payable as stated above in the box "Amount of Payment". This means my loan payments will not fully amortize this loan. My payment schedule and the balloon payment are based on the estimated residual value of the vehicle securing this loan as determined by PenFed. The residual value of the vehicle is an estimate only and may vary substantially from its actual value at the end of this loan.
FINANCE CHARGE CALCULATION. Finance charges are calculated as follows: The ANNUAL PERCENTAGE RATE, as stated above, is divided by 365 (days). This figure is then divided by 100 to obtain a daily periodic rate. The daily periodic rate is multiplied by the loan balance. This is the daily finance charge. The daily finance charge is multiplied by the number of days since my last loan payment. This is the amount of FINANCE CHARGE, which will be deducted from my loan payment and the remaining amount will be applied to the loan balance, insurance or debt protection fees, and any other applicable fees. If I make payments prior to their due date, the FINANCE CHARGE will be less than stated above, since finance charge is applied on a daily basis. I understand payments made after the due date will increase the total amount of FINANCE CHARGES. I also understand my actual total of payments may be different than stated above since Finance Charge and optional Debt Protection, Mechanical Breakdown Insurance, and Guaranteed Asset Protection are accrued on a daily basis, which means the dates my payments are actually received and future and/or additional purchase(s) of insurance and/or protection will determine the total amount I actually pay. Finance Charges begin from the date of loan and continue until the loan is paid in full.
SECURITY/POWER OF ATTORNEY/CONSENT. IF NOTED ABOVE, THE PROPERTY DESCRIBED ABOVE SECURES THIS LOAN AND THE OWNER(S) SIGNING BELOW GIVES YOU A SECURITY INTEREST IN THAT PROPERTY, AND AGREES TO ABIDE BY THE ADDITIONAL TERMS AND PROVISIONS OF THE SECURITY AGREEMENT SET FORTH ON THE REVERSE SIDE, ALL OF WHICH ARE INCORPORATED INTO AND MADE A PART OF THIS PROMISSORY NOTE BY REFERENCE. To protect you, if I default on this loan I pledge all my shares, deposits, payments and dividends which may be received, whether held jointly or individually, up to the amount of my loan balance. This does not include my Individual Retirement Account. You may take all shares needed by you to repay my loan. If it is necessary to take all my shares for the payment of this note I understand my membership in the credit union may end. I agree that PenFed has the right pursuant to its statutory lien and further, I give my express consent to enable PenFed to charge against any balance in any of my PenFed accounts, including accounts on which I am a joint owner to include any otherwise statutorily protected funds that may not otherwise be available by legal process, to liquidate any PenFed indebtedness or other outstanding financial obligation owed by me or any person who is listed as a joint owner on my accounts, including a deceased joint owner. PenFed may take such action without further notice to me or any joint owner. In regard to those funds that have a statutory protection I understand that I may withdraw my express consent for PenFed to apply such funds to pay any such indebtedness by notifying PenFed in writing. If my consent is withdrawn, PenFed may in its sole discretion terminate any and all services that I have with the credit union.
DEFAULT. I will be in default if I fail to pay any installment on time, if I become insolvent or file bankruptcy, if I die or become incompetent, if a judgment or tax lien is filed against me or an attachment or garnishment should be issued against any of my property including any of my accounts with you, if you in good faith consider yourself or my obligations or my ability to repay or perform my obligations with you unsafe or unsecure, or fail to live up to any of my other agreements with you. Subject to law, if I default on this note you can demand immediate payment of the remaining balance due on this note without giving anyone notice. You may also use any of your other legal rights. If my payment is 5 days or more late I will be charged a late charge of 20 percent of the finance charge due but no less than $5 nor more than $25 for each late payment. If my payment is not honored or you must return it to me because it could not be processed, a charge will be made to my account in the amount indicated for "Returned Payment Check" on your current schedule of service fees. Copies of the fee schedule are available by mail, at any branch office or online at www.PenFed.org. If you sue me because I default, I waive my right to be tried by a jury. (Continued on reverse)

Member-Borrower Sign Here

Joint Borrower Guarantor Sign Here

Owner of Collateral Other than Borrower(s) Sign Here

I agree that any ownership interest I have in the collateral described above is subject to the provision of the Security Agreement on the reverse. I have no responsibility for the payment of this loan.

SAMPLE PAYMENT CALCULATOR

Use the chart below to get an estimate of what your monthly payment will be:

	LOAN AMOUNTS AND PAYMENTS - 12.99% APR				
MONTHS	**$5,000**	**$10,000**	**$15,000**	**$20,000**	**$25,000**
60	--	$227	$341	$455	$569
48	$134	$268	$402	$536	$671
36	$168	$337	$505	$674	$842
24	$238	$475	$713	$951	$1,188
12	$447	$893	$1,340	$1,786	$2,233

Important Information:
Rates current as of January 15, 2019. APR = Annual Percentage Rate. A promissory note and Truth in Lending Disclosure will be sent for your signature once we receive your negotiated draft through the banking system. By executing the draft, you accept and agree to the terms and conditions of the Promissory Note in use by PenFed. If you have accepted a PenFed loan in the last 90 days, this offer may be withdrawn. Other conditions apply. Offer subject to meeting PenFed lending guidelines. All loans are subject to a minimum monthly payment of $50. PenFed does not permit internal refinances of an existing PenFed Personal Loan. Loan amount determines term. Terms subject to minimum and maximum loan amounts: 1) 12 - 36 Months: - $1,000 - $25,000; 2) 37 - 48 Months: $5,000 - $25,000; 3) 49 - 60 Months: $10,000 - $25,000. Members can only get approved for a total of $25,000 in Personal Loans across multiple applications.

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EQUAL HOUSING LENDER

PRESCREEN & OPT-OUT NOTICE: *This "prescreened" offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria including providing acceptable property as collateral, if applicable. If you do not want to receive prescreened offers of credit from us and other companies, call Experian toll-free at 1-888-567-8688 or write: Experian, P.O. Box 80128, Lincoln, NE 68521.*

MILITARY LENDING ACT. Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for a specified credit transactions or accounts); and any participation fee charged (other than certain participation for a credit card account). For more information please contact PenFed at 1-800-247-5626.
COLLECTION COSTS. If I am in default under this note I agree to pay all costs of collection, including your reasonable attorney's fee and court costs, in an amount not more than 25 percent of the principal and finance charge due on the note, or an amount which is in compliance with the DoD Standards of Fairness when appropriate.
GUARANTORS. If I am signing the note as a guarantor, I agree to be equally responsible with the borrower. You do not have to notify me that this note has not been paid. You can change the terms of payment and release any security without releasing me from responsibility on this note.
DELAY IN ENFORCEMENT. You can delay enforcing any of your rights under this note without losing them.
ADDITIONS/DELETION. No change, addition, erasure, deletion or cross through of any printed portion of this document shall be valid or binding on PenFed.
RECEIPT. I have received a copy of this disclosure and note.

SECURITY AGREEMENT (FINANCING STATEMENT) If collateral is pledged please read.

In this Security Agreement the words, "I", "me", "my", and "we" mean each person who signed the Promissory Note and addendum if applicable, as borrower, joint borrower/guarantor or owner of collateral other than borrower, even if one or more of the signers is not contractually responsible for repayment of the Promissory Note on the reverse side. "You" and "your" mean PenFed or any holder of the said Promissory Note.
SECURITY INTEREST. I give you a security interest in my property which is described on the reverse side of this Security Agreement. By granting you a Security Interest in this property I provide you with security for payment and performance of my duty to you which is described in the Promissory Note on the front.
COLLATERAL. Any of my property covered by your security interest is called "collateral." Any additions and replacements to the property, or any money or property from the sale of the property are also part of the collateral. The collateral is used primarily for personal/business, family or household purpose. I __ am __ am not using money you are lending me to buy the collateral. If I am using the money you are lending me to buy the collateral, you will have what is called a "purchase money security interest" in the collateral. This will give you more protection against others who might claim the collateral is theirs. You may pay the proceeds of this note directly to the seller of the collateral or jointly to me and the seller.
SECURITY FOR OTHER OBLIGATIONS. Except as to any collateral I use as my principal dwelling, the security interest created by this Security Agreement and Promissory Note shall also secure all of my other indebtedness, obligations, and liabilities to you, now existing or hereafter arising, including future advances, if any. If I have given you a Security Interest in any personal property used or purchased with the loan proceeds under this Promissory Note/Security Agreement for use as my principal dwelling (such as a mobile home or boat), this confirms that you have waived your security interest in such principal dwelling with respect to all existing and subsequent debts I may owe you or transactions I may subsequently enter into with you. Funds pledged for a Share Secured loan will be placed on hold in the Share account as collateral against the loan and may not be withdrawn until the loan is paid in full.
OWNERSHIP AND PROTECTION OF RIGHTS IN COLLATERAL. I own the collateral and no one else has any interest in it or claim against it. I agree not to sell, lease, or convey it as security to anyone else until I have obtained your written permission to do so or have repaid the loan in full. I agree to help you do all that is necessary to protect your security interest in the collateral. As such I agree to apply for and provide you with a Certificate of Title or any other document constituting proof of ownership of the collateral and your interest in it. I further agree to furnish you with such information and execute and deliver such documents and take any and all action necessary and appropriate to establish, perfect and maintain your valid and prior Security interest and lien in the collateral. I will be responsible for the cost of recordation. **IF I FAIL TO TAKE THE ACTIONS I HAVE AGREED TO IN THIS SECTION WITHIN 150 DAYS OF THE DATE OF THE LOAN, I SHALL BE IN DEFAULT AND IN ADDITION TO THE REMEDIES OTHERWISE AVAILABLE TO YOU, I AGREE THAT YOU MAY, AT YOUR OPTION, INCREASE THE ANNUAL PERCENTAGE RATE I PAY ON THE LOAN TO THE HIGHEST RATE THEN IN EFFECT ON YOUR CLOSED END UNSECURED LOANS. THIS WILL INCREASE THE MONTHLY PAYMENT DUE ON THE LOAN.**
If the security for this loan is an automobile which was purchased outside of the U.S. and the vehicle is later shipped to the U.S. it will meet U.S. specifications and I agree to title the vehicle with the appropriate state agency and have PenFed registered as lien holder on the title.
I understand and agree that if I use a Share Certificate as collateral, I cannot withdraw any dividends from the Share Certificate. If approved by PenFed, I can use 95% of the unencumbered principal amount of each share certificate as collateral for a loan.
USE OF THE COLLATERAL. While any part of my loan is unpaid, I promise: to use the collateral carefully and keep it in good repair; to obtain your written permission before making any major alteration; to notify you before changing my address or the address where the collateral is kept; to help you protect the rights I have given you; not to use or permit anyone to use the collateral for any unlawful purposes; to permit you to inspect the collateral at reasonable times.
PROPERTY INSURANCE AND TAXES. I will keep the collateral insured for its full value against loss and damage with an insurance company that you accept. The policies must say that you are to be paid what you are owed if there is a loss. I will deliver the policies to you, if you request. If the collateral is lost or damaged, you can use the insurance proceeds to replace or repair it, or to repay any amounts I owe you. I will pay all taxes and fees on the collateral. You can pay any tax or fee if I don't (although you do not have to). If you do pay for insurance, taxes or fees, I will repay you with interest at the rate stated on the reverse side.
Unless I provide you with evidence of insurance coverage required by my Promissory Note/Security Agreement with you, you may purchase limited comprehensive and collision insurance at my expense to protect your interest in my collateral. This insurance may, but need not, also protect my interest. If the collateral becomes damaged, the coverage that you purchase may not pay any claim that we make or any claim that is made against me in connection with the collateral. I may later cancel any insurance purchased by you, but only after providing you with the evidence that I have obtained acceptable insurance coverage elsewhere as required by my Promissory Note/Security Agreement with you. If you purchase insurance for the collateral I will be responsible for the costs of that insurance, including the insurance premium, finance charges and any other charges, including tracking and administrative costs and commissions you may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The effective date of coverage may be the date my prior coverage lapsed or the date I failed to provide proof of acceptable insurance. The costs of the insurance, and finance charges thereon, will be added to my total outstanding balance and the number and/or amount of my periodic payments will be increased to cover such premium charge. If the cost of the insurance or any other charges imposed in connection with the placement of the insurance are added to my outstanding balance, the finance charge on my underlying promissory note/security agreement with you will apply to these added amounts. The costs of the insurance may be considerably more than the cost of insurance I may be able to obtain on my own. The coverage will not be liability insurance and will not satisfy any need for the property damage liability coverage or my obligations under any state's mandatory liability, financial responsibility or no fault laws. A claim settlement will never exceed the lesser of (a) the net amount I owe on this loan (b) the actual cash value of the collateral at the time of loss (unless this loan settlement limit is deleted by loss settlement without actual cash value coverage), (c) the cost of repair or replacement of the collateral, or (d) the maximum limit of coverage.
ENTIRE BALANCE DUE. I agree that without giving me any advance notice, you can require me to pay the unpaid balance of my loan at once if I break any promise made under this Security Agreement or am in default of this Promissory Note or Security Agreement.
DEFAULT AND REPOSSESSION. I will be in default if I don't make a payment when due; if I break any promise I have made to you or do not fulfill the terms and conditions in this Agreement; if I become insolvent or file bankruptcy; if a lien is put on the collateral without your permission, or if the collateral is confiscated; if the collateral is misused, or in danger of losing too much value; if I do anything that reduces my ability or willingness to repay; if I die or become incompetent; if any insurance is canceled; if a judgment or tax lien is filed against me or an attachment or garnishment should be issued against any of my property including any of my accounts with you; if you in good faith consider yourself or my obligations or my ability to repay or perform my obligations with you unsafe or unsecure.
POWER OF ATTORNEY. I appoint PenFed's Assistant Treasurer or other signatory duly employed and authorized by PenFed attorney-in-fact to do all acts and things which PenFed may deem necessary to perfect and continue perfected the security interest created by this Security Agreement and to protect the collateral and to request a duplicate title.
POWER OF ATTORNEY TO SIGN FOR OWNER WHEN REGISTERING AND/OR TRANSFERRING OWNERSHIP OF A MOTOR VEHICLE. I, being the owner of the motor vehicle described in this Promissory Note/Security Agreement appoint Pentagon Federal Credit Union or other signatory duly employed and authorized by PenFed attorney-in-fact to sign my name to any Certificate of Title, or other supporting papers, covering the motor vehicle, in any manner necessary to register and/or transfer ownership of the motor vehicle; additionally I appoint Pentagon Federal Credit Union or other signatory duly employed and authorized by PenFed as attorney-in-fact to perform any other acts necessary to register or transfer title to the vehicle described in this Security Agreement, or to request and receive a certified title or other similar document for this vehicle.
MONEY ADVANCED. If I fail to do anything I have promised to do in this agreement you may do it and any money spent for this purpose shall be added to my loan with interest at the rate stated on the reverse side.
TAKING POSSESSION OF THE COLLATERAL. If I am in default you can take the collateral. I will deliver the collateral to you at a time and place you choose. If I don't or if you wish, you can take the collateral without giving me advance notice. If you take the collateral you will not be responsible for any of my property that is not covered by this agreement that I leave inside the collateral, but you will try to return it to me. After you have taken the collateral, you can sell it and apply the proceeds to the unpaid balance of my loan. You will give me at least 10 days notice of any public sale or the date after which you will be free to have a private sale. I will have to pay the costs you incur in taking and selling the collateral, court costs and reasonable attorney's fees. If the money from the sale is not enough to pay you the unpaid balance of the loan and any interest I owe you, and to reimburse you for these expenses, I still will have to pay the difference. I am entitled to any money left over if the money from the sale is more than I owe. You also have all the rights and remedies regarding taking possession, keeping and sale of the collateral and use of the money as are permitted by the Uniform Commercial Code. Louisiana law permits repossession of motor vehicles without Judicial process.
FINANCING STATEMENT. You are authorized to file financing statements as required and I will pay the cost.
NO WAIVER. Because you excuse one default by me does not mean later defaults will be excused.
EFFECTIVE DATE. This Security Agreement becomes effective on the date shown on the front side and when signed by me.

I have read this agreement and received a copy. I understand it contains all my rights and responsibilities. No oral statements can change it. All changes must be approved by you in writing. My heirs and legal representatives will also be responsible under this agreement.

PENTAGON FEDERAL CREDIT UNION

BY:

AUTHORIZED SIGNATURE

Form 224 (01/19) © Pentagon Federal Credit Union, 2019

October 2018

Market Intelligence

Market Information from RMR Market Offices

Spotlight: Payday Installment Lending Advertising

Office of Consumer Lending, Reporting, and Collections Markets

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Each Market Spotlight provides an in-depth analysis of a specific consumer financial issue or product line in order to educate Bureau stakeholders.

Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the official view of the Bureau.

Introduction

This spotlight examines differences in the marketing of payday loans and certain installment loan products, for which each installment is typically due on the consumer's payday or can be collected directly from the consumer's bank account or directly from the consumer's paycheck.[1] We refer to these installment loans as "payday installment loans." These loans differ from traditional payday loans — typically repaid in single installment on the consumer's payday or date benefits are received[2] — in that payday installment loans are amortized over a period of time and repaid in a series of installments. Payday installment loans differ from the installment loans typically offered by banks, credit unions, and finance companies in the timing of installments, the higher costs, and the methods of repayment.

The Bureau analyzed the direct marketing strategy for payday and payday installment loans by using advertising data from the Mintel Comperemedia direct marketing database.[3] First, this spotlight compares the advertising of payday installment loans to that of payday loans by both online and storefront payday lenders (Payday Lender Product Analysis). Second, this spotlight compares storefront payday lenders to online lenders in their advertising of payday installment loans (Storefront and Online Lender Analysis). The results of these analyses are presented below.

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[1] Consumer Fin. Prot. Bureau, Fed Reg. v. 82, no. 221, at 54496, *available at* https://www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans ("Payday Rule").

[2] Payday Rule at 54476.

[3] Mintel maintains a direct mail panel of 70,000 consumers, known as panelists, annually. About 1,000 of these panelists are "lifecycle" panelists who report consistently throughout the year. On the first of each month, panelists receive a packet with four envelopes, one for each week. Each week, panelists send solicitations, offers, and other communications, except bills and account statements, to Mintel. Mintel digitally scans each piece and recognizes text via optical character recognition (OCR). Panelists are provided an incentive of $20 per month. A subset of panelists also installs software on their computers to forward solicitation emails to Mintel automatically. Panelists self-report demographic information such as household income, race, and ethnicity. Information provided to Office of Fair Lending and Equal Opportunity by Anuj Shahani, Vice President of Financial Services at Mintel.

Data

Mintel collects advertisements – including "direct mail, email, banner ads, mobile ads, and print ads every day for consumers, small businesses, and insurance agents"[4] – from panelists and categorizes them by campaign,[5] company, product category, product type, and media channel, among other variables.[6] The Bureau obtained direct mail and email campaign and panelist information on personal loans, auto loans, and other credit lines between January 2017 and January 2018 for this spotlight (the "reporting period").[7]

The campaign calculations presented here are based on all advertisements collected by Mintel for each product type and company during the reporting period; likewise, the panelist calculations are based on the panelists who received advertisements for each product type from each company in the database during the reporting period.[8] The calculations are unweighted and potentially not representative of the populations of advertisements or consumers overall. The values are intended to be descriptive, rather than definitive statements of fact, about the market for payday and payday installment loan products.

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[4] Mintel Comperemedia, *available at* http://www.mintel.com/mintel-comperemedia.

[5] Mintel assigns a unique identification number to each advertising campaign. Individual advertisements from an advertising campaign are labeled with the same campaign number. Unless otherwise noted, campaign volumes in this report are distinct counts of advertising campaigns, not counts of individual advertisements.

[6] All records are deidentified by Mintel before sharing with the Bureau and other subscribers.

[7] The data were sampled to determine the rate of incorrect product category, product type, and company labels. The Bureau combined manual searches of individual advertising campaigns and automated searches of the offer data field to identify and correct these errors. The Bureau also manually labeled each company type.

[8] The aggregate numbers of panelists in this spotlight are unique counts with respect to the particular aggregating factor. For example, Panelist A received both a payday loan advertisement and a payday installment loan advertisement from Company 1. If aggregating by loan type, as in Table 1, Panelist A will be counted twice; if aggregating by lender, Panelist A will be counted once.

Payday Lender Product Analysis

The first analysis focuses specifically on payday lenders. These lenders are state licensed and offer single-payment loans and payday installment loans; they may also offer single-payment and/or installment vehicle title loans. Most of the companies in this analysis lend from storefront locations; however, one is an online lender that offers both single-payment and payday installment loans, and is included due to its product offerings as described below. As noted, the campaigns occurred during the January 2017 to January 2018 time period.

Table 1 shows the number of advertising campaigns and number of panelists that received advertising campaigns from each company. Check n' Go, Check Into Cash, Advance America, Fast Auto & Payday Loans, Inc., and Ace Cash Express are all storefront payday lenders, while CashNetUSA is an online payday lender. [9]

TABLE 1: COMPANIES AND CALCULATIONS INCLUDED IN THE PAYDAY LENDER PRODUCT ANALYSIS

	Number of Campaigns		Number of Panelists	
	Payday	Payday Installment	Payday	Payday Installment
Check 'n Go	33	102	20	150
CashNetUSA	25	67	10	80
Check Into Cash	5	21	17	31
Advance America	35	3	76	3
Fast Auto & Payday Loans, Inc.	3	2	4	2
Ace Cash Express	3	1	3	1
Grand Total	104	196	125	239

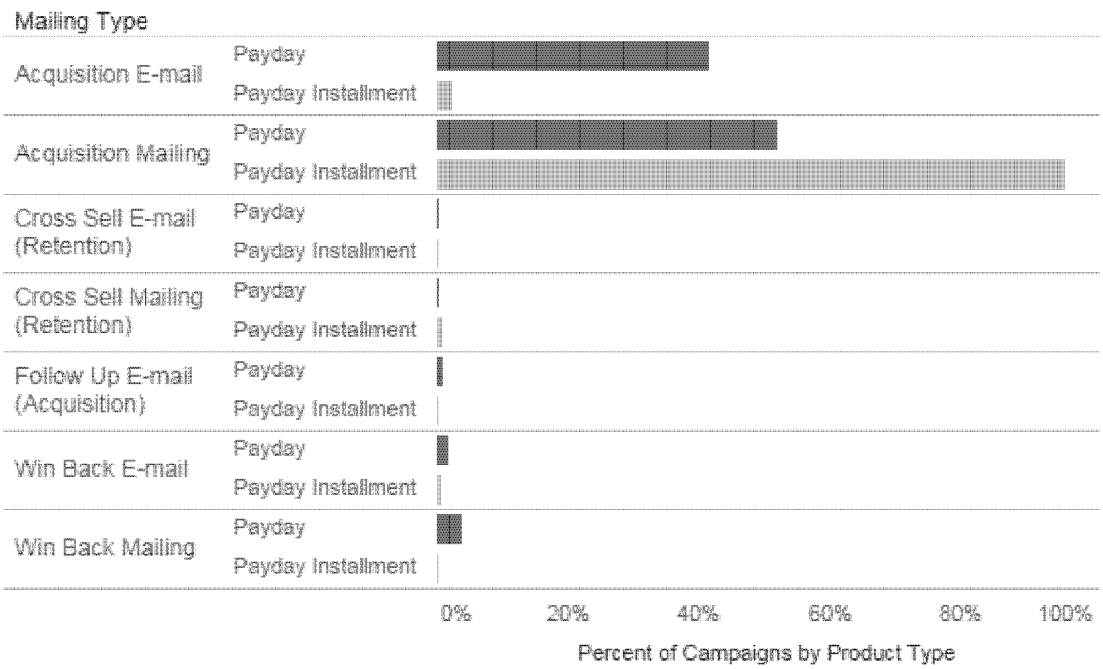
Campaign mailing type

Payday lenders used different mailing type strategies for payday and payday installment advertisements. Nearly all (97%) of the 104 payday installment campaigns were mail, while the

[9] CashNetUSA is a state licensed lender that offers both single-payment and payday installment loans. Although the company lends exclusively online rather than through storefront locations, it is included as a payday lender in the Payday Lender Product Analysis due to its product offerings.

196 payday campaigns were split between 56% mail and 44% email across acquisition, cross-selling, follow up, and win back advertisements.[10] Overall, payday lenders focused their advertising on new customer acquisition. Figure 1 provides a breakdown of the different mailing types by loan type.

FIGURE 1: ADVERTISING CAMPAIGN MAILING TYPES FOR PAYDAY AND PAYDAY INSTALLMENT LOANS



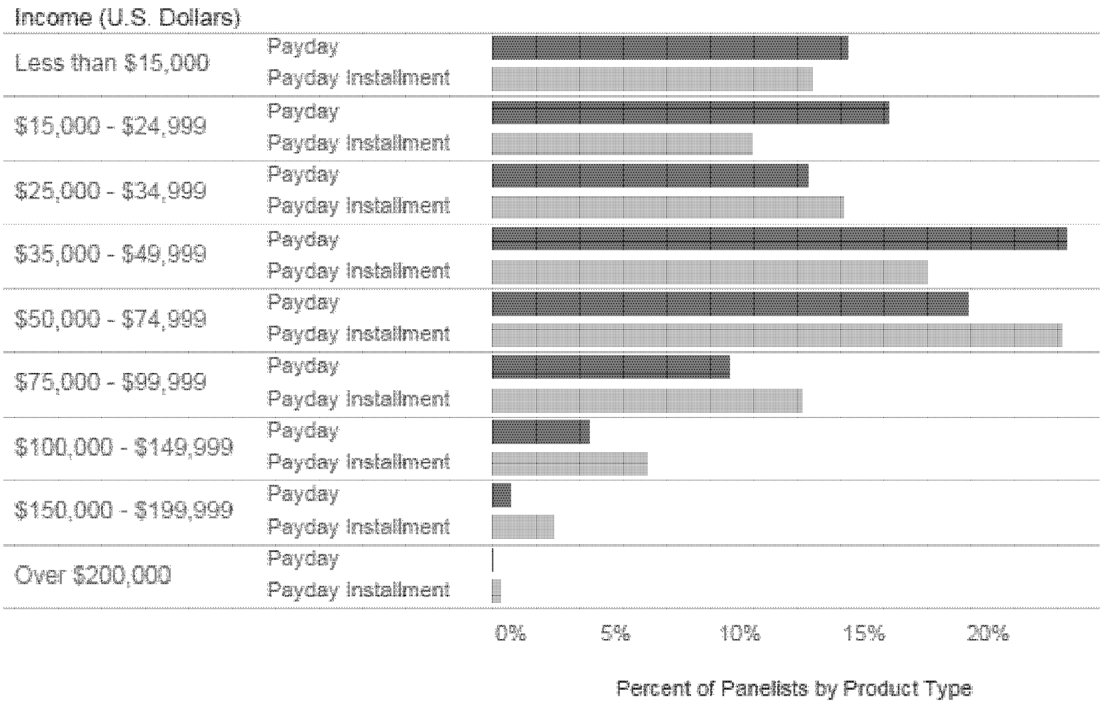
Income

Panelists who received payday (125) and those who received payday installment (239) advertising campaigns differed slightly by income bracket. The payday panelists skewed lower income, with the distribution centering on the $35,000 to $49,999 income bracket, while the

[10] The mailing type definitions are as follows: acquisition, where the piece offers a new product or service to a consumer who is not a current customer; cross sell, where the piece offers a new product or service to a current customer of the company in addition to the customer's current product or service, not as a replacement for the customer's current product or service; follow up, where the piece offers a second chance for the consumer, who is not a current customer of the company, to respond to an acquisition offer that was made in the recent past; and win back, where the piece offers the opportunity to re-open a closed account or return to an entity that a consumer has worked with in the past.

payday installment panelist distribution centered at $50,000 to $74,999. The distributions are plotted by income bracket in Figure 2.

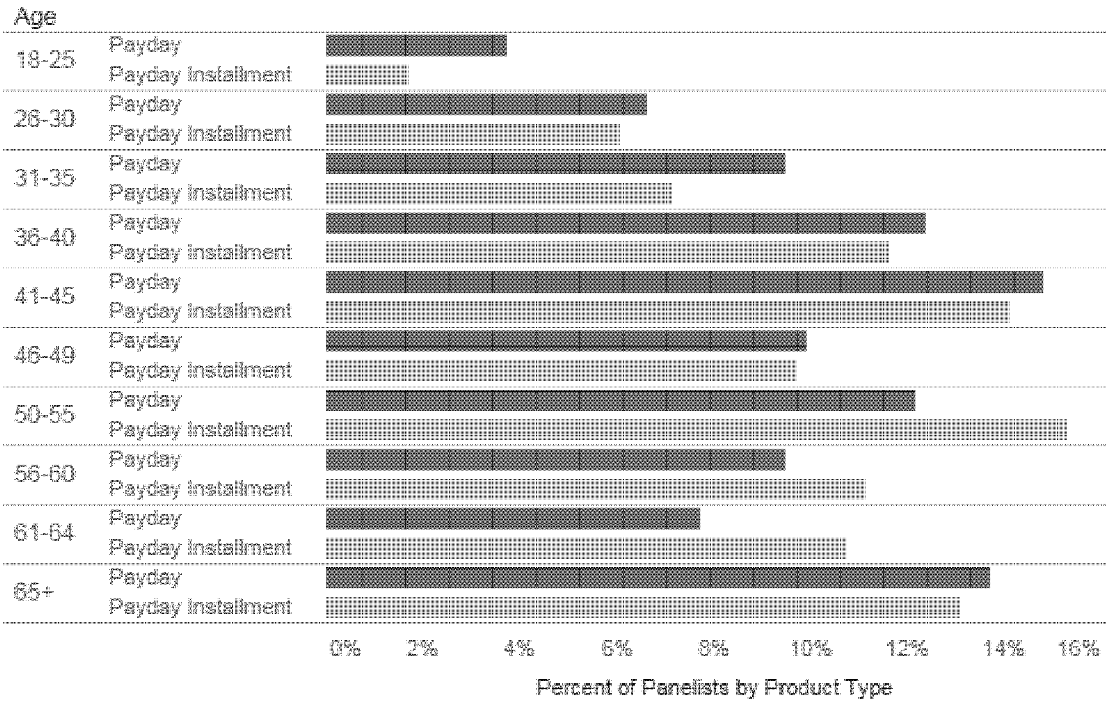
FIGURE 2: INCOME BRACKETS OF PANELISTS THAT RECEIVED PAYDAY OR PAYDAY INSTALLMENT LOAN ADVERTISEMENTS



Age

This analysis did not show a discernable difference in advertising across age brackets. In general, payday installment campaigns from payday lenders were most frequent for panelists in the 50 to 55, 41 to 45, and 65+ age brackets, as shown in Figure 3.

FIGURE 3: AGE BRACKETS OF PANELISTS THAT RECEIVED PAYDAY OR PAYDAY INSTALLMENT LOAN ADVERTISEMENTS



Geography

There are currently 34 states that either have created an exception from their general usury caps for payday loans or have no usury caps on consumer loans.[11] The remaining 15 states and the District of Columbia either prohibit payday loans or have fee or interest rate caps that payday lenders do not find profitable.[12] Closed-end payday installment lending is specifically authorized in Colorado, Illinois, and Mississippi.[13] In addition, seven states have no rate or fee limits for $500 closed-end installment loans, and another 10 states have no limits for closed-end

[11] Payday Rule, at 54477; *see also* Pew Charitable Trusts, *State Payday Loan Regulation and Usage Rates*, (Jan. 14, 2014), *available at* http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-paydayloan-regulation-and-usage-rates (for a list of States). Legislation in New Mexico prohibiting short-term payday and vehicle title loans went into effect on January 1, 2018.

[12] Payday Rule, at 54477.

[13] Payday Rule, at 54496-54497.

installment loans of $2,000 or less.[14] Most of the loan advertisement, for both payday and payday installment, included offers for loan amounts under $2,000, but many advertised the potential of higher loan amounts depending on the borrower's credit profile.

Table 2 shows the states that received the most payday installment advertising campaigns. The table also shows the number of payday loan advertising campaigns. Three additional states did not receive payday installment advertisements from payday lenders, but received relatively high volumes of payday advertising campaigns – Florida (17), Louisiana (10), and Michigan (10).

TABLE 2: VOLUME OF PAYDAY AND PAYDAY INSTALLMENT LOAN ADVERTISING CAMPAIGNS BY STATE

	Payday Installment Loans	Payday Loans
CA	60	34
MO	49	4
SC	26	6
TX	26	5
WI	24	2
OH	22	18
IL	16	8
MS	11	3
AL	10	2
DE	7	1
Grand Total	192	72

Figure 4 shows the zip codes where panelists received advertisements for payday, payday installment, or both loan types from payday lenders. The advertisements were generally concentrated in the Midwest, South, and California (the state with the lowest limit on payday loan amounts of the states that authorize payday lending).[15] In Ohio, which received the most payday loan advertisements after California, single-payment payday loans are limited to a 28%

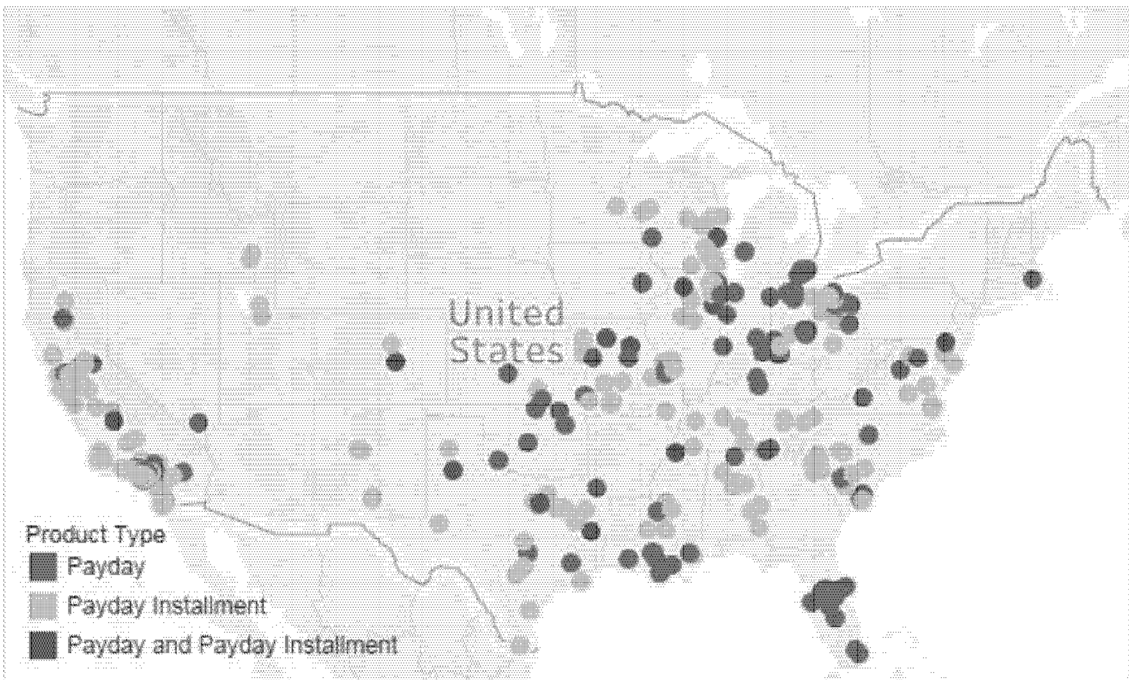
[14] National Consumer Law Center, *Predatory Installment Lending in 2017: States Battle to Restrain High-Cost Loans*, (Aug 2017), *available at* https://www.nclc.org/images/pdf/pr-reports/installment-loans/report-installment-loans.pdf. California law caps rates for consumer loans under $2,500 but has no limits on closed-end loans of $2,500 or more. See California Department of Business Oversight, *Installment Consumer Lending by California Non-Banks Declined by 9.9% in 2017*, (June 18, 2018), *available at* http://www.dbo.ca.gov/Press/press_releases/2018/CFL%20RSDL%20Annual%20Reports%20Release%2006-18-18.asp.

[15] The limit is $300, which includes the loan fee. *See* Payday Rule at 54477, fn 27.

APR with credit service organizations advertising, arranging, and servicing the loans and charging credit service fees.[16] Lenders advertised both payday and payday installment loans in only 27 zip codes, while they advertised either payday or payday installment campaigns in 298 zip codes (94 and 204 campaigns, respectively).

Only 22 panelists received both payday and payday installment campaigns; the remaining 94% of panelists who received a solicitation for a payday or payday installment product received only one or the other type of product but not both. Payday lenders only advertised single-pay payday loans in some states, including Florida, Michigan, Nevada, and Louisiana, while they advertised both products in others, including California, Missouri, Ohio, and Texas.[17] These states all permit payday lending.

FIGURE 4: PAYDAY AND PAYDAY INSTALLMENT LOAN ADVERTISING CAMPAIGNS BY ZIP CODE



[16] Payday Rule at 54484. Ohio's SB 123 will ban the CSO arrangement and make other changes effective in 2019.

[17] In Texas, as in Ohio, payday loans are advertised, arranged, and serviced by credit access businesses. Payday Rule at 54477and 54486.

Storefront and Online Lender Analysis

The second analysis focuses on payday installment lending by comparing storefront and online lenders. Online lenders can either be state licensed or non-state licensed, with the latter often claiming tribal affiliation or an offshore location. The online non-state licensed lenders in this spotlight all claim tribal affiliation and will be referred to as tribal lenders. In general, the online lenders identified here as payday installment lenders do not offer single-payment payday loans or vehicle title loans.[18] Table 3 shows the number of advertising campaigns and number of panelists that received payday installment loan advertising campaigns from storefront and online lenders. As Table 3 shows, advertisements from online lenders heavily outnumber advertisements from storefront lenders.

[18] Because the relevant comparison in this analysis is between storefront and online payday installment lenders, CashNetUSA is included among the online state licensed lenders, rather than among the storefront payday lenders.

TABLE 3: COMPANIES AND CALCULATIONS INCLUDED IN THE STOREFRONT AND ONLINE LENDER PAYDAY INSTALLMENT ANALYSIS

			Number of Campaigns	Number of Panelists
Online	State Licensed	RISE	98	296
		NetCredit	82	94
		CashNetUSA	67	80
		OppLoans	10	56
		RSVP Lending, LLC	8	11
		Coast 2 Coast Lenders, LLC	1	1
		Loan At Last	1	1
	Tribal	Big Picture Loans	73	467
		Plain Green	24	93
		Arrowhead Advance	13	30
		Blue Trust Loans	9	3
		MaxLend	6	5
		Lakeshore Loans	4	3
		Spotloan	4	129
		Q Credit	2	12
		Great Plains Lending	1	2
Payday	Storefront	Check 'n Go	102	150
		Check Into Cash	21	31
		Advance America	3	3
		Fast Auto & Payday Loans, In..	2	2
		Ace Cash Express	1	1
Grand Total			532	985

Table 4 shows the number of payday installment loan advertising campaigns by state across online and payday lenders. Similar to the Payday Lender Product Analysis, the advertising campaigns for payday installment loans were concentrated in California and the Midwest. However, online lenders had a strong advertising presence along the East Coast and in the southeast, particularly in Florida, Georgia (where payday lending is banned), and South Carolina.

TABLE 4: VOLUME OF PAYDAY INSTALLMENT LOAN ADVERTISING CAMPAIGNS BY LENDER TYPE AND STATE

	Online		Payday	Grand Total
	State Licensed	Tribal	Storefront	
CA	90	47	42	179
MO	87	20	19	126
OH	45	52	22	119
WI	54	26	11	91
TX	18	40	19	77
SC	40	16	12	68
FL	4	51		55
AL	22	22	10	54
IL	14	27	12	53
GA	22	25		47
Grand Total	251	107	122	480

Figure 5 shows the distribution by zip code of payday installment advertisements from storefront payday and online lenders. Overall, campaigns from online lenders accounted for 76% of the advertising campaigns. The wide distribution of payday installment campaigns by online lenders' across 841 zip codes, compared to the distribution of storefront payday lenders' payday installment campaigns across 173 zip codes, also shows the breadth of the online lenders' advertising.

FIGURE 5: PAYDAY INSTALLMENT ADVERTISING CAMPAIGNS BY COMPANY TYPE AND ZIP CODE

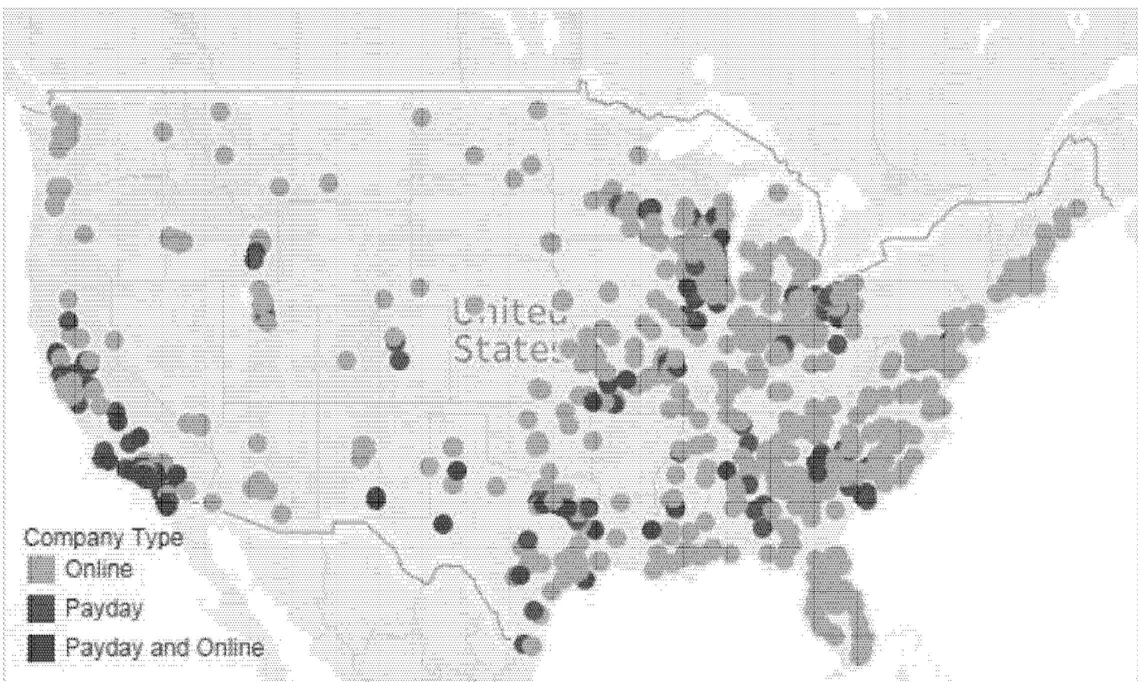
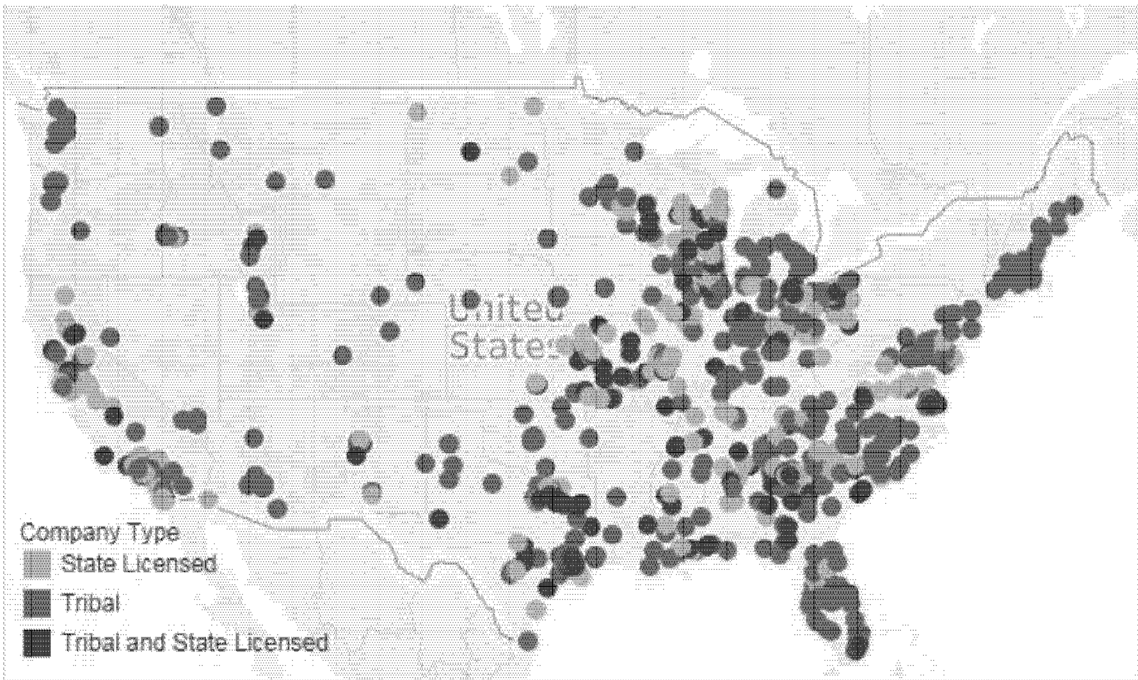


Figure 6 focuses exclusively on online lenders. It shows the distribution of payday installment advertisements from state licensed and tribal lenders. Although state licensed lenders accounted for 66% of the payday installment campaigns from online lenders (403 total), advertisements from tribal lenders had the most reach. Tribal lenders' advertising campaigns for payday installment loans, typically offered at triple-digit rates, were the only payday installment advertisements in several states in the Northeast/mid-Atlantic and Northwest, including Massachusetts, Maine, Maryland, the District of Columbia, Washington, and Oregon, which have rate caps of 36% or less for loans of $2,000, the category that would describe payday installment loans.

FIGURE 6: PAYDAY INSTALLMENT ADVERTISING CAMPAIGNS BY COMPANY TYPE AND ZIP CODE: ONLINE LENDERS ONLY



Market Intelligence

Market Information from RMR Market Offices

Spotlight: Platform Lending

Office of Consumer Lending, Reporting, and Collections Markets | July 2018

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Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*

Introduction

Advances in technology have influenced the ways in which consumer credit markets operate. The recent emergence of fintech lenders, or those that rely on advances in financial technology to support their practices, has led to the development of several new lending models. This spotlight focuses on lenders who engage in personal loan platform lending.[1] These institutions nearly tripled their lending in annual dollar originations from 2014 to 2016 and are now responsible for at least 15 percent of the U.S. personal loan market.[2]

In addition to providing an overview of the platform lending model, this spotlight highlights four unique aspects of platform lending, and how they may impact consumer experiences:

- Diversified investor capital sources and the impact on credit availability
- Incentives to offer standardized loan products
- Implications of unique liquidity challenges on loan servicing
- Implications of investor-driven decisioning

It concludes by highlighting trends in the industry.

Background on Platform Lending

Definition of platform lending

For purposes of this spotlight, platform lending is defined as the practice of offering online personal loans with the intent to quickly sell the loans to third-party investors, either individual or institutional. Investors may purchase loans directly or purchase loan-backed securities. This spotlight draws a distinction between platform lending and other online personal lending by focusing on how the loans are funded. Platform loans are originated with the understanding that investors will ultimately fund the loan and bear most of the default risk. Other online lenders traditionally fund personal loans using their own balance sheet; this practice of 'balance sheet lending' leaves the lender with default risk,[3] and is not addressed here. In addition:

This spotlight considers platform lending as a practice. This definition is intentionally focused on the practice of platform lending as opposed to a focus on platform lenders; as many platform lenders are hybrids and employ aspects of platform lending and balance sheet lending, a clear institution-based categorization is less useful. For simplicity, this spotlight may refer to any institution that engages in the practice of platform lending as a platform lender and discuss issues from a lender perspective.

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[1] This spotlight does not address platform lending in the mortgage, student, auto, small business, or point of sale markets.
[2] The Cambridge Centre for Alternative Finance estimates that U.S. peer-to-peer lenders, or platform lenders, originated $21 billion in consumer loans in 2016 and $7.6 billion in 2014. According to Experian-Oliver Wyman Market Intelligence Reports, total personal loan originations in 2016 was approximately $130B. Relying on this number, and the Cambridge Centre report's $21 billion for peer-to-peer lenders, gives us $21 billion of $130 Billion or roughly 15 percent. *See* Tania Ziegler et al., *2017* The *Americas Alternative Finance Industry Report* (2017) at 15, *available at* https://www.jbs.cam.ac.uk/fileadmin/user_upload/_research/centres/alternative-finance/downloads/2017-05-americas-alternative-finance-industry-report.pdf.
[3] For example, Goldman Sachs recently launched Marcus, a balance lender who, given their inherent partnership with Goldman Sachs Bank, is able to use deposits to fund loans.

Platform lending is a more precise descriptor of marketplace lending. Much has been written on the emergence of marketplace lenders;[4] however, definitions significantly vary. As stated above, this spotlight defines platform lending as the practice of creating of a proprietary lending platform used by individual and institutional investors to purchase consumer loans. The practice of securitizing and selling loans is also considered a form of platform lending in this spotlight.

Typical platform lending business model

Personal loans funded using platform lending vary, but are typically fully amortizing with amounts ranging from $1,000 to $35,000, interest rates between 5% and 30%, and loan terms of either 36 or 60 months.[5] The business models tend to follow the structure below:

Advertising. The platform advertises loan products directly to consumers in its name, assuming all responsibility for customer acquisition costs. For the largest platform lenders, customer acquisition costs as a percent of loan originations tend to range from 2% to 3%; this metric is likely higher for newer lenders.[6] In comparison to traditional banks, online lenders generally have a smaller existing customer base and rely heavily on marketing to new customers.[7]

Application and Underwriting. Consumers submit loan applications directly to the platform; the platform then assesses the borrower's creditworthiness. Underwriting typically follows one of two avenues:

- *Originating Bank Partnership*. Most platform lenders opt to partner with a depository institution, typically a bank, in order to originate the loan. While the depository institution is responsible for setting the underwriting standards, it typically consults with the platform lender to develop an underwriting policy used to assess applicant risk.[8] If the consumer qualifies, the platform lender sets an interest rate and loan grade in accordance with the partner bank agreement.[9]

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[4] Of note, the Bureau released a bulletin with information and tips on marketplace lending while simultaneously announcing a collection of marketplace lending-related complaints. *See* Bureau of Consumer Financial Protection, *CFPB Now Accepting Complaints on Consumer Loans from Online Marketplace Lender* (Mar. 7, 2016), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-now-accepting-complaints-on-consumer-loans-from-online-marketplace-lender/

[5] CLRC Markets analysis of publicly available information and discussions with industry participants.

[6] These costs are calculated based on sales and marketing expenses from 2015 through 2017 at LendingClub and Prosper, two leading platform lenders. *See* Prosper Marketplace, 2017 Annual Report (Form 10-K), at 43 and 48, *available at* https://www.prosper.com/Downloads/Legal/prosper10k12312017.pdf *and* LendingClub, 2017 Annual Report (Form 10-k), at 49, *available at* http://ir.lendingclub.com/file.aspx?IID=4213397&FID=392292654&O=3&OSID=9.

[7] Eric Turner, *Digital Lenders Continue to Struggle with Finding Profitability* (Mar. 10, 2017), *available at* https://www.spglobal.com/cn/our-insights/Digital-Lenders-Continue-to-Struggle-with-Finding-Profitability.html

[8] Conversations both with platform lenders that use this model and the originating banks suggest the platforms may have some autonomy over the underwriting process. One originating bank recently suggested in a Bureau visit that it offers platform lenders a regulatory sandbox, allowing a degree of flexibility with product offerings and underwriting models. However, any activity must comply with its regulatory standards. In recent proposed guidance to banks on third-party lending, the FDIC discussed model risk which arises as "some third-party lending relationships are heavily dependent on quantitative models developed by third parties." *See* Federal Deposit Insurance Corp., *Examination Guidance for Third-Party Lending*, (Jul. 29, 2016) at 4, *available at* https://www.fdic.gov/news/news/financial/2016/fil16050a.pdf.

[9] Two financial institutions, WebBank and Cross River Bank, serve as the primary originating partner banks for the industry's largest participants. Recently, however, other banks have begun to partner with platform lenders.

- *Self-underwriting*. Platform lenders may also originate their own loans and have direct control of their underwriting model.[10]

Financing Structure. After the loan is approved, the platform will offer the loan to investors as one of the following:
- *Loan Note*. Investors can directly purchase a portion of a loan, or "note", and receive the commensurate installment payments; in certain instances, investors may purchase the entire loan. Platforms also offer portfolios of diversified loan notes.
- *Securities*. Investors can purchase tradeable personal loan asset backed securities; these allow investors to preserve their investment liquidity.[11] Securitization also offers investors the opportunity to diversify their portfolio by investing in tranches made up of notes from several loans, each with a differing risk profile.

Finalizing and Loan Funding. Approved loans are listed on the various platforms to allow investors an opportunity to commit funding. Loans that receive sufficient investor interest will likely be funded; the origination of listed loans that do not receive sufficient investor interest is not guaranteed. Two differing lending policies exist:
- *Guaranteed origination*. The loan is listed on the platform in an effort to seek sufficient investor commitments. If the loan fails to attract sufficient investor commitments, the loan will be originated but the asset is retained on the balance sheet of either the platform lender or originating bank.[12]
- *Origination not guaranteed*. If the loan fails to attract sufficient investor commitments, the platform lender may choose *not* to fund the loan. For example, one large platform lender sets a minimum amount of investor commitment prior to funding a loan; a loan is only originated if the listing has received investor commitments equal to or above this amount. At least one of the largest platform lenders engages in this practice.[13]

Certain platform lenders also perform a secondary 'back-end' application review which occurs while or after a loan is listed for investor commitments, but prior to the loan being funded.[14] This more thorough review may include an additional credit inquiry, requests for additional documents, and a review of tax records; the entire process may take a number of days.[15]

Origination. Once a borrower has accepted the terms and the platform has determined that investors will fund the loan, the platform will generally partner with a bank to originate the loan. Borrowers are charged an origination fee, typically ranging from 1% to 6% of the loan amount;[16]

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[10] For example, SoFi (who is primarily known for refinancing student loans, but also offers personal loans and mortgages) holds state-level consumer lending licenses; the platform develops its own underwriting models for assessing credit risk and independently sets loan terms.
[11] Kroll Bond Rating Agency, *2017 Consumer Loan Marketplace Lending Year in review and 2018 Outlook*, (Jan. 2018), *available at* https://www.krollbondratings.com/auth?uri=/show_report/8492.
[12] In discussion with a leading platform lender, the Bureau learned that all loans approved by this platform were ultimately funded; in the event investors do not contribute the full amount of the loan, the platform will fund the loan using its balance sheet. There are other regulatory reasons that platform lenders or originating banks hold a portion of the loans on their balance sheets including performance testing and to mitigate legal risk.
[13] Prosper Funding LLC, Prospectus, at 66 (Apr. 19, 2018), *available at* https://www.prosper.com/prospectus.
[14] When the platform identifies inaccurate information in an application that would result in the borrower receiving different loan offers, they will cancel the listing and any commitments made by investors. *See e.g.* Prosper Funding LLC, Prospectus, at 57-58 (Apr. 19, 2018), *available at* https://www.prosper.com/prospectus.
[15] This practice played a role in a 2018 FTC complaint lodged against LendingClub. *See:* Federal Trade Commission, *FTC Charges Lending Club with Deceiving Consumers* (Apr. 25, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/04/ftc-charges-lending-club-deceiving-consumers-0.
[16] These are based on disclosed origination fee ranges at LendingClub and Prosper. *See* LendingClub, *What fees do borrowers pay?, available at* https://help.lendingclub.com/hc/en-us/articles/216117807-What-fees-do-borrowers-pay- (last visited May 30, 2018) *and* Prosper, *footnote,* https://www.prosper.com/ (last visited May 30, 2018).

if the platform partners with an originating bank, a portion of this fee is paid to the bank. The originating bank typically sells the loan to the associated platform lender soon after origination, often within 2 to3 business days.[17]

Servicing. The platform is typically responsible for servicing the loan and ensuring the collection and transfer of funds from borrowers to investors. In the event of a default, the platform is responsible for the debt collection process. The platform generally receives servicing fees that are tied to the borrower's repayments. These fees tend to range from 1% to 1.075% of borrower payments.[18]

Key stakeholders

Various parties are involved in the platform lending business model, each of which have their own set of incentives.

Borrowers. Most borrowers of platform loans are prime or near-prime consumers seeking a means to consolidate debt from existing credit cards or student loans.[19] A recent study found that one platform lender offered lower interest rates than those offered by credit card providers to consumers with similar risk profiles, suggesting that borrowers are attracted to platform loans as a way to consolidate debt and reduce interest payments.[20] After surveying borrowers, this lender reported that its credit card debt consolidation loans had an average interest rate of 15.1% while the interest rate on their prior outstanding debt averaged 20%.[21] A number of lenders specifically market their products as low interest alternatives to credit card debt.[22] Others have suggested that borrowers are attracted to platform lenders due to a preferable user experience, which includes a quick and easy application processes, fast decision-making, and the easy-to-use online interfaces.[23] Some programs are aimed at subprime borrowers unable to find credit elsewhere.[24] We discuss the extent to which the platform model impacts credit availability in the following section.

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[17] *See e.g.* Lending Club, Annual Report 2017 (Form 10-K), at 75, *available at* http://ir.lendingclub.com/file.aspx?IID=4213397&FID=392292654&O=3&OSID=9. *See also,* Federal Deposit Insurance Corp., *Winter 2015 Supervisory Insights,* at 12-18, *available at* https://www.fdic.gov/regulations/examinations/supervisory/insights/siwin15/si_winter2015.pdf.

[18] This range is based on servicing fees charged by LendingClub and Prosper. *See* LendingClub, *Rates and Fees,* https://www.lendingclub.com/public/rates-and-fees.action (last visited May 30, 2018) *and* Prosper Marketplace, 2017 Annual Report (Form 10-K), at 46, *available at* https://www.prosper.com/Downloads/Legal/prosper10k12312017.pdf.

[19] Department of the Treasury, *Opportunities and Challenges in Online Marketplace Lending,* at 21 (May 10, 2016), *available at* https://www.treasury.gov/connect/blog/Documents/Opportunities%20and%20Challenges%20in%20Online%20Marketplace%20Lending%20vRevised.pdf.

[20] Julapa Jagtiani & Catharine Lemieux, *Fintech Lending: financial inclusion, risk pricing, and alternative information* (Federal Reserve Bank of Philadelphia, Working Paper No. 17-17, Jul. 2017), *available at* https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-17.pdf.

[21] LendingClub, Response to OCC RFI on Evaluating Charter Applications from Financial Technology Companies at 4 (April 14, 2017), *available at* https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-lending-club-2.pdf. During the same period, creditcards.com's Weekly Credit Card Rate Reports lists the national average credit card APR as around 15.2%. The Weekly Report is based on APR's of the nation's 100 most popular credit cards. *See* creditcards.com, *Rate Reports,* https://www.creditcards.com/credit-card-news/rate-report-stories.php#Rate_report (last visited July 16, 2018).

[22] *See e.g.* LendingClub, Credit Cards vs Personal Loans, *available at* https://www.lendingclub.com/loans/resource-center/credit-cards-vs-personal-loans (last visited July 16, 2018) *and* Prosper, Get a Debt Consolidation Loan, *available at* https://www.prosper.com/plp/loans/loan-types/debt-consolidation-loans/ (last visited July 16, 2018).

[23] Deloitte, *A temporary phenomenon? Marketplace Lending: An analysis of the UK market,* at 23 (Feb. 2016), *available at* https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-fs-marketplace-lending.pdf

[24] Avant, for example, targets customers with FICO scores as low as 600; unlike other large platform lenders their loans are not generally debt consolidation loans. *See e.g.* Meg Graham, *Lending billions is just the beginning for Chicago startup*

Despite these potential advantages, platform lending is relatively unfamiliar to most U.S. consumers. A 2017 nationally representative survey conducted by the Boston Federal Reserve found that only 25 percent of U.S. consumers have heard the term "marketplace lending" or recognize the names of the largest platform lenders.[25]

Platforms. Platform lenders, along with fintech lenders more generally, introduce technology-focused characteristics to traditional lending models. Examples include: 1) the use of alternative data and new underwriting techniques (*e.g.*, machine learning) in an effort to better assess borrower credit risk and potentially increase credit access;[26] 3) lack of brick-and-mortar branches or other legacy costs, potentially allowing lenders to offer more affordable credit; and, 3) user experiences that are designed to be entirely-online and allow consumers to complete the entire personal loan borrowing process from their homes.

Table 1: Descriptive information on a selection of the largest platform lenders

Institution Name	Year Established	Originations through 3Q17 ($B)	Minimum FICO	Average FICO	Partner Bank	Funding Sources
Lending Club	2007	31.2	600	684	WebBank	Institutional and retail investors; Warehouse lines of credit/retained on balance sheet
Prosper	2005	10.5	640	710	WebBank	Institutional (90%) and retail investors (10%)
SoFi	2011	8.1*	~680	731	N/A – State Licensing	Institutional investors; warehouse line of credit/retained on balance sheet
Avant	2012	4.2	580	650	WebBank	Institutional investors; warehouse line of credit/retained on balance sheet
Marlette (Best Egg)	2013	4	621	711	Cross River	Institutional investors; warehouse line of credit/retained on balance sheet; originating bank
Upstart	2012	1.0	620	690	Cross River	Institutional investors (65%); Retail investors (5%); Warehouse line of credit/retained on balance sheet (20%); originating bank (5%)
Upgrade	2017	<1.0	620	685	WebBank	Institutional investors; warehouse line of credit/retained on balance sheet

*Only includes Personal Loans, excluding over $12.5B in student loans.
Source: KBRA reports, SEC filings, Securitization offering documents, and presentations prepared for the Bureau.

Avant, Chicago Tribune (Apr. 26, 2016) http://www.chicagotribune.com/bluesky/originals/ct-avant-growth-credit-card-bsi-20160426-story.html

[25] Robert Adams et al., *U.S. Consumers' Awareness and Use of Marketplace Lending* (Federal Reserve Bank of Boston, Current Policy Perspective No. 17-7, Oct. 27 2017), *available at* https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2017/cpp1707.pdf

[26] In 2017, the Bureau issued an RFI on the use of alternative data and received comment. *See* Bureau of Consumer Financial Protection, *Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process* (Feb. 16, 2017) https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/request-information-regarding-use-alternative-data-and-modeling-techniques-credit-process/. The Bureau then issued a No-Action Letter to marketplace lender Upstart to aid in better understanding the real-world impact of alternative data. *See*: Bureau of Consumer Financial Protection, *CFPB Announces First No-Action Letter to Upstart Network* (Sep. 14, 2017) https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.

However, certain costs create barriers to entry:

- *Cost of capital.* Platforms depend on investor capital; this requires them to cater to investor needs. Investors demand returns that are more expensive than depository funds used for loans by traditional banks.
- *Consumer-acquisitions.* Similar to online lenders more generally, platforms realize the marketing costs associated with bringing consumers to the platform.
- *Compliance costs.* Platform lenders face a variety of compliance costs, including those associated with securities law.[27]

Investors. While platform lenders originally marketed their services as a way for everyday retail investors to fund consumer loans, sophisticated institutional investors – including banks, investment advisors, hedge funds, trusts, endowments, pension funds, and insurance companies – currently provide the vast majority of platform loan funding.[28] Lenders attract these investors by marketing their investments as higher-yield alternatives to other fixed-income securities.[29] Three trends point to an increase in the number and types of institutional investors in platform lending: 1) a general increase in institutional investor awareness of platform lending as a practice,[30] 2) the creation of new platform-focused investment vehicles,[31] and 3) the expansion of platform Asset Backed Securities (ABS) issuances.[32]

Originating Banks. Platform lenders may opt to partner with originating depository institutions; these charter-holding institutions are generally able to extend credit under federal laws that allow them to "export" interest rates from their home states into other states where borrowers reside. Further, such a partnership may obviate the need for platform lenders to obtain individual state lending licenses. Originating banks earn origination and other fees as compensation for originating each loan. Additionally, they can provide compliance guidance and assistance to their platform partners.[33] As discussed, while originating banks are ultimately responsible for their underwriting standards, they typically work in coordination with their platform partners to develop underwriting standards.

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[27] Chapman and Cutler LLP, *The Regulation of Marketplace Lending: A Summary of the Principal Issues* (Apr. 2018), *available at* https://www.chapman.com/media/publication/744_Chapman_Regulation_of_Marketplace_Lending_2018.pdf.

[28] Based on CLRC Markets conversations with industry participants. *See, e.g.,* LendingClub, Response to Marketplace Lending RFI, at 7 (Sep. 30, 2015), *available at* http://www.regulations.gov/contentStreamer?documentId=TREAS-DO-2015-0007-0030&attachmentNumber=1&disposition=attachment&contentType=pdf.

[29] LendingClub, Investor Day Presentation, at 70 (Dec. 7, 2017), *available at* http://ir.lendingclub.com/file.aspx?iid=4213397&fid=1001230258

[30]In a 2016 study, Richards, Kibbe & Orbe LLP and Wharton FinTech found that half of institutional investors surveyed made some form of investment in marketplace lending, up from 30% less than a year prior. *See,* RK&O & Wharton FinTech, *2016 Survey of U.S. Marketplace Lending* (Apr. 11, 2016), *available at* https://www.rkollp.com/newsroom-publications-389.html.

[31] For example, LendingRobot, a SEC-registered investment advisor provides services for retail investors in marketplace lending, created a hedge fund that invests solely in marketplace loans. *See,* Anna Irrera, *Startup LendingRobot launches automated hedge fund investing in loans,* Reuters (Jan. 26, 2017), *available at* https://www.reuters.com/article/us-lendingrobot-hedgefund/startup-lendingrobot-launches-automated-hedge-fund-investing-in-loans-idUSKBN15A28S. Some marketplace lenders have also created their own captive hedge funds *e.g.,* SoFi Credit Opportunities Fund & Lending Club LC Advisors.

[32] Kroll Bond Rating Agency, *2017 Consumer Loan Marketplace Lending Year in review and 2018 Outlook,* at 2 (Jan. 2018), *available at* https://www.krollbondratings.com/auth?uri=/show_report/8492.

[33] Materials provided to Markets' Offices by Cross River Bank (May 2017).

Potential Consumer Impacts of Platform Lending

Diversified investor capital sources and the impact on credit availability

Platform lenders increasingly cater to a diverse investor group. Industry participants suggest the wide variety of investor preferences and risk tolerance allows the platform model to serve a broader set of consumers than those traditionally served by banks. Lenders suggest that banks traditionally have a low risk tolerance and serve prime borrowers, while non-depository alternative lenders may have higher costs of capital and therefore focus on high-yield loans to subprime borrowers. Generally, neither lender type serves borrowers across the entire credit spectrum. Platform lenders, however, argue that they are able to match investor risk profiles to different borrowers across a broader spectrum of consumers.[34] Industry participants claim this allows them to defray marketing, servicing, and other costs on a per-customer basis; a savings that can be passed on to consumers and ultimately could provide more consumers with affordable access to credit.[35]

As mentioned above, a 2017 Philadelphia Fed working paper compares loan-level data from a large platform lender to bank stress testing data; it found that consumers with similar risk profiles pay lower interest rates for loans offered by a platform lender compared to rates for credit card debt.[36] A follow-up study found that lenders' activities have penetrated areas that may be underserved by traditional banks.[37] The studies attribute these benefits to financial technology, but neither point specifically to aspects unique to platform lending as the drivers of these outcomes. Instead, they discuss the broader benefits of financial technology, primarily focusing on the impact of alternative data.

While platform lenders suggest the potential for expanded credit access, there is little evidence to date of meaningful credit expansion. Platform lenders generally serve prime or near-prime borrowers seeking debt consolidation.[38] In fact, several of the largest platform lenders have recently started requiring even higher average credit scores to cater to a recent shift in investor preference towards short-term, high credit quality asset backed securities.[39]While certain lenders and lending programs provide financing to subprime borrowers, these loans make up only a small portion of the larger platform lending portfolio.[40]

Incentives to offer standardized loan products

[34] According to LendingClub's Investor Day 2017 presentation, for example, managed accounts and other non-bank institutions invest in lower grade loans than banks. *See,* LendingClub, Investor Day Presentation, at 64 (Dec. 7, 2017), *available at* http://ir.lendingclub.com/file.aspx?iid=4213397&fid=1001230258

[35] Based on CLRC Markets conversations with industry participants.

[36] *See* footnote 18

[37] Julapa Jagtiani & Catharine Lemieux, *Do Fintech Lenders Penetrate Areas Thar Are Underserved by Traditional Banks?* (Federal Reserve Bank of Philadelphia, Working Paper No. 18-13, Mar. 2018), *available at* https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2018/wp18-13.pdf

[38]*See* footnote 17.

[39] Shelly Hagan & Adam Tempkin, *Online Lenders Tighten Rules After a Wave of Defaults,* Bloomberg News (May 30, 2018), *available at* https://www.bloomberg.com/news/articles/2018-05-30/online-lenders-tighten-rules-as-default-wave-rattles-investors.

[40]For example, Avant targets customers with FICO scores as low as 600. See footnote 21.In addition, LendingClub has a custom lending program; consumers in this program may have FICO score as low as 600. *See* LendingClub, *Investing at scale with LendingClub,* https://www.lendingclub.com/investing/institutional/team (last visited May 1, 2018).

In general, the lengths of the loan terms offered by platform lenders are fairly standardized. Platform lenders typically only allow two discrete loan-length options, and may be incentivized to do so. Homogenous and standardized loans have more externally verifiable credit risk than loans with varying lengths, making them more attractive to investment pools;[41] this practice limits consumer flexibility.

Table 2: Length of the loan terms offered by a selection of the largest platform lenders

Institution Name	Available Loan Terms
Lending Club	36 or 60 months
Prosper	36 or 60 months
SoFi	36, 48, 60, 72, or 84 months
Avant	24, 36, 48, or 60 months
Marlette (Best Egg)	36 or 60 months
Upstart	36 or 60 months
Upgrade	36 or 60 months

Source: LendingClub 10-k, Prosper 10-k, Cross River Bank's 2017 presentation to BCFP, avant.com, sofi.com, Avant discussion with BCFP, upgrade.com

However, as platform loan securitizations continue to increase,[42] major players in this space may begin to offer more customizable loans and more innovative securities to package and sell to investors. New fintech entrants are offering loans that are far more customizable than those offered by either traditional or platform lenders, giving borrowers added flexibility; platform lenders may have to adapt in order to remain competitive.[43]

Implications of unique liquidity challenges on loan servicing

As noted above, loan servicing is a critical component of the platform lending model. The potential for a decline in servicing quality during an economic downturn is not unique to platform lending. However, platform lending has developed over the past decade, a period of credit expansion,[44] and market participants have yet to demonstrate the ability to survive a full credit cycle. This may raise concerns about their longevity in the event of market-wide credit

[41] In conversations with platform lenders and originating banks, CLRC Markets confirmed that homogenized product offerings provide incentives for securitization purposes. *See also* Weitzu Chen et al., *Characteristics of Securitizations that Determine Issuers' Retention of the Risks of the Securitized Assets*, 83 The Accounting Review 1181-1215, (2008), *available at* http://aaapubs.org/doi/10.2308/accr.2008.83.5.1181?code=aaan-site.
[42] Kroll Bond Rating Agency, *2017 Consumer Loan Marketplace Lending Year in review and 2018 Outlook*, (Jan. 2018), *available at* https://www.krollbondratings.com/auth?uri=/show_report/8492.
[43] Notably, personal loans through Goldman Sachs' Marcus can be customized for nearly any desired loan term, from 36 to 72 months. As noted above, Marcus is a balance sheet lender.
[44] *See e.g.*, Deloitte, *Marketplace lending 2.0: Bringing on the next stage in lending*, at 2 (2017), *available at* https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-markeplace-lending2.pdf

tightening; 85 percent of institutional investors in one survey stated they were somewhat or very concerned with market-wide credit events as a risk associated with platform lending.[45]

Platform lenders may face unique liquidity challenges, raising significant questions about the long-term impacts that these models may have on servicing quality. As discussed, platform lenders are dependent on investors to fund loans on their platform, and the cost of capital for platform lenders is significantly higher relative to depository institutions.[46] Often, a relatively small number of investors provide funding for a large percentage of a platform's loans; any decrease in investment activity could have a significant impact on a platform's revenue.[47]

In the event a platform can no longer continue operations, its servicing portfolios may be transferred to backup servicers.[48] The Bureau has noted – in the context of mortgage markets – that while some servicing transfers can be beneficial, affected consumers must deal with new paperwork, different staff, and new payment addresses. Adverse impacts can include lost paperwork and untimely crediting of payments.[49] In some instances, arrangements for back-up servicing may be limited and subsequent servicers may not have the same incentives as the platform to maintain brand equity.[50] This could result in lower quality servicing.[51]

Implications of investor-driven decisioning

As mentioned above, a platform lender's loan funding decision may be predicated on whether investors pledge to purchase a potential loan and, if applicable, a more stringent secondary credit check. There may be two implications associated with this practice:

Consumer Uncertainty. According to a recent FTC court filing, applicants of one platform lender received communications indicating their loans were "fully funded" when it was possible that they would later be denied by the platform's secondary screening. The FTC alleged that this may have ultimately delayed consumers from applying for credit elsewhere and constituted deceptive acts or practices.[52] While these allegations may be unique to the company's disclosure practices, the case highlights a potential delay consumers may face.

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[45] Richards Kibbe & Orbe LLP, *2016 Survey of U.S. Marketplace Lending,* at 3, *available at* https://www.rkollp.com/assets/htmldocuments/2016%20Marketplace%20Lending%20Survey.pdf.
[46] Karen Gordon Mills & Brayden McCarthy, *The State of Small Business Lending: Innovation and Technology and the Implications for Regulation,* at 70 (Harvard Business School, Working Paper 17-042, 2016), *available at* http://www.hbs.edu/faculty/Publication%20Files/17-042_30393d52-3c61-41cb-a78a-ebbe3e040e55.pdf.
[47] Prosper Funding LLC, Prospectus, at 27 (Apr. 19, 2018), *available at* https://www.prosper.com/prospectus.
[48] *See e.g.,* LendingClub, *What happens if LendingClub goes out of business?,* https://help.lendingclub.com/hc/en-us/articles/216080787-What-happens-if-LendingClub-goes-out-of-business- (last visited May 3, 2018).
[49] Bureau of Consumer Financial Protection, *Consumer Financial Protection Bureau Warns Mortgage Servicers About Legal Protections for Consumers When Transferring Loans* (Feb. 2013),*available at* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-reminds-mortgage-servicers-of-legal-protections-for-consumers-when-transferring-loans/
[50] For example, Prosper's prospectus warns investors that "arrangements for back-up servicing are limited" and Lending Club warns that "our arrangements for backup servicing are untested." *See* Prosper Funding LLC, Prospectus, at 26 (Apr. 19, 2018), *available at* https://www.prosper.com/prospectus *and* LendingClub, Prospectus, at 36 (May 22, 2018).
[51] Vouch Financial and Circleback Lending are two platform lenders that shut down in 2016 due to a lack of investor capital; after their collapse, complaints were lodged with the BCFP about credit reporting errors, inability to access account information, inability to contact new servicing providers, poor customer service, and a general lack of information about transferred loan servicing. *See e.g.* Bureau of Consumer Financial Protection, *Consumer Complaint Database: Public Complaint #2164678* (October 2016), *available at* https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2164678 *and* Consumer Complaint Database: Public Complaint #2343418 (February 2017), *available at* https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2343418
[52] Federal Trade Commission, *FTC Charges Lending Club with Deceiving Consumers* (Apr. 25, 2018), *available at* https://www.ftc.gov/news-events/press-releases/2018/04/ftc-charges-lending-club-deceiving-consumers-0

ECOA and Regulation B Compliance. A collective lack of investor interest in funding a loan may contribute to a platform loan not being originated; legal advisors to platform lenders have suggested this may have implications for Equal Credit Opportunity Act (ECOA) and Regulation B compliance.[53] Many platform lenders limit what borrower information is made available to mitigate this concern.[54]

Future Trends

Regulatory Adaptations. Regulators are adapting to the emergence of online lenders and, more specifically, platform lenders. With respect to platform lender and bank partnerships, the Office of the Comptroller of Currency (OCC) recently suggested financial institutions should not "effectively lend their charter to a vendor"[55] and the FDIC has recently proposed additional guidance for FDIC-chartered banks entering into third-party partnerships.[56]

The OCC is considering a special-purpose charter for fintech firms which may allow recipient firms to "engage in new activities as part of the business of banking."[57] In addition, at least one lender is considering an industrial loan company (ILC) charter.[58] According to the Federal Reserve Bank of St. Louis, this "interest in [ILCs] has the potential to accelerate growth of a new shadow banking system...and potentially heighten risks to the financial system."[59]

Partnerships as the future of platform lending. As the platform lending industry matures, market experts have suggested that the inherent high costs associated with securing available investor funding and ensuring regulatory compliance may dis-incentivize new entrants and existing firms from creating or further developing their platforms.[60] As a result, there exists a movement towards greater partnerships between banks and platform lenders. In conversations with Markets offices, several of the largest platform lenders spoke of a renewed focus on building new branded and white label technology-sharing agreements. These partnerships, which allow banks to adopt innovative aspects of the platform's technology, are sometimes labeled "lending as a service."[61] Strengthened relationships with larger financial services players may allow fintechs to continue to expand their personal loan business.

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53 Lawrence D. Kaplan, Gerald Sachs & Kristin S. Teager, *Addressing ECOA Risk in Marketplace Lending* (Paul Hastings insights, August 2016), *available at http://www.paulhastings.com/publications-items/details?id=802eea69-2334-6428-811c-ff00004cbded*

54 Kadhim Shubber, *Lenders can't discriminate, but what about investors?* Financial Times (Jan. 13, 2016), *available at* https://ftalphaville.ft.com/2016/01/13/2150093/lenders-cant-discriminate-but-what-about-investors/

55 *See* Kevin Wack, *A return to bank-payday lender partnerships? Not on Otting's watch,* American Banker (May 29, 2016), *available at* https://www.americanbanker.com/news/a-return-to-bank-payday-lender-partnerships-not-on-ottings-watch. The OCC has also recently released a bulletin on principles for short-term, small-dollar installment lending, *see* Office of the Comptroller of the Currency, *Core Lending Principles for Short-Term, Small-Dollar Installment Lending* (May, 2018), *available at* https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html.

56 *See* footnote 7

57 Office of the Comptroller of the Currency, *Exploring Special Purpose for Fintech Companies* (Dec. 2016), *available at* https://www.occ.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf.

58 *SoFi Bank Puts ILC Charter in Spotlight,* Consumer Bankers Association (June 28, 2017), *available at* http://www.consumerbankers.com/cba-media-center/cba-news/sofi-bank-puts-ilc-charter-spotlight.

59 Julie Stackhouse, *Fintech Interest in Industrial Loan Company Charters: Spurring the Growth of a New Shadow Banking System?*, Federal Reserve Bank of St. Louis On the Economy Blog (Oct. 24, 2017), *available at* https://www.stlouisfed.org/on-the-economy/2017/october/fintech-interest-industrial-loan-company-charters-spurring-new-shadow-banking-system

60 *See* footnote 29.

61 *See e.g.*, Deloitte, *Marketplace lending 2.0: Bringing on the next stage in lending,* at 15 (2017), *available at* https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-markeplace-lending2.pdf

Market Intelligence

Market Information from RMR Markets Teams

Overview of Consumer Report Security Freeze Programs

Office of Consumer Lending, Reporting & Collections Markets

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent of the view of the Bureau.*

Consumer Financial Protection Bureau

Table of Contents

1. Prologue & Purpose

This paper provides an overview of consumer report security freeze programs. A security freeze (or "freeze") is a statutorily defined means by which certain consumer reporting companies are required to block certain third parties from accessing information in a consumer report. This is done by consumer request. Freezes are intended to help consumers protect against identity theft-related fraud, such as blocking someone from opening a new credit account in the name of the consumer whose identity is stolen.

Identity theft occurs when someone steals a person's identity to commit fraud.[1] Consumers can place security freezes at multiple consumer reporting companies–for example, at the three nationwide credit reporting companies–to attempt to achieve more comprehensive protection.[2] What gets blocked to whom, when, for how long and for how much money are some of the key questions this report seeks to answer.

1.1 Data Breach: Consumer Risks & Harms

A data breach occurs when personally sensitive information, like a Social Security number in connection with a first and last name, driver's license number, tax ID, medical or financial record, is exposed either because of a hacking attack, theft, negligence or error.[3] With so much personally sensitive information held at entities such as at businesses, hospitals, banks, and others, institutions are attractive targets for data theft.[4] Data breaches regularly occur when the consumer is not at fault.

A top-of-mind example of a data breach when the consumer is not at fault is one that took place at Equifax. In September 2017, Equifax announced a cybersecurity incident potentially impacting nearly 148 million consumers. The information accessed includes consumer names, Social Security numbers, tax identification numbers, email addresses, birth dates, postal addresses and driver's license numbers (in some instances, including driver license issue dates and states). In addition, credit card numbers for approximately 209,000 U.S. and Canadian

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[1] Consumer Fin. Prot. Bureau, *What is identity theft?* (Mar. 28, 2017), *available at* https://www.consumerfinance.gov/ask-cfpb/what-is-identity-theft-en-1243/.

[2] For the purposes of this report, the term "three nationwide credit reporting companies" refers to Equifax, Experian, and TransUnion. U.S. lenders may purchase and use the reports from all, some or none of these three companies to make decisions about consumers, but most of the largest U.S. lenders use at least one of them. Other consumer reporting companies offer security freeze services too. *See*, for example, Jonah Kaplan, Consumer Fin. Prot. Bureau, *Know your data: Our latest list of consumer reporting companies*, Blog (Jan. 30, 2018), *available at* https://www.consumerfinance.gov/about-us/blog/know-your-data-our-latest-list-consumer-reporting-companies/.

[3] Identity Theft Resource Center, *What is a breach? available at* https://www.idtheftcenter.org/Data-Breaches/data-breaches (last visited Mar. 15, 2018).

[4] For annual summary statistics on data breach incidents including for 2017 by industry, *see* https://www.idtheftcenter.org/Data-Breaches/data-breaches, and *2017 Data Breach Stats*, (Jan. 2018), *available at* https://www.idtheftcenter.org/images/breach/2017Breaches/ITRCBreachStatsReport2017c.pdf.

consumers, and certain dispute documents with personally sensitive information for approximately 182,000 U.S. consumers, were accessed.[5] That this incident includes so much sensitive information makes this particular breach so severe, and therefore, represents a material identity theft risk for millions of consumers.[6]

Identity theft victims can face all kinds of problems and nuisances. Some of the more serious problems can include the following:

- Direct, out-of-pocket monetary loss, for example, on the theft of an existing bank, investment or credit account, or the opening and theft of a new credit account;
- Rejected new checking accounts or loan applications;
- Higher interest rates on approved loans;
- Loss of home and personal services such as utility or phone access;
- Being subject to debt collections that are not theirs;
- Loss of job,
- Problems with fraudulent income tax filing; and
- Being arrested and subject to criminal proceedings.[7]

Finally, it can mean the permanent uncertainty of personal harm after a known breach has taken place, but when no actual ID theft is yet known.[8]

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[5] For more information *see*: Press Release, Equifax, *Equifax Releases Details on Cybersecurity Incident, Announces Personnel Changes*, (Sep. 15, 2017), *available at* https://investor.equifax.com/news-and-events/news/2017/09-15-2017-224018832; Press Release, Equifax, *Equifax Releases Updated Information on 2017 Cybersecurity Incident*, (Mar. 1, 2018), *available at https://investor.equifax.com/news-and-events/news/2018/03-01-2018-140531340;* and AnnaMaria Andriotis, *Equifax Hack Might Be Worse Than You Think: Hackers accessed more records, including tax ID numbers and email addresses, than Equifax previously thought*, Wall St. J. (Feb. 9, 2018), *available at* https://www.wsj.com/articles/equifax-hack-might-be-worse-than-you-think-1518191370?mod=searchresults&page=1&pos=1.

[6] Additional context: "Other cyberattacks, such as the two breaches that Yahoo announced in 2016, have eclipsed the penetration at Equifax in sheer size, but the Equifax attack is worse in terms of severity. Thieves were able to siphon far more personal information — the keys that unlock consumers' medical histories, bank accounts and employee accounts. 'On a scale of 1 to 10 in terms of risk to consumers, this is a 10,' said Avivah Litan, a fraud analyst at Gartner.'" Source: Tara Siegel Bernard et al., *Equifax Says Cyberattack May Have Affected 143 Million in the U.S.*, N.Y Times (Sep. 7, 2017), *available at* https://nyti.ms/2xS95kJ. Note also that Equifax's estimate of consumers affected by the breach has risen since it originally disclosed the breach, from 143 million to nearly 148 million.

[7] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Victims of Identity Theft, 2014*, at 8 (Nov. 13, 2017) ("2014 Report"), *available at* https://www.bjs.gov/content/pub/pdf/vit14.pdf. Regarding income tax, for example, fraudsters use stolen data to file with the Internal Revenue Service. Tax returns are sent to bank accounts or pre-paid cards that are held by thieves. According to the Federal Bureau of Investigation (FBI), "the only legitimate information needed to file a fraudulent tax return is a name and social security number." For more information *see*: Public Service Announcement, FBI, *STOLEN IDENTITY REFUND FRAUD*, (Mar. 23, 2016), *available at* https://www.ic3.gov/media/2016/160323.aspx.

1.2 Quantification of Consumer Harms

Unfortunately, identity theft is common. According to the Justice Department's Bureau of Justice Statistics, over 36 million persons, or nearly 15% of all U.S. residents age 16 or older have experienced at least one incident of identity theft during their lifetime.[9] In 2014, and similar to findings for calendar-year 2012, "an estimated 17.6 million persons, or 7% of all U.S. residents age 16 or older, were victims of one or more incidents of identity theft."[10] Of those, nearly 16.4 million victims had incidents with their existing accounts, such as from fraudulent account take-overs, and over 1 million victims regarding new account incidents, such as fraudulently opening a new credit card account.[11] In its 2016 *Internet Crime Annual Report*, the FBI's Internet Crime Complaint Center (IC3) ranks "personal data breach" and "identity theft" among the top 10 cybercrimes by victim count at #2 and #7 respectively.[12]

In terms of the economic impact to victims of identity theft, the Justice Department says that "victims who experienced a direct and indirect financial loss of at least $1 lost an average of $1,343, with a median loss of $300." In a recent study, Javelin, a research-based advisory firm, reports that in 2017, fraudsters successfully stole $16.8 billion. Some 16.7 million U.S. consumers had their identities compromised in 2017. It was the highest since Javelin started tracking identity fraud in 2013. In 2017, for the first time ever, says Javelin, Social Security numbers (35 percent) were compromised more than credit card numbers (30 percent) in breaches.[13]

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[8] *See* 2014 Report, at 9-10.

[9] *See id.* at 13.

[10] *See id.* at 1.

[11] *See id.* at 2.

[12] Federal Bureau of Investigation, Internet Crime Complaint Center (IC3), *Internet Crime Annual Report for 2016*, at 17 (2016), *available at* https://pdf.ic3.gov/2016_IC3Report.pdf. For more information *see*, FBI, *IC3 Releases Annual Report Highlighting Trends in Internet Crime* (Jun. 22, 2017), *available at* https://www.fbi.gov/news/stories/ic3-releases-2016-internet-crime-report.

[13] Press Release, Javelin, *Identity Fraud Hits All Time High With 16.7 Million U.S. Victims in 2017, According to New Javelin Strategy & Research Study* (Feb. 6, 2018), *available at* https://www.javelinstrategy.com/press-release/identity-fraud-hits-all-time-high-167-million-us-victims-2017-according-new-javelin, and Peter Rudegeair et al., *Identity Fraud Hits Record Number of People*, Wall St. J. (Feb. 6, 2018), *available at* https://www.wsj.com/articles/identity-fraud-hits-record-number-of-people-1517922001.

1.3 Existing Consumer Protections Under The Federal Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) provides that consumers can obtain free consumer reports once every 12 months from nationwide and nationwide specialty consumer reporting companies, as well as obtain free consumer reports from all consumer reporting companies in certain circumstances.[14] In other circumstances, consumers have the right to obtain their consumer reports from consumer reporting companies for a "reasonable fee."[15] Reviewing consumer reports may alert consumers that they may be an identity theft victim, however, given that lenders typically furnish consumer credit information to consumer reporting companies on a rolling monthly basis, any awareness from reviewing consumer reports would come with a time lag, after any unauthorized credit charges were made and reported as past due.[16] Only 1.4% of identity theft victims discover the theft by reviewing a credit report or through a credit monitoring service.[17] Most victims discover an identity theft when they are contacted directly by financial institutions about suspicious activity.[18]

Once consumers believe that they may have been or are likely to become a victim of identity theft, the FCRA provides other tools consumers can use for protection. First, upon the request of consumers, the FCRA requires nationwide consumer reporting companies to place "fraud alerts" on their files. Once a consumer places an alert at one of the nationwide consumer reporting companies, it must notify the others. This service is available to consumers without charge. Consumers may place an initial fraud alert, good for 90 days, if they believe they are, or are about to become, a victim of fraud or identity theft, or an extended fraud alert, good for seven years, if they are a victim of identity theft and submit an identity theft report. These alerts inform prospective lenders of the risk of identity theft, and require them to take "reasonable steps" to verify the identity of credit applicants before they extend credit. Notably, a fraud alert does not prevent lenders from extending credit.

Second, the FCRA permits consumers who have been victimized by identity theft to initiate a credit "block." The conduct of identity thieves can have an adverse effect on the information in the credit files of identity theft victims. To address this concern, the FCRA requires that credit

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[14] 15 U.S.C § 1681.

[15] For calendar year 2018, the maximum allowable fee is $12.00. For more information *see*: Consumer Fin. Prot. Bureau, *Fair Credit Reporting Act Disclosures* (Nov. 16, 2017), *available at* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/fair-credit-reporting-act-disclosures/.

[16] Financial institutions typically report consumer credit information in batch files transmitted electronically. For more information *see*: Consumer Fin. Prot. Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System* at 14 (Dec. 2012), *available at* https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/.

[17] *See* 2014 Report, at 5. *available at* https://www.bjs.gov/content/pub/pdf/vit14.pdf.

[18] See *Id.*

reporting companies block the reporting of information resulting from identity theft in the credit files of consumers who request a credit block and who provide proof that they have been victims of identity theft.

1.4 Existing Consumer Report Security Freeze Protections Under State Laws

Currently, consumer report security freeze protections are derived from state laws. There is no federal freeze law and no mention of security freezes in the FCRA.[19] States legislated in an effort to address some of the risks of identity theft through security freeze legislation, and in so doing tried to fill a gap in the FCRA.[20] California was the first to pass a freeze law in 2001.[21] Michigan was the last in 2013.[22] Today 50 states, Puerto Rico, and the District of Columbia have passed and enacted laws that allow at least some, and in most cases all, consumers who reside in those states to place freezes on the file data held at consumer reporting companies.[23]

Though freeze laws all seek to achieve the same end–allowing consumers to freeze their consumer report information–several significant differences exist among them.

The most important differences exist within the following parameters:

- **Fees and Fee Exceptions**:
  - Under most freeze laws consumer reporting companies have the option to charge fees for:
    - Initially placing a freeze on a consumer report file at a single consumer reporting company ("placing");

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[19]As of March 2018, the U.S. Congress is considering a single federal standard. See below for details.

[20] Industry information, (October 2017); Bob Sullivan, *Love credit report security freezes? Hug a state lawmaker. Really!*, Blog (Sep. 17, 2017), *available at* https://bobsullivan.net/cybercrime/love-credit-report-security-freezes-hug-a-state-lawmaker/; and Byron Acohido and Jon Swartz, *Zero Day Threat*, at 206-08 and 218-223 (2008), Pershing Publishing Co., Inc.

[21] SB-168, 2001 – 2002 Leg. Sess. (CA 2001), *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB168.

[22] SB-0174, 97th Leg. Sess. (MI 2013), *available at* http://legislature.mi.gov/doc.aspx?2013-SB-0174. In 2015, Puerto Rico passed a freeze law as well, *see* P S1290, 17th Leg. Sess. (PR 2015), *available at* http://www.oslpr.org/legislatura/tl2013/tl_busca_avanzada.asp?rcs=P%20S1290.

[23] For a list of the citations by state *see*: Heather Morton, *Consumer Report Security Freeze State Laws*, National Conference of State Legislatures (Sep. 1, 2017), *available at* http://www.ncsl.org/research/financial-services-and-commerce/consumer-report-security-freeze-state-statutes.aspx. For freeze treatment of territories such as Guam and the U.S. Virgin Islands, *see* Consumers Union, *Frequently asked questions about security freeze, available at* http://consumersunion.org/research/frequently_asked_questions_about_security_freeze/ (last visited March 17, 2018) *and* Consumers Union, *Consumer Union's Guide To Security Freeze Protection, available at* http://consumersunion.org/research/consumers-unions-guide-to-security-freeze-protection-2/ (last visited March 17, 2018).

    - Temporarily lifting a freeze, either for a period of time or for a specific party ("lifting");
    - Permanently removing a freeze ("removing"); and
    - Replacing a lost security Personal Identification Number (PIN), which a consumer uses to place, lift, or remove a freeze.
  - States have a variety of fee exception requirements, in which companies are forbidden from charging fees based on certain conditions, e.g., victims of identity theft, consumers over or under a certain age.
- **Duration** of freezes. Consumers residing in most states can place freezes for an indefinite period, but three states require consumer reporting companies to remove a freeze after seven years.
- **Time Limit Implementation Requirements** regarding state-mandated deadlines on consumer reporting companies for placing, lifting, and removing freezes following a consumer's request.
- **Scope of Freezes**: Freeze laws have myriad exemptions that limit the scope of freezes. Certain entities that maintain consumer reports are specifically excluded from freeze laws. Likewise, certain consumer report end-users may still get access to consumer reporting files even after the consumer applies a freeze to the consumer's file.

This report describes freeze programs, with a focus on their respective fees and features, and, where relevant, the obligations and market practices of certain consumer reporting companies in managing security freeze services pursuant in part to their interpretations of state law.

This report involves analysis of state freeze laws as of March 2018. These laws are going through changes in several states. As described below, state and federal legislatures are actively considering or have passed freeze-related legislation. The claims made in this report concerning state laws are meant to be illustrative of the differences between state laws with regards to security freeze protection and are not meant to provide formal legal advice or insight.

2. Key Learnings

1. **Freeze laws are complex. Features vary significantly by state**: While state freeze programs share the same goal, to help consumers gain better control over who can have access to their consumer reporting data, specific freeze features vary by program significantly.
2. **The fees consumers are required to pay differ by state, and appear to be unrelated to the expense of providing the service**: Fees to apply, lift and remove freezes vary between $0 and $10. Some states also allow consumer reporting companies to increase fees annually, proportional to changes in the Consumer Price Index (CPI). Fee waivers also differ and range by certain consumer classifications, such as older consumers (age 62 and over or 65 and over, depending on the state), or minors (age under 16 or 18, depending on the state), to ID theft victims. Based on our analysis and on discussions with market participants, there appears to be no apparent consistent, expense-based rationale for the differences in fees.
3. **There are diverging views on fees**: Market participants and industry representatives describe and justify the presence of fees not as much in terms of covering the expense of freeze services per se, but in terms of putting a "speed bump" in front of consumers to give them pause before deciding whether to place a freeze. Consumer groups and consumers take a different view. In a 2008 public request from the Federal Trade Commission (FTC) requesting comments on freezes, most consumer groups said that fees should be lowered. Their rationale was that fees for applying, lifting, and removing freezes with multiple consumer reporting companies can add up for consumers. Relatedly, through the Consumer Financial Protection Bureau (Bureau) complaint program, consumers complain about fees, especially when their decision to place freezes is motivated by third party cybersecurity data breaches beyond their control.
4. **Time requirements to place freezes vary by state**: State laws allow consumer reporting companies between one and ten days to place a freeze upon the consumer's request. A majority of states limit consumer reporting companies to three to five days to place a freeze. At least one market participant has told us that it makes freeze placements instantaneously when requests are made online or by phone–irrespective of what freeze laws might allow–as long as consumers can authenticate their identities successfully. We have not determined how common this practice is.
5. **Virtually all states give consumer reporting companies up to three days to lift or remove freezes by consumer request, some 28 states require consumer reporting companies to lift a freeze within 15 minutes for consumer requests made electronically**. Similar to freeze placements, at least one market participant has told us that it makes freeze lifting instantaneous for requests made online or by phone, but we have not independently verified whether this is also the case for other consumer reporting companies that offer freeze services to consumers.
6. **Consumer reporting companies are required to remove freezes after seven years in three states**: Kentucky, Pennsylvania, and South Dakota have seven year expirations on freezes, while the rest of the states' freezes are in place until such time as a consumer requests the freeze to be lifted. As of March 2018, Kentucky and South Dakota are considering legislation that would end the seven year expiration requirement. Similarly, recent federal freeze legislation currently has no such freeze expiration requirements.
7. **Exemptions in freeze laws vary widely in ways that are quite complex**: A substantial minority of freeze laws applies only when a consumer report is sought for transactions related to credit, such as the "extension of credit." In other states, by contrast, freeze laws cover requests for credit reports apply for purposes beyond credit, such as for

background screening for employment purposes. Virtually all state freeze laws contain exemptions that provide carve-outs from freeze laws. Most programs exempt prescreening, so companies can solicit consumers with credit and insurance marketing and advertising. Many freeze laws, for example, allow insurance providers to continue to access consumer files even if consumers freeze them.

8. **Company-sponsored "lock" programs are marketed as a convenient alternative to legally-mandated freeze programs**: The three nationwide credit reporting companies are offering an alternative–denominated as a "lock"–in addition to the freeze services they are required by law to offer. Two of the three companies offer locks without any charge to the consumer. All three market the benefits of locks as "fast" and "convenient." As described below, benefits to the three credit reporting companies of locks may include: operational efficiencies, increased monetization opportunities, and lower litigation risk.
9. **Freeze utilization is low on an absolute basis even after Equifax disclosed its data breach**: According to Equifax, approximately 0.5% of its credit files were locked or frozen in the days leading up to its data breach announcement in September 2017. After Equifax disclosed the breach, the number of locked or frozen files spiked to between 1.5% and 2.0% of Equifax's 200 million+ files. Between 75% and 80% are freezes, and the rest are locks. Our understanding is the other two nationwide credit reporting companies have about the same number of files frozen or locked.
10. **Current state and federal legislative reform efforts seek to eliminate fees among other changes**: As a result of the Equifax data breach, state and federal legislatures are actively considering or have passed freeze-related legislation. Often provisions in these reform efforts include: eliminating fees; shortening the time requirements to place; lift and remove freezes; requiring each nationwide credit reporting company to offer a feature whereby consumers may place a freeze at the other nationwide credit reporting companies similar to how fraud alerts work today; and enabling consumer reporting companies to use solutions other than PINs for accessing freeze accounts, among other feature enhancements described in more detail below.

3. Application of Security Freeze Protection & Consumer Eligibility

Absent a freeze, according to the FCRA, consumer reporting companies can provide a consumer's credit report to a third party if that party has a "permissible purpose," as defined in the FCRA such as in connection with an application for the extension of credit, insurance, a home lease or job. At a minimum, security freeze laws block consumer reports to third parties for credit origination purposes when the consumer has no existing account relationship with the third parties. This would also include transactions that consumers might not typically associate with lending, such as enrolling in wireless phone subscription plans or opening an account with a utility account for gas, water or electric services, but where consumer reports are commonly used. A substantial minority of state freeze laws say explicitly that freeze programs apply only for reports in relation to credit transactions, such as the "extension of credit," while other states do not specify. Virtually all freeze laws contain exemptions (see below).

State laws also make a distinction as to the kind of consumers eligible for security freeze protection. While most states allow any consumer to qualify for security freezes, two states (Mississippi and South Dakota) limit eligibility, e.g., to ID theft victims, minors under 16 and incapacitated individuals with legal guardians. The three nationwide credit reporting companies decided in 2007 to offer freezes to all U.S. consumers irrespective of prerequisites the state laws may describe. It is unclear how other consumer reporting companies that offer freezes treat consumers residing in Mississippi and South Dakota.

TABLE 1: CONSUMER ELIGIBILITY TO PLACE A FREEZE BY STATE

Consumer Eligibility to Place a Freeze by State		
All Consumers	*ID Theft Victims Only*	*ID theft victims, minors under 16, & incapacitated individuals with legal guardians*
All states, Puerto Rico and Washington, DC, except for Mississippi and South Dakota	Mississippi	South Dakota

Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

4. Entities Not Required to Offer Freezes & Entities That May Access Frozen Reports

Depending on the specific freeze law, exemptions can apply to entities and/or certain types of information. Nearly every freeze law excludes the following entities from requirements to offer freezes. Among these are:

- **Check and bank account screening providers, and deposit account information service providers** (ISPs): These are companies that issue reports to financial institutions regarding negative depository account-related information about consumers, typically when these institutions are reviewing consumer requests to open demand deposit / checking accounts. The type of information in these reports includes account closures due to fraud, overdraft, ATM abuse or similar derogatory information.[24]
- **Resellers**: Companies that assemble and merge information contained in the databases of other consumer reporting companies, but do not maintain a permanent database of consumer information. Resellers are common, for example, in background screening where employers, landlords and others use civil and criminal public records, acquired from others who maintain their own databases, to review consumer applicants.

In addition, states laws may contain exemptions for consumer reporting companies with criminal record, employment, tenant, personal insurance claim information or "background screening information" from their freeze laws.[25] In states with these exemptions, these companies are not required to offer freezes for this kind of information.

Depending on the state, certain third parties are also granted exemptions which permit them to access otherwise-frozen credit reports for certain specified purposes. These exemptions are unique to some states and common to virtually all of them. There are no exemptions that are uniform to every state law. The table below lists the third parties that can access frozen reports as per state laws.

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[24] For an illustration of this specific exemption *see*: ChexSystems, *Security Freeze Information*, *available at* https://www.chexsystems.com/web/chexsystems/consumerdebit/page/securityfreeze/information/!ut/p/z1/pZHLDoIwFES_xQ-QW6qi26qIKPgIEqAbgwYKCtRUIolfb-tOE1_xLprc5Ew7MwUKIdAqvuQsrnNexYXcI2psERkTveshx1otJ4iY7mLg-Q5GcwOCR2A53WAJmI7VwXPdWneB_qR_AlD_P70E7voXQxDMHh948m_qqgEs3JHLgJ7iOmvnVcohtOUpyntLogL9dMl7QLXoNqeq4YsgrOA7-WfBEKKrZeBmrcyTatcZSPMiSRORCC3j5xrCpmkoxjkrEm3PSziVvh9endSzD71jQFo3pWZ_Ag!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/ (last visited Mar. 12, 2018).

[25] Some states do not define "background screening information" beyond that term.

TABLE 2: ENTITIES THAT MAY ACCESS FROZEN REPORTS

Entities That May Access Frozen Reports
Existing Creditors: Virtually all freeze laws exempt entities with which the consumer has an existing financial obligation, account, or a debtor-creditor relationship. Under these laws entities may access a frozen report for "account maintenance," "account monitoring," "credit line increases," and "account upgrades and enhancements."
Debt Collectors: Many state laws allow a collection agencies acting on behalf of a financial obligatee to have access to frozen files. State laws often provide for debt collectors to act under the authority of a court order, warrant, or subpoena to access frozen reports.
Providers of Consumer Disclosures: Virtually all freeze laws enable consumer reporting companies to provide consumers with their own files when consumers request them even if their files are frozen when the disclosure request is made.[26]
Entities for the Purpose of Prescreening: Virtually all freeze laws exempt prescreening. Companies can solicit consumers with credit and insurance marketing and advertising. Consumers have the option to opt-out of prospect marketing and advertising, but must do so independently of security freezes.[27]
Credit File Monitoring Servicers: Most freeze laws allow a consumer's credit file monitoring service to access a frozen report. A credit monitoring service is a commercial service to watch credit reports and alert consumers to changes to the accounts listed in a credit report or report(s), depending on the service.[28]
Federal, State, and Local Government Entities: Exemptions for governmental entities or in some cases their agents are common among security freeze laws. Many include a blanket exemption for federal, state and local authorities to access frozen reports when acting under the authority of a court order, warrant, or subpoena. Other security freeze laws allow governmental entities or their agents to access frozen reports when conducting law enforcement activities, investigating public fraud, conducting tax investigations, enforcing child support obligations, or fulfilling other statutory obligations.
Insurance Providers: Many freeze laws allow insurance providers to access frozen reports for purposes such as underwriting insurance policies or adjusting rates on existing policies.
Employers: A few freeze laws allow employers to access frozen reports for the purposes of employment screening.

Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

We describe perceived issues with freeze purposes, exemptions and exclusions in the section below entitled "Perceived Issues with Security Freeze Programs."

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[26] Consumer Fin. Prot. Bureau, *How Do I Get a Copy of My Credit Reports?* (Jul. 7, 2017), *available at* https://www.consumerfinance.gov/ask-cfpb/how-do-i-get-a-copy-of-my-credit-reports-en-5/.

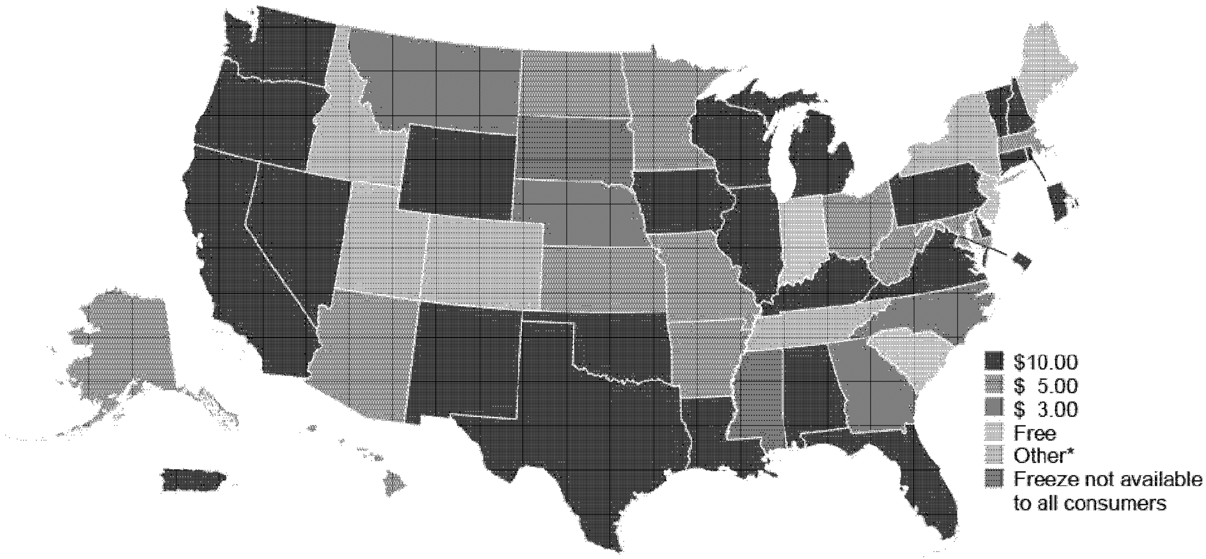
[27] For more information about prescreen marketing and opt-outs, *see*: Federal Trade Commission, *Prescreened Credit and Insurance Offers*, (Mar. 2011), *available at* https://www.consumer.ftc.gov/articles/0148-prescreened-credit-and-insurance-offers; Consumer Fin. Prot. Bureau, *What is a Prescreened Credit Card Offer?* (Jul. 11, 2017), *available at* https://www.consumerfinance.gov/ask-cfpb/what-is-a-prescreened-credit-card-offer-en-1/, and Consumer Fin. Prot. Bureau, *Can I Make Issuers Stop Sending Me Credit Card Offers in the Mail?* (Aug. 8, 2016), *available at* https://www.consumerfinance.gov/ask-cfpb/can-i-make-issuers-stop-sending-me-credit-card-offers-in-the-mail-en-1377/.

[28] Consumer Fin. Prot. Bureau, *What is a Credit Monitoring Service?* (Jun. 1, 2017), *available at* https://www.consumerfinance.gov/ask-cfpb/what-is-a-credit-monitoring-service-en-1365/.

5. Fees for Placing Freezes

Fees for placing freezes differ by state. (See Appendix A below for a full list of fees by state.) For a typical consumer, the majority of freeze laws allow consumer reporting companies to charge a maximum fee, between $3.00 and $10.00 per freeze placement. Further, some freeze laws also allow the fees to be increased based on the Consumer Price Index (CPI).[29] At least four states (Indiana, Maine, New Jersey, and South Carolina) make freezes free to all consumers.[30]

FIGURE 1: MAXIMUM FEES TO PLACE FREEZE BY STATE (INCLUDING WASHINGTON, DC & PUERTO RICO)



This map represents what a consumer could be charged to place a freeze if the consumer does not fit into a specific class of consumers as defined in a state law.

*States classified as "other" on this map include the following:

- Colorado law does not allow consumer reporting companies to charge a consumer for the first freeze. However, if a consumer removes the freeze and places another, those consumer reporting companies can charge $10.00 for the subsequent freeze.
- New York operates as Colorado does, except that New York law only allows consumer reporting companies to charge $5.00 for each subsequent freeze.
- Idaho law allows consumer reporting companies to charge $6.00.
- Tennessee law allows consumer reporting companies to charge $7.50.
- Utah law says that consumer reporting companies can charge a "reasonable" fee without providing an exact fee.

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[29] These states are: Kentucky, Louisiana, Nevada, Tennessee, and Texas. In general, fee increases are allowed once a year and are proportional to the change in the Consumer Price Index with rounding to the nearest $0.25 or $0.50 depending on the state.

[30] As of March 2018 several state legislatures are considering or passed bills that would waive fees in their respective states. See below for details.

Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

5.1 Consumer Classifications for Fee Exceptions & Eligibility

State laws contain a number of fee exceptions for certain classes of consumers. Below is a table of them. One item of note is that some states, for example Maine and South Carolina, explicitly exempt fees for classes of consumers even when the freeze programs in these states are already free for all consumers. There appears to be no reason we can think of for the states to call out these specific classes but they do. The table below is faithful to what is written in the respective laws. See also the Appendix below for fees and exemptions by state.

TABLE 3: DISTRIBUTION OF FEE EXCEPTIONS BY CATEGORY & NUMBER OF STATES WITH WRITTEN EXCEPTIONS (INCLUDING WASHINGTON, DC & PUERTO RICO)

Category of Fee Exception	No. of Programs with Exception
Victim of Identity Fraud/Theft	50
Minors under 16 or 18 depending on state	26
State-defined "Protected Consumers"	20
Consumers age 62+ or 65+ depending on state	18
Spouse of Identity Fraud Victim	3
First Freeze Placement Free	3
Victims of Domestic Violence	1
Military	1
Freeze Requested Electronically	1

Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

Consumer classifications for fee exceptions and eligibility are defined as follows:

- Fifty of the 52 freeze laws do not permit consumer reporting companies to charge fees to *victims of identity fraud*. Freeze laws generally require victims of identity theft to submit a police report and/or an FTC identity theft report (which consumers can complete at www.identitytheft.gov) to qualify for fee exceptions. Only Mississippi and Colorado (after the consumer's first freeze, which is free) permit charging victims of identity fraud for placing freezes. In addition, some programs include spouses of identity theft victims within the fee exception.
- Twenty freeze laws have specific provisions for "*protected consumers*," though the definition of that term differs depending on the state. Most protected consumer provisions include consumers under the age of 16 and adult consumers who are incapacitated or otherwise have an appointed guardian, conservator, or other advocate. In most of these states, the laws do not allow consumer reporting companies to charge consumers under the age of 16, but do allow them to charge adult protected consumers who have appointed guardians. Laws in California, Iowa, and Kansas also make

exceptions for consumers less than 16 years of age, but do not define this class as "protected consumers."

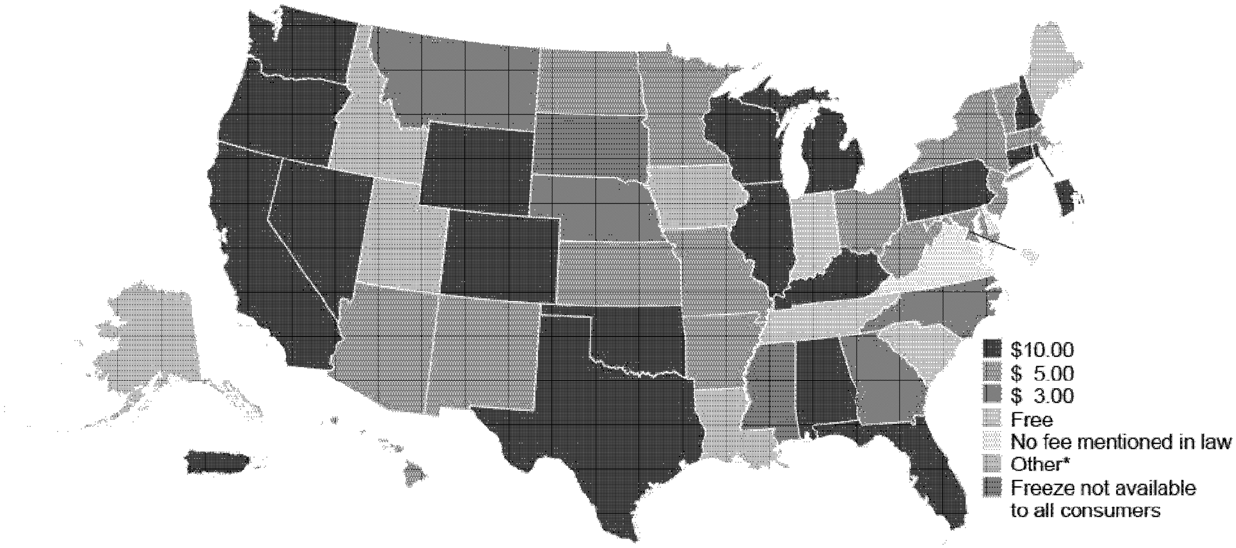
- Seventeen freeze laws make specific exceptions for freeze fees for consumers 62 or 65 and older, depending on the state. Fifteen of these laws make freezes free for these consumers, while Delaware allows for a charge of $5.00 per freeze, and California allows for the consumer's first freeze to be free, before allowing for a charge of $5.00 for subsequent freezes.
- *Active Duty Military* members in Illinois are exempt from all fees. No other state grants such exceptions.[31]
- Other notable but uncommon state exceptions for freeze fees include *victims of domestic violence*, *children in foster care*, and *consumers who submit requests electronically.*

5.2 Procedures & Fees for Temporary Freeze Lifts

All states codify a procedure to allow a consumer to temporarily lift a freeze for a specific duration, and some states additionally allow consumers to lift freezes for use by certain parties, such as lenders. These provisions allow consumers to permit access for planned transactions. Some consumer reporting companies satisfy this provision by giving consumers access codes, which they can then share with others to whom they would like to grant access.

[31] Under the FCRA active military personnel are eligible to place what is called an active duty alert on their credit files. An active duty alert on a credit file is not a security freeze. It is a free service that notifies companies of the consumer's military status and ensures that they have reasonable policies and procedures to verify the identity of a person who is requesting new credit in that name. The alert will also generally prohibit credit reporting companies from providing the servicemember's name for new prescreened credit offers for two years. For more information *see*: Consumer Fin. Prot. Bureau, *Fraud protection tools to help safeguard servicemembers, available at* http://files.consumerfinance.gov/f/201508_cfpb_fraud-protection-tools-to-help-safeguard-servicemembers.pdf.

FIGURE 2: FEES FOR TEMPORARY FREEZE LIFTS (INCLUDING WASHINGTON, DC & PUERTO RICO)



This map represents what a consumer could be charged for a temporarily freeze lift if the consumer does not fit into a specific class of consumers as defined in a state law.

*States classified as "other" on this map include the following:

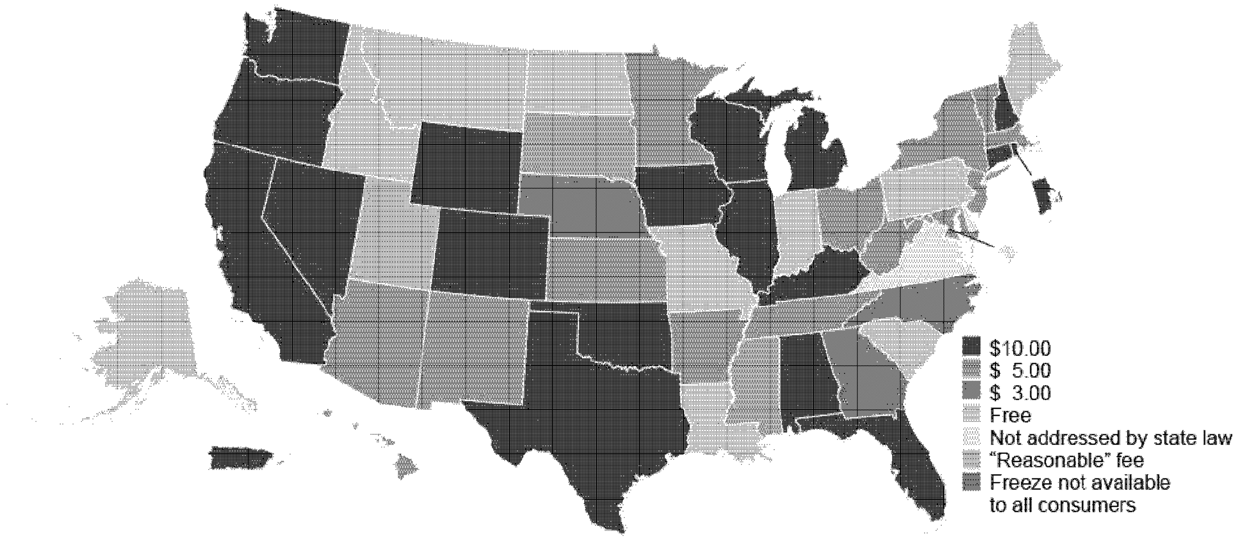
- Alaska law allows consumer reporting companies to charge $2.00.
- Iowa law allows consumer reporting companies to charge $12.00.
- Idaho law allows consumer reporting companies to charge $6.00.
- Louisiana law allows consumer reporting companies to charge $8.00.
- Utah law says that consumer reporting companies can charge a "reasonable" fee without providing an exact fee.

Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

As with placing freezes, fees for temporary lifts vary depending on the state and consumer's situation, though the same categories (e.g. victim of identity theft/fraud, protected consumer, etc.) apply.

5.3 Fees to Remove Freezes

FIGURE 3: FEES TO REMOVE FREEZES (INCLUDING WASHINGTON, DC & PUERTO RICO)



This map represents what a consumer could be charged to remove a freeze if the consumer does not fit into a specific class of consumers as defined in a state law.

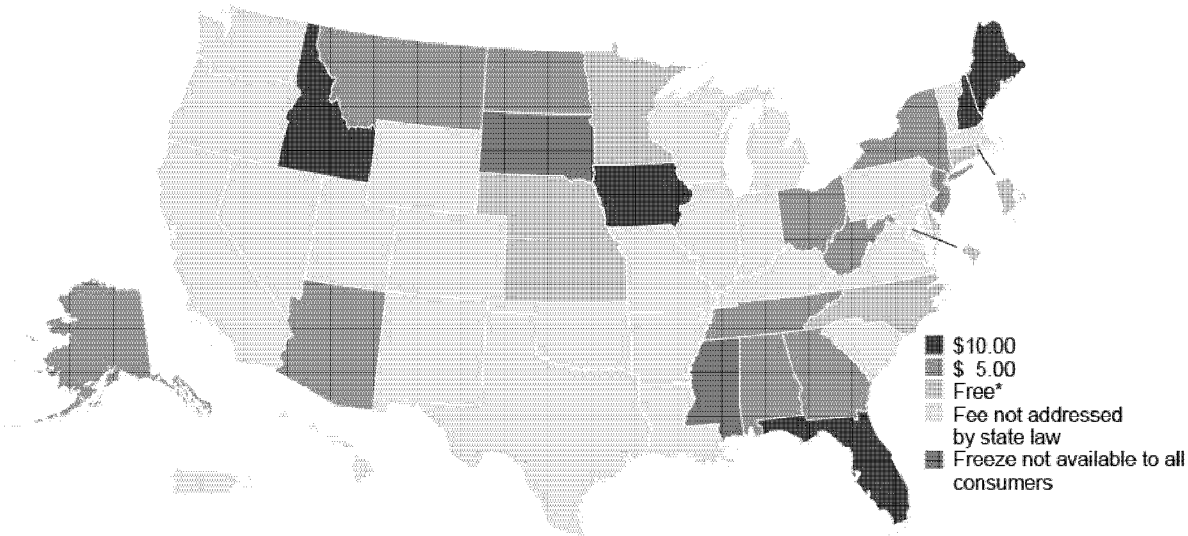
Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

For laws that permit consumer reporting companies to charge fees to permanently remove a freeze, the fees range from $3.00-$10.00. Ten laws do not allow consumer reporting companies to charge for freeze removals. Three laws in Delaware, Virginia, and the District of Columbus do not address freeze removal fees. Utah requires that the consumer reporting companies' fees be "reasonable."

5.4 Fees to Replace Lost PINs

When freezing a file, and pursuant to virtually all freeze laws, consumer reporting companies are generally required to generate and give consumers a security PIN (Personal Identification Number) or similar password. Freeze laws generally require consumers to use their PINs to lift temporarily or remove permanently their security freezes. If consumers lose their PINs they must obtain a replacement from the consumer reporting company. Some states allow consumer reporting companies to charge for these replacements.

FIGURE 4: FEE AMOUNTS TO REPLACE SECURITY PINS (INCLUDING WASHINGTON, DC & PUERTO RICO)



This map represents what a consumer could be charged for a freeze if said consumer does not fit into a specific class of consumers as defined in a state law.

*States classified as "free" on this map include the following:

- Kansas is the only state that requires free PIN replacement regardless of how many times a consumer has requested a replacement.
- Delaware and the District of Columbia require that consumer reporting companies do not charge a fee for the first replacement of a PIN. Then these states allow for a charge of $10.00 for subsequent replacements.
- Minnesota, Rhode Island, and Nebraska require that consumer reporting companies do not charge a fee for the first replacement of a PIN. Then these states allow for a charge of $5.00 for subsequent replacements.
- North Carolina requires that consumer reporting companies do not charge a fee for the first replacement of a PIN. Then it allows for a charge of $3.00 for subsequent replacements.
- Connecticut's law says that the first PIN replacement is free. It does not address subsequent replacement fees.

Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

Twenty-six of the freeze laws are silent regarding whether consumer reporting companies can charge to replace lost or misplaced PINs and, correspondingly, the amount they can charge. The other freeze laws specify that companies may charge fees for PIN replacement, which vary between $3.00 to $10.00 across states. Kansas is the only state that requires free replacement PINs, and seven states require that the consumer reporting company replace the first PIN for free. Of those, all but one specifies the fees on subsequent replacement fees.

5.5 Fee Variations from State Requirements at the Three Nationwide Credit Reporting Companies

In practice, the fees that the three nationwide credit reporting companies charge are sometimes lower than the states' maximum allowable fees. For example, in response to its recent 2017 data breach, Equifax announced that it would not charge fees freeze-related fees through June 30, 2018.[32] Meanwhile, Experian typically charges up to the legal limits for all freeze-related actions.[33] TransUnion takes a mixed approach, generally charging (where allowed) for freeze placements and temporary lifts, but making permanent freeze removals free for all consumers, regardless of state or classification.[34] TransUnion and Experian have also made the decision to waive fees for replacement PINs.[35]

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[32] For more information *see*: Equifax, *Freeze Request Form, available at* https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp (last visited Mar. 12, 2018).

[33] Industry information, (December 2017). For Experian pricing by state, *see*: Experian, *Security Freeze, available at* https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/ (last visited Mar. 12, 2018).

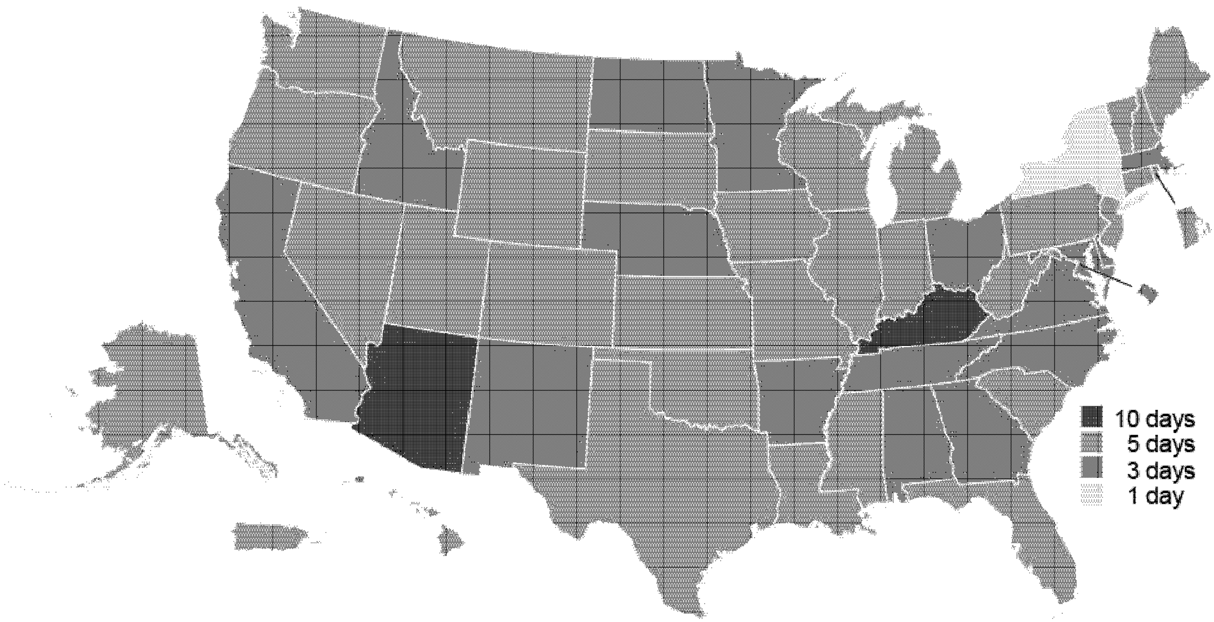
[34] For TransUnion pricing by state, *see*: TransUnion, *Credit Freeze Information by State, available at* https://www.transunion.com/credit-freeze/credit-freeze-information-by-state, (last visited Mar. 12, 2018).

[35] *Id.*, and industry information, (March 2018).

6. Time Requirements

6.1 Time Requirements to Place a Freeze

FIGURE 5: STATE REQUIREMENTS FOR PLACING FREEZES (INCLUDING WASHINGTON, DC & PUERTO RICO)



"Days" = maximum number of business days allowed under state law.
Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

The vast majority of states require consumer reporting companies to place a freeze within three to five business days of a consumer's request. Arizona and Kentucky have placement deadlines of 10 business days. Montana and North Dakota require a one business day placement for freezes of identity theft victims. North Carolina and Virginia have a one business day placement requirement for requests submitted online.

At least one market participant has told us that it makes freeze placements instantaneously when freeze placement requests are made online or by phone–irrespective of what state laws might allow–as long as consumers can successfully authenticate their identities.[36] We have not determined how prevalent this practice is in the market.

[36] Industry information, (December 2017).

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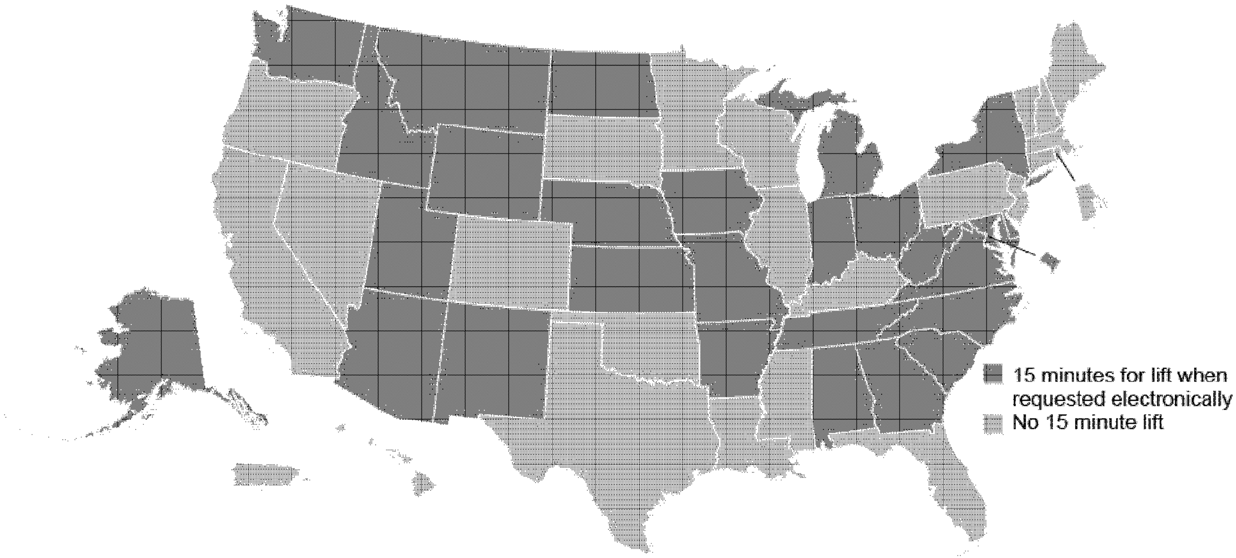
6.2 Time Requirements for Temporary Lifts & Removals

FIGURE 6: FIFTEEN MINUTE LIMITS FOR ELECTRONIC LIFT REQUESTS



Source: Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

All states except Tennessee allow up to three business days for consumer reporting companies to process temporary lifts and requests to remove a freeze permanently. Tennessee does not provide a deadline for lift requests and allows only two days to remove a freeze. Some states allow shorter time limits for temporary lift requests that are made electronically. Twenty-eight states (including Tennessee) require consumer reporting companies to lift a freeze within 15 minutes if the freeze request was made electronically. Similar to freeze placements, at least one market participant has told us that it makes freeze lifting instantaneous for requests made online or by phone, but we have not determined how prevalent this practice is in the market.[37]

6.3 Duration of Freezes

Consumers have the option to keep freezes in place indefinitely; however, three states, Kentucky, Pennsylvania, and South Dakota, require consumer reporting companies to remove freezes seven years from the placement date. Consumers who want to continue to have their freezes in place in these states would need to make an entirely new request from each consumer

[37] *Id.* Says one market participant on its website: "In most cases, if you make the request by phone or online, the credit bureaus can lift a freeze in as little as 15 minutes," Brian O'Connor, *How to Unfreeze Your Credit Report*, Experian Blog (Sep. 20, 2017), *available at* https://www.experian.com/blogs/ask-experian/how-to-unfreeze-your-credit-report/. We have not independently verified the accuracy of this statement with all three nationwide credit reporting companies, or whether this is also the case with other consumer reporting companies that offer freezes to consumers.

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reporting company. Additionally consumers would also need to pay any fees as required under those state freeze laws. For example, all three of those state freeze laws allow consumer reporting companies to charge consumers $10.00 to place a freeze as listed below. As of March 2018, however, Kentucky and South Dakota are considering legislation that would end the seven year expiration requirement. Similarly, recent federal freeze legislation has no such freeze expiration requirements. See below for details.

7. Locks

The three credit reporting companies have built and offer "lock" services for consumers. Locks are available as a competitive alternative to the legally-mandated freeze programs these same companies are required to offer. Like freezes, locks serve the same basic purpose as freezes of blocking third party access to consumer reports.

7.1 Consumer Benefits

The two primary consumers benefits of locks may include the following. They are:

1. **Reduced cost:** Two of the three credit reporting companies offer locks at no monetary cost to consumers. Equifax and TransUnion both market free lock programs to consumers.[38] TransUnion also offers consumers the ability to lock both TransUnion and Equifax credit reports in a single service, but that comes with a monthly subscription fee.[39]
2. **Ease of use:** The companies offering them claim that locks can be applied and removed immediately and easily including via a mobile device app they provide. This is a feature that currently is unavailable for freezes as far as we can tell. Also, pursuant to state requirements and as described above, most freeze programs generally rely on PINs, whereas locks allow consumers to create their own customized log-in's and passwords. Each of the three companies describes locks as "fast," "convenient," and/or "easy."[40] In so doing, these companies appear to be marketing the convenient, fast, and (for two out of the three companies) free benefits of locks as the perfect foil to state freeze programs.

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[38] Currently Experian does not offer a free stand-alone lock service. Consumers who want to lock an Experian credit report must pay for it as part of a monthly subscription service, or they can opt to freeze, which may come with fees depending on the states where consumers live, but likely less than Experian's monthly subscription service. *See* also: Ron Lieber, *Equifax Calls for Free Credit Locks. Experian's Reply? Nope.*, N.Y. Times (Oct. 4, 2017), *available at* https://nyti.ms/2xU5YsZ. For more information on the free programs *see*: Equifax, *Lock & Alert™*, *available at* https://www.equifax.com/personal/products/credit/credit-lock-alert/ (last visited Mar. 15, 2018), and TransUnion, *Protect Your Credit Now. It's Free With TrueIdentity*, *available at* https://www.trueidentity.com/ (last visited Mar. 15, 2018) respectively.

[39] For more information *see*: TransUnion, *Lock Thieves Out of Your TransUnion & Equifax Credit Reports*, *available at* https://www.transunion.com/product/credit-lock (last visited Mar. 12, 2018).

[40] *See*: Equifax, *Lock & Alert™*, *available at* https://www.equifax.com/personal/products/credit/credit-lock-alert/ (last visited Mar. 28, 2018), and TransUnion, *Protect Your Credit Now. It's Free With TrueIdentity*, *available at* https://www.trueidentity.com/ (last visited Mar. 28, 2018). For similar language regarding Experian's paid service, *see*: Experian, *Credit Monitoring*, *available at* https://www.experian.com/consumer-products/credit-monitoring.html (last visited Mar. 12, 2018) and Experian, *Introducing Experian CreditLock*, *available at* https://www.experian.com/blogs/ask-experian/introducing-creditlock/ (last visited Mar. 28, 2018).

7.2 Corporate Benefits

Locks appear to provide comparative benefits vs. freezes to the credit reporting companies too. Three perceived credit reporting company benefits of locks may include the following. They are:

1. **Locks may be easier to manage vs. freezes:** Locks provide the ability to provide freeze-like features without the comparative complexity of managing the requirements of 50+ statutes. Also, as company sponsored solutions that sit outside of the state freeze legal framework, the companies can change the terms of service at any time, so locks offer companies more flexibility vs. freezes too.
2. **Increased monetization opportunity:** Locks are available only as part of a paid monthly credit monitoring subscription program at Experian; at TransUnion consumers wishing a lock that covers their Equifax report as well must pay a fee.[41] Further the credit reporting companies can monetize lock products through targeted first and third party advertisements, AKA cross-selling.[42] Finally, these companies may decide to distribute lock solutions indirectly through third party channels and receive compensation for doing so, as they each already do as a core business practice in their respective consumer services business segments.[43]

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[41] *See* TransUnion, *Lock Thieves Out of Your TransUnion & Equifax Credit Reports*, *available at* https://www.transunion.com/product/credit-lock (last visited Mar. 12, 2018), and Experian, *Credit Monitoring*, *available at* https://www.experian.com/consumer-products/credit-monitoring.html (last visited Mar. 12, 2018). As mentioned, TransUnion's fee-based subscription program currently includes the ability for consumers to lock their Equifax reports too. This implies that not only is TransUnion making money for this product, but so is Equifax, assuming–and as is generally standard in the business-to-business-to-consumer (B2B2C) space–TransUnion is remitting to Equifax a portion of its revenue for "reselling" its lock feature to TransUnion. In our research, this is also what we are hearing from seasoned credit reporting industry executives too. Equifax describes B2B2C re-selling as follows: "We also sell consumer and credit information to resellers who combine our information with other information to provide direct to consumer monitoring, reports and scores," Equifax, Quarterly Report (Form 10-Q) (Nov. 9, 2017). Similarly, LifeLock, another company that sells credit monitoring services to consumers, uses Equifax and pays Equifax when customers enroll in its services. *See* Chris Arnold, *Senator To Ex-CEO: Equifax Can't Be Trusted With Americans' Personal Data*, NPR (Oct. 4, 2017), *available at* https://www.npr.org/2017/10/04/555651379/senator-to-ex-ceo-equifax-can-t-be-trusted-with-americans-personal-data.

[42] For example, *see* the terms of use available at Experian, *Terms and Conditions*, *available at* https://usa.experian.com/login/#/index?c=22&p= (last visited Mar. 15, 2018), and TransUnion, *Legal*, *available at* https://membership.trueidentity.com/tucm/support.page?panel=terms (last visited Mar. 15, 2018).

[43] Based on their annual financial reporting, the three nationwide credit reporting company made combined revenue of over $1.5 billion from their consumer services business segments representing nearly 17% of their total combined revenue. This consists of services distributed directly and indirectly through third parties. Sources: Equifax, *Equifax 2016 Annual Report*, *available at* https://investor.equifax.com/~/media/Files/E/Equifax-IR/Annual%20Reports/2016-annual-report.pdf; Experian, *Experian 2017 Annual Report for Year Ended 31 March 2017*, *available at* https://www.experianplc.com/media/3089/exp-ar2017.pdf; TransUnion, *TransUnion 2016 Annual Report*, *available at* https://investors.transunion.com/~/media/Files/T/Transunion-IR/annual-reports/2016/tru-2016-annual-report-final.pdf. Centralizing credit report locks (and freezes for that matter) through a centralized source would create additional convenience for consumers.

3. **Lower litigation risk:** Unlike state freeze programs, the credit reporting companies may seek to try to force consumers to waive rights to litigate disputes in signing up for a lock.[44] Also, freeze laws have prescribed penalties for consumer reporting companies that do not follow their procedures.

[44] *See* ValuePenguin, *Credit Lock vs. Credit Freeze: How These Security Options Stack Up*, (Oct. 10, 2017), *available at* https://www.nasdaq.com/article/credit-lock-vs-credit-freeze-how-these-security-options-stack-up-cm856592 *and* Octavio Blanco, *Why a Credit Freeze Is Better Than a Credit Lock*, Consumer Reports (Sep. 28, 2017), *available at* https://www.consumerreports.org/credit-bureaus/why-credit-freeze-is-better-than-credit-lock/. For user agreements *see* Experian, *Terms and Conditions*, *available at* https://usa.experian.com/login/#/index?c=22&p= (last visited Mar. 12, 2018), and TransUnion, *Legal*, *available at* https://membership.trueidentity.com/tucm/support.page?panel=legal (last visited Mar. 12, 2018). Note that Equifax also has an arbitration agreement, but it appears currently to exclude its lock product. For more information visit: Equifax, *Terms of Use*, *available at* https://www.equifax.com/terms/ (last visited Mar. 12, 2018).

8. Statistics on Freeze Utilization

A 2014 paper from the Federal Reserve Bank of Philadelphia estimated that about two million U.S. consumers placed a credit freeze or fraud alert on their credit reports in 2012 (estimated using an anonymized 5 percent random sample of variables contained in the credit records of U.S. consumers with at least "one credit record or one credit account currently reported").[45] According to a Justice Department report, of the 17.6 million identity theft victims in the United States in 2014, only about 4% chose to place a freeze on their credit reports.[46] More recently, in November 2018, Equifax disclosed the total number of its credit files frozen or locked. According to Equifax, those figures are as follows:

> "Prior to the September 7 [Equifax breach] announcement, approximately 0.5% of Equifax credit files were locked or frozen. Since then, we have seen an increase in volume in the number of locks and freezes placed by consumers, and the total files locked or frozen currently represent about 1.5% to 2% of all Equifax credit files. Approximately 15% to 20% are locks, and the rest are state-filed freezes."[47]

The number of frozen or locked files jumped by 200%-300%, but is still at a relatively low number as a percent of total consumer files at Equifax.[48] Since the Equifax breach, consumers have had the ability to freeze or lock their Equifax files for free which removes price as an impediment. As mentioned above, Equifax ends its freeze fee waiver after June 30, 2018; however, it intends to offer consumers its free lock service indefinitely.[49]

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[45] Julia Cheney, et al., , *Consumer Use of Fraud Alerts and Credit Freezes: An Empirical Analysis, Payment Cards Center*, Federal Reserve Bank of Philadelphia at 3 (Sep. 2014), *available at* https://www.philadelphiafed.org/-/media/consumer-finance-institute/payment-cards-center/publications/discussion-papers/2014/D-2014-IdentityTheft.pdf.

[46] 2014 Report, at 18.

[47]Seeking Alpha, *Equifax (EFX) CEO Paulino Barros on Q3 2017 Results – Earnings Call Transcript* (November 10, 2017), *available at* https://seekingalpha.com/article/4124226-equifax-efx-ceo-paulino-barros-q3-2017-results-earnings-call-transcript. *See* also: Seeking Alpha, *Equifax' (EFX) CEO Paulino Barros on Q4 2017 Results – Earnings Call Transcript* (March 3rd, 2018) *available at* https://seekingalpha.com/article/4152952-equifax-efx-ceo-paulino-barros-q4-2017-results-earnings-call-transcript?part=single.

[48] Total consumer files estimated at over 200 million. *See*: Consumer Fin. Prot. Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System* at 3 (Dec. 2012), *available at* https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system/, *and* Equifax, *Consumer Credit Reports from Equifax* at 2, *available at* https://www.equifax.com/ePort/pdfs/ConsumerCreditProducts.pdf (last visited March 16, 2018).

[49] Press Release, Equifax, *Equifax Launches Lock & Alert™*, (Jan. 31, 2018), *available at* https://investor.equifax.com/news-and-events/news/2018/01-31-2018; Press Release, Equifax, *Equifax Announces Cybersecurity Incident Involving Consumer Information*, (Sep. 7, 2017), *available at* https://investor.equifax.com/news-and-events/news/2017/09-07-2017-213000628.

The other two nationwide credit reporting companies have not disclosed publically freeze and lock figures, but our understanding is that they have about the same number of files locked or frozen. In its February 2018 earnings call, TransUnion did cite a "nice uptick" of its free and paid lock services "over the past four months or so."[50]

[50] TransUnion's full comment: "On the direct side of our business, since 2016, we have had a free product called TrueIdentity available online to all consumers. It allows them to see and monitor their TransUnion credit profile and score, while also providing the ability to easily lock and unlock their credit online, or using an app, all at no cost. We have seen a nice uptick in this product, along with our paid offering over the past four months or so," Seeking Alpha, *TransUnion's (TRU) CEO James Peck on Q4 2017 Results – Earnings Call Transcript, February 11, 2018, available at* https://seekingalpha.com/article/4146136-transunions-tru-ceo-james-peck-q4-2017-results-earnings-call-transcript.

9. Perceived Issues with Security Freeze Programs

Security freeze programs raise a number of high potential user issues for consumers. We identify three of them. They are: (1.) Fees; (2.) Time-limits for applying, lifting and removing freezes; and (3.) The difficulty in understanding the purposes that are blocked once a security freeze is in place. These issues create expense and complexity for consumers. As a result consumers may opt to explore and utilize other solutions (e.g., locks, paid credit monitoring services, and free account monitoring services available directly from financial institutions) or, to do nothing. The latter could leave consumers vulnerable to the ill effects of ID theft.

9.1 Fees

As described above, fees to apply, lift and remove freezes vary between $0 and $10. Some states also allow consumer reporting companies to increase fees annually, proportional to changes in the Consumer Price Index (CPI). Fee waivers also differ and range by certain consumer classifications, such as older consumers (age 62 and over or 65 and over, depending on the state), or minors (age under 16 or 18, depending on the state), to ID theft victims. Finally, about half of the state freeze programs give consumer reporting companies the option to charge fees for lost PINs, ranging between $3.00 to $10.00.

Former and current executives from nationwide credit reporting companies with direct compliance and operations freeze expertise expressed the view that the differences in fee amounts between states, as well as the fee amounts themselves, appear arbitrary.[51] Market participants said that fees recognize that there is a cost to companies in implementing freeze services even if they are not consistently applied by the states that devised these programs. Additionally, some market participants said that fees can serve to give credit-active consumers, who may not necessarily need the protections of a freeze, pause about freezing their consumer report information.[52] Complementing this perspective, one industry trade group said that a purpose of freeze fees is to act as a "speed bump" to slow down consumers, so they can consider whether freezes make sense for their personal data security and credit access needs.[53]

As described below, consumer groups and consumers often express an opposing opinion. In a public request from the Federal Trade Commission (FTC) to provide comments on freezes, many consumer groups said that fees should be lowered. These groups often noted the high costs of placing freezes with multiple consumer reporting companies and proposed lower fees to better accommodate consumers' needs. Relatedly, through the Consumer Financial Protection Bureau (Bureau) complaint program, consumers expressed negative opinions about fees especially when the decision to place freezes is motivated by third party cybersecurity data breach incidents beyond their control.

[51] Industry information, (October 2017 and December 2017).

[52] *Id.* See below for a distribution of fee exceptions by category and state.

[53] Industry information, (October 2017).

9.2 Time-limits for Applying, Lifting & Removing Freezes

Despite the seriousness and urgency of situations which lead many consumers to apply freezes (i.e., the real threat of an identity theft or an actual identity theft), currently 32 freeze laws allow consumer reporting companies a full five business days after receiving a request to freeze a file, most likely because these laws assume that consumers communicate with companies mostly by postal mail. (All but two states and Puerto Rico passed freeze laws between 2003 and 2008, presumably when faster electronic communications were less common.) Only two states (Virginia and North Carolina) have shorter deadlines for electronic freeze requests, and two states (Montana and North Dakota) have shorter deadlines for identity theft victims. Time-limits for lifts and freeze removals also appear out-of-sync with the times and consumer needs. Despite the intention for temporary lifts to make certain transactions easier, slightly more than half of states have a 15-minute provision for the execution of electronic requests as described above. Finally, and as described above, while it appears some consumer reporting companies apply and remove freezes instantaneously when consumers request them online or by phone, it is unknown how many consumer reporting companies actually do this, and even if they all can currently, it is not being widely communicated to consumers as far as we know; however, notably, the speed of lock services is well communicated as can be seen on the websites of the three nationwide credit reporting companies provided above.

9.3 Freeze Laws Vary in Scope

As described above, freeze laws have a number of exclusions and exemptions. Consumers may not understand the purposes that are blocked once a security freeze is in place. In some states, for example, freeze laws block the use of reports for the purpose of background screening. In other states they are not blocked. In those states, a consumer might inadvertently allow a prospective employer or landlord to use a consumer report that is filled with tradeline errors from an identity theft, and even when the report is frozen by the consumer.

An area of potential consumer confusion is that all of the state freeze programs apply for new extensions of credit, but consumers may not understand that generally otherwise frozen consumer files are still accessible when there is a "financial obligation," including an existing credit relationship. One scenario where a security freeze does not help is when a credit line increase is requested on a stolen credit card account. In this scenario one could reasonably think that the credit line increase is a new extension of credit, and therefore the frozen consumer report should remain unavailable for use to help underwrite the line increase and prevent a line increase from occurring. However, because it is an existing account, a freeze would not apply and would not protect the consumer in this scenario.[54]

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[54] Even if the freeze did apply it might not matter. Many U.S. lenders, currently, do not rely on consumer reports to underwrite credit card line extensions on existing borrowers. Instead they can use internally-available data, such as the borrower's line utilization history and repayment history with the lender. As such, there might be little need for the lender to underwrite using consumer reporting data from a credit risk management perspective. This is known as an "on-us" underwriting review. Consumer reports are generally not used for this purpose (Source: Industry information, February 2018). We do not know the prevalence of line increase fraud on existing credit card accounts; however, we know that of the estimated 17.6 million identity theft victims in 2014, approximately 8.6 million were on existing credit card accounts; *see* 2014 Report at 2. An example where line increase fraud can come into play is

Mobile phones are another high potential area for consumer confusion. Consumers might not realize that consumer reports are commonly used to facilitate the purchase of mobile phones and the monthly billing plans that go with them. These transactions are generally considered to be an "extension of credit." Consumers at point of sale might be surprised to learn that the security freeze they put in place will generally prevent these transactions from taking place at the price and terms they seek. This could be a source of confusion and frustration for consumers. The same is true for utility accounts (e.g., gas, water, electric) where credit reports are commonly used.

Finally, some consumers might think that access to the free score programs many U.S. financial institutions sponsor might be affected by consumer report security freezes. That would be incorrect. They are not affected.[55] Nor are the credit monitoring programs consumers purchase and disclosure requests made to consumer reporting companies as described above.

9.4 The Impact of Complexity?

Freeze programs are complex. Fees to apply, lift and remove freezes, and fees to replace lost PINs; uncertainty over the length of time it takes to apply, lift, and remove freezes; and the uncertainty regarding the purposes for which reports are frozen might create incentives for consumers to search and utilize other solutions (e.g., locks, paid credit monitoring services, and free account monitoring services available directly from financial institutions) or, to do nothing.[56] One industry trade group described freezes as a "cumbersome tool," because of the various fees and hard to understand rules that govern them.[57] It could be that freezes are so cumbersome for consumers that it inhibits utilization, and in so doing it could leave consumers more vulnerable to ID theft.

"bust-out" or "sleeper" fraud. This happens when the fraudster opens a credit card account and uses it without creating suspicion only to seek, and ultimately to draw, the maximum line amount and abandon the account leaving it unpaid.

[55] For a description of free score programs *see*: Maria Jaramillo, *Check Our New List to See If Your Credit Card Offers Free Access to One of Your Credit Scores*, Consumer Fin. Prot. Bureau Blog(Mar. 2, 2017), *available at* https://www.consumerfinance.gov/about-us/blog/check-our-new-list-see-if-your-credit-card-offers-you-free-access-one-your-credit-scores/. *See* also: Press Release, FICO, *FICO Score Open Access Program Reaches Milestone of 250 Million Consumer Financial Credit Accounts*, (Feb. 5, 2018), *available at* http://www.fico.com/en/newsroom/fico-score-open-access-reaches-250-million-consumer-financial-credit-accounts.

[56] For a comparison of freezes vs. locks, *see* also: Octavio Blanco, *Why a Credit Freeze Is Better Than a Credit Lock*, Consumer Reports (Sep. 28, 2017), *available at* https://www.consumerreports.org/credit-bureaus/why-credit-freeze-is-better-than-credit-lock/.

[57] Industry information, (October 2017).

10. Freeze Reform & Related Government Activities

10.1 Federal Trade Commission

In 2008, the Federal Trade Commission (FTC) published a public notice seeking comments on the topic of security freezes.[58] Among these comments, consumer groups largely expressed views that (1.) fees are too high and should be lowered and (2.) freeze placements and lifts should be implemented quickly so consumers do not need to wait to secure their own data. Many comments from industry stakeholders expressed views that any additional freeze standards should maintain exemptions for particular entities to access frozen reports, e.g., exempting insurance companies for underwriting purposes to ensure they can still access consumer reports.

The FTC's public notice effort was conducted partly to fulfill goals of the President's Identity Theft Task Force to determine "whether a federal credit freeze law would be appropriate."[59] Comments expressed varying viewpoints among industry groups and consumer groups as to whether there should be a national freeze standard. Many of the industry comments submitted opposed federal standards as unnecessary in light of existing state freeze laws. Some consumer groups were supportive of the idea of a "one-stop-shop" where consumers could manage their freezes with consumer reporting companies with a single interface. Some consumer groups also expressed the concern that federal standards might preempt state freeze laws that provide greater protections to consumers. We are not aware that the FTC has reached any conclusions or made any recommendations in response to the comments received.

10.2 Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (Bureau) has the authority to promulgate rules "as are necessary to carry out the purposes of" the FCRA.[60] The Bureau publishes an update of its rulemaking agenda, including actions in pre-rule, proposed rule, final rule, long-term, and

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[58] Federal Trade Commission, *FTC Staff Seeks Comments on Credit Freezes: Impact and Effectiveness*, (Jan. 20, 2008), *available at* https://www.ftc.gov/news-events/press-releases/2008/01/ftc-staff-seeks-comments-credit-freezes-impact-effectiveness and Federal Trade Commission, *#227: Project No.: P075420: Impact and Effectiveness of Credit Report Freezes, available at* https://www.ftc.gov/policy/public-comments/2013/08/initiative-227.

[59] Federal Trade Commission, *The President's Identity Theft Task Force Report*, at 29 (Sep. 2008), *available at* https://www.ftc.gov/sites/default/files/documents/reports/presidents-identity-theft-task-force-report/081021taskforcereport.pdf. The President's Identity Theft Task Force began in May 2006. For more information *see* Department of Justice Archives, President's Identity Theft Task Force, *available at* https://www.justice.gov/archive/ittf/.

[60] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

completed stages. The most recent rulemaking agenda, released in 2017, does not include rulemaking items related to security freezes nor fraud alerts.[61]

Through its consumer complaint program, the Bureau has heard from some consumers about security freeze-related issues. Some consumers complain about the requirement to pay fees, especially when their primary motive to place freezes on their files is to protect themselves from third party cybersecurity data breach incidents beyond their control. Some consumers report feeling pushed by credit reporting companies to enroll in paid credit monitoring and identity monitoring services while trying to freeze their files. In the months after the Equifax data breach, many consumers reported problems placing freezes, perhaps because the systems of the companies offering them were overloaded with requests. Relatedly, regarding freeze services specifically at the three nationwide credit reporting companies, consumers mentioned not receiving confirmation that the freezes they requested were put in place, lengthy phone hold times, dropped calls, call center agents not calling back as promised, and call center agents that were not helpful.

10.3 State Legislatures

As of March 2018 and in response to the 2017 Equifax data breach, over twenty state legislatures are considering or have passed bills that would reform freeze laws in their respective states.[62] The common characteristic of these bills is that they prohibit fees for consumers. Bills that are being considered by Kentucky and South Dakota would eliminate the seven-year expiration provisions. Massachusetts is considering a bill that would require companies to place, lift and remove freezes within 15 minutes of a consumer's request. A few states are considering a one-stop-shop concept where consumers could manage their security freezes from one consumer reporting company. This concept is similar to how fraud alerts work today.

10.4 Congress

In the U.S. Congress, as of March 2018 there have been a variety of recent bills in the wake of the 2017 Equifax data breach. For the purposes of this research report there are two of note regarding freezes: One bill seeks to manage credit report data security by requiring the three nationwide credit reporting companies to get consumer permission before releasing consumer files to third parties.[63] The other bill creates a single national standard for security freezes in which freeze would be (1.) free for consumers, (2.) limited strictly for the purpose of new credit account origination (as opposed to including additional purposes such as background screening as several states do), and (3.) placed no later than one business day and lifted no later than one

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[61] Kelly Cochran, *Spring 2017 Rulemaking Agenda*, Consumer Fin. Prot. Bureau Blog (Jul. 20, 2017), *available at* https://www.consumerfinance.gov/about-us/blog/spring-2017-rulemaking-agenda/.

[62] Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018). *See* also: National Conference of State Legislatures, *Status of 2018 State Legislation, available at* http://www.ncsl.org/research/telecommunications-and-information-technology/2018-security-breach-legislation.aspx (last visited Mar. 1, 2018).

[63] Control Your Personal Credit Information Act of 2018, S.2362, 115th Cong. (1st Sess. 2017) *available at* https://www.congress.gov/bill/115th-congress/senate-bill/2362/text (last visited May 1, 2018).

hour, when the consumer makes the requests by phone or electronic means, and three business days for placement and removal when the request is made by mail.[64] Notably, the latter bill has no specific PIN requirements. Presumably, this would enable consumer reporting companies to use authentication and log-in mechanisms that are more user-friendly for consumers. Finally, the bill also extends initial fraud alerts from 90 days to one year.[65]

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[64] Economic Growth, Regulatory Relief, and Consumer Protection Act S. 2155 115th Cong. (1st Sess. 2017), *available at* https://www.congress.gov/bill/115th-congress/senate-bill/2155 (last visited May 1, 2018).

[65] Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

11. Appendix A: Allowable Freeze Fees by State & Segment[66]

State	Segment	Freeze	Lift	Remove
Alabama	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	$10.00	$10.00
Alaska	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$2.00	Free
	Consumer over 18 for whom prot. order is issued	$5.00	$2.00	Free
	Consumer who is incapacitated	$5.00	$2.00	Free
	Consumers under 18 years of age	$5.00	$2.00	Free
Arizona	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00
	State Protected Consumers:			
	Consumers under 16 years of age	Free	Free	Free
	Consumer who is incapacitated	$5.00	N/A	$5.00
Arkansas	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00
	Consumers 65+ years of age	Free	Free	Free
California	Protected consumer	$10.00	N/A	$10.00
	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	1st Free, $5.00	$5.00	$5.00
	Consumers under 16 years of age	Free	N/A	Free
Colorado	ID theft victims	1st Free, $10.00	$10.00	$10.00
	All other consumers	1st Free, $10.00	$10.00	$10.00
Connecticut	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Spouse of ID Theft Victim	Free	Free	Free
	Consumer on ID victim's health insurance policy	Free	Free	Free
	Consumers under 18 years of age	Free	Free	Free
	Person with guardian/conservator	Free	Free	Free
	Victims of Domestic Violence	Free	Free	Free
	Consumers 62+ years of age	Free	Free	Free
Delaware	ID theft victims	Free	N/A	N/A
	All other consumers	$10.00	N/A	N/A
	Consumers 65+ years of age	$5.00	Free	N/A
	State Protected Consumers:			
	Person with guardian/conservator	$5.00	N/A	$5.00
	Consumers under 16 years of age	Free	N/A	N/A
District of Columbia	ID theft victims	Free	Free	Free

[66] Office of Consumer Lending, Reporting & Collections Markets, Consumer Fin. Prot. Bureau analysis, (Mar. 2018).

	All other consumers	$10.00	N/A	N/A
Florida	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	$10.00	Free
	State Protected Consumers:			
	Person with guardian/other advocate	$10.00	N/A	$10.00
	Consumers under 16 years of age	$10.00	N/A	$10.00
Georgia	ID theft victims	Free	Free	Free
	All other consumers	$3.00	$3.00	$3.00
	Consumers 65+ years of age	Free	$3.00	$3.00
	State Protected Consumers:			
	Person with guardian/conservator	$10.00	N/A	$10.00
	Consumers under 16 years of age	Free	N/A	Free
Hawaii	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00
	State Protected Consumers:			
	Person with guardian/conservator	$5.00	N/A	$5.00
	Consumers under 16 years of age	Free	N/A	Free
Idaho	ID theft victims	Free	Free	Free
	All other consumers	$6.00	$6.00	Free
Illinois	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	$10.00	Free
	Active duty military member	Free	Free	Free
	Consumers under 18 years of age	$10.00	N/A	$10.00
Indiana	All consumers	Free	Free	Free
Iowa	ID theft victims	Free	Free	Free
	Consumers under 16 years of age	$5.00	Free	$5.00
	All other consumers	$10.00	$12.00	$10.00
Kansas	ID theft victims	Free	Free	Free
	Consumers under 16 years of age	$10.00	N/A	$10.00
	All other consumers	$5.00	$5.00	$5.00
Kentucky (7-year expiration)	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
Louisiana	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$8.00	Free
	Consumers 62+ years of age	Free	Free	Free
	State Protected Consumers:			
	Consumers under 16 years of age	Free	N/A	Free
Maine	ID theft victims	Free	Free	Free
	All other consumers	Free	Free	Free
	State Protected Consumers:			
	Consumers under 16 years of age	Free	Free	Free
Maryland	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00
	State Protected Consumers:			
	Person with guardian/conservator	$5.00	N/A	$5.00
	Children in foster care (Section 14-1212.3)	$5.00	N/A	$5.00
	Consumers under 16 years of age	Free	N/A	Free
Massachusetts	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00

	Spouse of ID Theft Victim	Free	Free	Free
Michigan	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	State Protected Consumers:			
	Consumers under 16 years of age	Free	N/A	Free
Minnesota	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00
Mississippi	ID theft victims	$10.00	Free	Free
Missouri	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	Free
Montana	ID theft victims	Free	Free	Free
	All other consumers	$3.00	$3.00	Free
Nebraska	ID theft victims	Free	Free	Free
	All other consumers	$3.00	$3.00	$3.00
	State Protected Consumers:			
	Person with guardian/guardian ad litem	$3.00	N/A	$3.00
	Consumers under 16 years of age	Free	N/A	Free
Nevada	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	Free	Free
New Hampshire	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
New Jersey	All consumers	Free	$5.00	$5.00
New Mexico	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$5.00	$5.00
	Consumers 65+ years of age	Free	Free	Free
New York	ID theft victims	Free	Free	Free
	All other consumers	1st Free, $5.00	$5.00	$5.00
	Victims of Domestic Violence	Free	Free	Free
North Carolina	ID theft victims	Free	Free	Free
	All other consumers	$3.00	$3.00	$3.00
	Spouse of ID Theft Victim	Free	Free	Free
	Consumers 62+ years of age	Free	Free	Free
	State Protected Consumers:			
	Person with guardian/guardian ad litem	$5.00	N/A	$5.00
	Consumers 62+ years of age	Free	N/A	Free
	Consumers under 16 years of age	Free	N/A	Free
North Dakota	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	Free
Ohio	ID theft victims	Free	$5.00	$5.00
	All other consumers	$5.00	$5.00	$5.00
	State Protected Consumers:			
	Person with guardian/conservator	$5.00	N/A	$5.00
	"A child in foster care"	Free	N/A	Free
	Consumers under 16 years of age	Free	N/A	Free
Oklahoma	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	$10.00	Free
Oregon	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00

	State Protected Consumers:			
	Person with guardian/conservator	$10.00	N/A	$10.00
	Consumers under 16 years of age	Free	N/A	Free
Pennsylvania (7-year expiration)	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	Free
	Consumers 65+ years of age	Free	$10.00	Free
Puerto Rico	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers over 65 years of age	Free	$10.00	Free
Rhode Island	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	Free	Free
South Carolina	ID theft victims	Free	Free	Free
	All other consumers	Free	Free	Free
	State Protected Consumers:			
	Person with guardian/conservator	Free	Free	Free
	Consumers under 16 years of age	Free	Free	Free
South Dakota (7-year expiration)	ID theft victims	N/A	N/A	N/A
	State Protected Consumers:			
	Person with guardian/conservator	$5.00	N/A	$5.00
	Consumers under 16 years of age	Free	N/A	Free
Tennessee	ID theft victims	Free	Free	Free
	All other consumers	$7.50	Free	$5.00
	State Protected Consumers:			
	Person with guardian/conservator	$10.00	N/A	$10.00
	Consumers under 16 years of age	Free	N/A	Free
Texas	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	State Protected Consumers:			
	Consumers under 16 years of age	Free	N/A	Free
Utah	ID theft victims	Free	Free	Free
	All other consumers	"Reasonable"	"Reasonable"	"Reasonable"
	State Protected Consumers:			
	Incapacitated person	$5.00	N/A	$5.00
	Person for whom protective order has been made	$5.00	N/A	$5.00
	Consumers under 16 years of age	Free	N/A	Free
Vermont	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$5.00	$5.00
Virginia	ID theft victims	Free	N/A	N/A
	All other consumers	$10.00	N/A	N/A
	State Protected Consumers:			
	Person with guardian/conservator	$10.00	N/A	$10.00
	Consumers under 16 years of age	Free	N/A	Free
Washington	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00
	Consumers 65+ years of age	Free	Free	Free
West Virginia	ID theft victims	Free	Free	Free
	All other consumers	$5.00	$5.00	$5.00
Wisconsin	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00

	State Protected Consumers:			
	Person with guardian/conservator	$10.00	N/A	$10.00
	Consumers under 16 years of age	Free	N/A	Free
Wyoming	ID theft victims	Free	Free	Free
	All other consumers	$10.00	$10.00	$10.00

Market Intelligence

Market Information from RMR Market Offices

Spotlight: Tax refund-related financial products

Office of Consumer Lending, Reporting, and Collections Markets

Holly Zaharchuk & Laura Udis

Each Market Spotlight provides an in-depth analysis of a specific consumer financial issue or product line in order to educate Bureau stakeholders. Spotlights are internal work products of the Market Offices. They are for background informational purposes only and do not represent the official view of the Bureau.

April 2018

Introduction

Tax season presents an opportunity for millions of consumers to receive the largest "paycheck" of the year:[1] their tax refund.[2] Consumers receiving refunds include the more than 27 million low-to-moderate income (LMI)[3] consumers who receive the Earned Income Tax Credit (EITC)[4] to supplement their wages. In order to receive a refund, consumers must first file their federal and state tax returns. Consumers have several filing options, including paid tax preparers, volunteer tax preparers, tax preparation software, and fillable forms from federal and state tax authorities. Many paid tax preparers and tax preparation software platforms offer tax refund-related financial products during filing. This report provides an overview of these products, with a focus on refund anticipation checks (RACs) and refund anticipation loans (RALs).

An initial challenge for LMI consumers is the cost of paid tax preparation. According to a national survey published in 2017, tax preparation fees for individual income tax returns

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[1] Tax season refers to the year in which consumers file federal and state income tax returns, while tax year refers to the year on which consumers pay federal and state income taxes. For example, consumers filed returns for the 2017 tax year during the 2018 tax season. Tax time refers to the period of time between January and April when most households file taxes.

[2] *See* Consumer Fin. Prot. Bureau, *Building the Capacity of Tax Preparation Providers to Encourage Savings*, at 13 (Aug. 22, 2017), ***available at*** https://www.consumerfinance.gov/data-research/research-reports/building-capacity-tax-preparation-providers-encourage-saving/.

[3] The Department of Housing and Urban Development (HUD) defines low-to-moderate income as 115% or less of the median income of an area after adjusting for family size. *See* Department of Housing and Urban Development, *How Is a Low- to Moderate-Income Individual or Family Defined?*, ***available at*** https://hudgov.prod.parature.com/link/portal/57345/57355/Article/4684/How-is-a-Low-to-Moderate-Income-individual-or-family-defined (last visited Mar. 26, 2018).

[4] The Earned Income Tax Credit (EITC) is a federal tax credit for working people with low to moderate income. In order to be eligible, an individual must have earned income and adjusted gross income (AGI) under a certain threshold, depending on their filing status and number of qualifying children. An individual must also either meet the criteria for workers without a qualifying child or have at least one qualifying child. Additional rules apply, including limits on investment income and restrictions on filing status and foreign income. *See* Internal Revenue Service, *Earned Income Tax Credit (EITC)*, ***available at*** https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit (last visited Jan. 22, 2018); *see also* Internal Revenue Service, *EITC Fast Facts*, ***available at*** https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts (last visited Jan. 22, 2018).

average between $176 and $457, depending on the number and complexity of the schedules and forms filed.[5] For LMI consumers, these fees represent 26% to 67% of the median weekly wage for low-income workers of $686.[6] Many LMI consumers are within the scope of the Internal Revenue Service's (IRS) Volunteer Income Tax Assistance (VITA) program and could have their tax returns prepared at no charge.[7] Nonetheless, over 53% of LMI consumers use paid tax preparation services to navigate the complex EITC filing process or maximize their refunds.[8] RACs are offered to consumers to enable them to defer payment of paid tax preparation fees.

An additional challenge is access to depository institutions. Some LMI consumers lack a bank account to receive a direct deposit or access to check-cashing services at a depository institution, which can create additional costs for receiving a tax refund. The Federal Reserve Board's most

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[5] National Society of Accountants, *NSA Survey Reveals Fee and Expense Data for Tax Accounting Firms in 2016 and 2017 Projections*, (Jan. 27, 2017), *available at* http://connect.nsacct.org/blogs/nsa-blogger/2017/01/27/nsa-survey-reveals-fee-and-expense-data-for-tax-accounting-firms-in-2016-and-2017-projections.

[6] The Department of Housing and Urban Development (HUD) defines low-income as income that is 80% or less of the median family income of an area. The Bureau of Labor Statistics (BLS) reported that the median weekly earnings of full-time workers were $857 in the fourth quarter of 2017. Eighty percent of $857 is $686, which provides a proxy for the upper bound on the median weekly earnings of low-income consumers. The national average tax preparation fees of $176 to $457 represent 26% to 67% of $686. *See* Department of Housing and Urban Development, *Methodology for Determining Section 8 Income Limits*, (Apr. 1, 2018), *available at* https://www.huduser.gov/portal/datasets/il//il18/IncomeLimitsMethodology-FY18.pdf; *see also* Press Release, Bureau of Labor Statistics, *Usual Weekly Earnings of Wage and Salary Workers Fourth Quarter 2017*, (Jan. 17, 2018), *available at* https://www.bls.gov/news.release/pdf/wkyeng.pdf. In addition, a study of storefront tax preparers in Baltimore and Washington, D.C., found that filers spent between 13% and 22% of their EITC on tax preparation fees. Paul Weinstein Jr. and Bethany Patten, *The Price of Paying Taxes II: How Paid Tax Preparer Fees Are Diminishing the Earned Income Tax Credit (EITC)*, (Apr. 2016), *available at* http://www.progressivepolicy.org/wp-content/uploads/2016/04/2016.04-Weinstein_Patten_The-Price-of-Paying-Takes-II.pdf.

[7] The Volunteer Income Tax Assistance (VITA) program is assisted and directed by the Internal Revenue Service and "offers free tax help to people who generally make $54,000 or less, persons with disabilities and limited English speaking taxpayers who need assistance in preparing their own tax returns." *See* Internal Revenue Service, *Free Tax Return Preparation for Qualified Taxpayers*, *available at* https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers.

[8] The Brookings Institution, *Earned Income Tax Credit (EITC) Interactive and Resources*, (Dec. 21, 2016), *available at* https://www.brookings.edu/interactives/earned-income-tax-credit-eitc-interactive-and-resources/. *See also* Tax Policy Center, *Why Do Low-Income Families Use Tax Preparers?*, http://www.taxpolicycenter.org/briefing-book/why-do-low-income-families-use-tax-preparers.

recent report on economic well-being found that 14.7% of households with an annual income less than $40,000 were unbanked.[9] One of the large retail tax preparation firms similarly states its belief that many of its customers either do not have access to traditional bank accounts to receive tax refunds by direct deposit or prefer not to use their bank accounts.[10] A feature of RACs and RALs is the establishment of a temporary bank account for consumers to receive their tax refunds.

The IRS reports that it issues "more than 9 out of 10 refunds in less than 21 days" through direct deposit or paper checks.[11] This delay between filing a return and receiving a refund may be too long or variable for some consumers. In particular, consumers who claim the EITC must wait until mid-February of each year to receive their federal tax refunds due to recent federal legislation, which is discussed in the *Market trends* section of this report. RALs offer short-term credit to consumers with liquidity needs based on their expected tax refunds between filing their tax returns and receiving their refunds.

The cost of paid tax preparation, the difficulty of accessing tax refunds with the financial services available to many LMI consumers, and the delay between filing a tax return and receiving a refund have created the demand for tax refund-related financial products. Tax preparers are incentivized to offer these products in order to compete with online and free filing options.[12] RACs and RALs are described in detail in this report.

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[9] Unbanked is defined as not having a checking, savings, or money market account. Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2016*, (May 2017), https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-201705.pdf.

[10] Liberty Tax, Inc., *Form 10-K 2017*, at 9 (Apr. 30, 2017).

[11] Internal Revenue Service, *What to Expect for Refunds in 2017*, https://www.irs.gov/refunds/what-to-expect-for-refunds-this-year.

[12] *See, e.g.*, "In the United States, 30% of our revenue during our 2017 fiscal year was directly derived from our facilitation of the sale of financial products provided to our customers by financial institutions and providers, and we believe that percentage may grow in future tax seasons. Our tax return preparation business is also, to some extent, dependent on our ability to facilitate the sale of these products, because our customers are often attracted to our business by the expectation that these products will be available." Liberty Tax, Inc., *supra*, at 14.

Tax refund-related financial products

Refund anticipation checks (RACs)

Refund anticipation checks (RACs), commonly referred to as refund transfers, allow consumers to defer payment of the cost of paid tax preparation services for a fee until the IRS or state tax authority issues their refunds.[13] Tax preparers partner with depository institutions, as well as with processing service providers in some cases, to provide RACs. After the tax return is prepared and e-filed, the consumer authorizes the creation of a temporary deposit account to receive the tax refund. The tax preparation fee, RAC fee, and any other fees are withdrawn from the refund; the consumer receives the remaining refund amount, which is typically disbursed by direct deposit, prepaid card, or check; and the account is closed.[14]

Federal banking guidance classifies RACs as deposit products,[15] and one tax preparation firm describes RACs as "a feature enabling [consumers] to deduct tax preparation and service fees from their tax refunds."[16] RACs are also described as offering consumers the option to defer payment of their tax preparation fees.[17] However, at least one court case has held that RACs are structured as credit products and the fees are finance charges under the Truth in Lending Act.[18]

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[13] While many tax preparers offer RACs of the federal refund, state refund, or both, this report will focus on RACs of the federal refund.

[14] Taxpayer Advocate Service, *Annual Report to Congress*, Volume 1, at 228 (Dec. 31, 2017), *available at* https://taxpayeradvocate.irs.gov/reports/2017-annual-report-to-congress/full-report.

[15] Office of the Comptroller of the Currency, *Risk Management Guidance*, OCC Bulletin 2015-36, (Aug. 4, 2015), *available at* https://www.occ.treas.gov/news-issuances/bulletins/2015/bulletin-2015-36.html. The bulletin provided an advisory to banks under the OCC's jurisdiction and their third-party servicers about the OCC's safety and soundness and consumer protection concerns with tax-refund related products.

[16] H&R Block, Inc., *Form 10-K 2017*, at 3 (Apr. 30, 2017).

[17] BofI Holding, Inc., *Form 10-K 2017*, at 3, 33, and F-9 (Jun. 30, 2017); Liberty Tax, Inc., *supra*, at 11.

[18] *See* People v. JTH Tax, Inc.,151 Cal. Rptr. 3d 728 (Cal. Ct. App. 2013).

Refund anticipation loans (RALs)

Refund anticipation loans (RALs) are short-term loans that are secured by the taxpayer's expected federal or state tax refund.[19] RALs were traditionally interest-bearing loans, but many of the loans on the market today are no-fee 0% annual percentage rate (APR). A consumer can receive RAL funds one to two days after applying for the loan.[20] Across various market participants, the maximum loan amount was $1,300 in the 2017 filing season,[21] but increased to $3,250 in the 2018 filing season.[22] A review of the larger firms' offerings indicates that most RALs represent approximately 20% to 50% of the expected refund, although one lender appears to offer RALs as high as 100% of lower refund amounts.[23] A RAL is typically due in full in a single balloon payment when the IRS issues the tax refund, one to three weeks after filing.

Another type of RAL — a "pay stub RAL" or "pre-season RAL" — is made prior to tax filing season based on an estimate of the consumer's expected refund using pay stubs or other pre-year-end income verification.[24] Tax preparers begin offering pay stub RALs in November, followed by traditional RALs and RACs at the start of filing season in late January and offered through February.[25]

In the RAL agreement, the consumer authorizes the creation of a temporary deposit account to receive the tax refund.[26] When the IRS issues the tax refund, the loan is offset with the refund, any remaining balance is disbursed to the consumer, and the temporary deposit account is

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[19] Taxpayer Advocate Service, *supra*. While many tax preparers offer RALs of the federal refund, state refund, or both, this report will focus on RALs of the federal refund.
[20] *Id.*
[21] *Id.*, at 232.
[22] *See Apply for an Easy Advance* at https://www.libertytax.com/easy-advance/ (last visited Jan. 26, 2018).
[23] *See Easy Advance Plus* and *Easy Advance Basic* at https://www.republicrefund.com/Products/EasyAdvance.aspx (last visited Apr. 16, 2018).
[24] Office of the Comptroller of the Currency, *supra*; National Consumer Law Center, Consumer Credit Regulation (2d ed. 2017), Chapter 15.1.2, *available at* https://library.nclc.org/ccr/150102 (last visited Jan. 22, 2018). *See*, for example, https://www.jacksonhewitt.com/express-refund-advance available as early as Dec. 18, 2017 with a pay stub or other income verification (*last visited* Jan. 29, 2018).
[25] Office of the Comptroller of the Currency, *supra*.
[26] Taxpayer Advocate Service, *supra*, at 228.

closed.[27] The consumer selects a disbursement method when applying for the loan, and this method is used for both the loan proceeds and the remaining balance after the tax refund is received.

IRS regulations prohibit tax preparers from originating RALs.[28] Depository institutions partner with large tax preparation firms,[29] smaller electronic return originators (EROs),[30] and tax preparation software providers to originate RALs, sometimes with the assistance of third party vendors. These regulations also require the disclosure that RALs are interest-bearing loans that do not allow the consumer to receive their tax refund more quickly than a direct deposit or check from the IRS.[31] The RAL's APR must be disclosed based on an estimate of the number of days that the loan will be outstanding.[32]

RAL lenders face a risk of non-payment when a consumer's refund is lower than anticipated, usually due to a federal tax lien. Of the federal taxpayers who filed by February 15 and applied for a RAL during the 2017 tax season, 4.7% received a lower refund than expected; 80.9% of

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[27] *Id.*

[28] Internal Revenue Service, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*, IRS Pub 1345, Rev. 4-2014, *available at* https://www.irs.gov/pub/irs-pdf/p1345.pdf.

[29] The largest storefront tax preparation firms offering RALs, and also RACs, are H&R Block, Inc., Jackson Hewitt, and Liberty Tax, Inc., along with their franchises.

[30] The IRS defines an electronic return originator (ERO) as an "Authorized IRS e-file Provider that originates the electronic submission of a return to the IRS." *See* Internal Revenue Service, *Electronic Return Originator*, (Nov. 27, 2017), *available at* https://www.irs.gov/e-file-providers/electronic-return-originator. As used in this paper, ERO is a general term that encompasses Certified Public Accountants (CPAs), tax attorneys, IRS-enrolled agents, and tax-preparation businesses that offer tax refund-related financial products, and is used to distinguish the large tax preparation firms from the rest of the tax preparation market.

[31] Internal Revenue Service, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*, *supra*.

[32] *See* 12 CFR 1026.17(c)(2)(i), comment 17(c)(17)-i. In 2015, the Bureau brought an enforcement action against a tax preparation firm for illegally understating RAL APRs, illegally steering consumers, and unfairly failing to disclose the availability of consumers' tax refunds. The Bureau obtained a stipulated final judgment and an order was entered for consumer refunds of interest and fees, civil penalties to the Bureau, and banning the individual defendants from the market for five years. *See* Press Release, Consumer Fin. Prot. Bureau, *CFPB and Navajo Nation Take Action to Stop an Illegal Tax-Refund Scheme*, (Apr. 14, 2015), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-navajo-nation-take-action-to-stop-an-illegal-tax-refund-scheme/.

these refunds were offset to repay a federal tax debt from a prior tax year.[33] In addition, consumers may exercise their right to withdraw Automated Clearing House (ACH) authorization for the lender to collect payments via direct debit. Despite these risks, most RAL lenders' financial filings state they have no remedy or option to collect if the refund is less than expected.[34] One lender's RAL agreement expressly states that the consumer is not liable if their federal and state tax refunds do not cover the amount of the loan.[35] In addition, at least one RAL lender states that it does not report unpaid RAL debt to consumer reporting agencies.[36]

Market trends

RALs have been on the market since 1987.[37] At the peak of RAL lending in tax season 2003, borrowers took out 12.7 million RALs and paid $1.1 billion in RAL fees.[38] The effective APR for the average loan amount of $3,300 in 2009 was 72%.[39] Beginning in the 2011 tax season, the IRS removed the "debt indicator" that was used by tax preparers and RAL lenders to determine

[33] Taxpayer Advocate Service, *supra*, at 231.

[34] *See* Republic Bancorp, Inc., *Form 10-K 2017*, at 11 (Dec. 31, 2017) ("If an insufficient refund to repay the EA [Easy Advance] occurred: there was no recourse to the taxpayer customer, no negative credit reporting on the taxpayer customer, and no collection efforts against the taxpayer customer."); *see also* Meta Financial Group, Inc., *Form 10-K 2017*, at 10 (Sept. 30, 2017) ("In the event of default, the Bank has no recourse against the tax consumer.").

[35] *See Bank Product Application and Agreement (Application/Agreement)* at http://www.zillionforms.com/2016-Deleted/F700250198.pdf (last visited Feb. 28, 2018).

[36] *See* Republic Bancorp, Inc., *supra*. This is consistent with the fact that short-term and single-payment loans such as RALs do not easily fit within Metro 2 furnishing classifications and reporting periods and are not typically reported to the national consumer reporting agencies. Metro 2 is the standard electronic data reporting format developed by the Consumer Data Industry Association. *See Furnishers of Data Overview* at https://www.cdiaonline.org/resources/furnishers-of-data-overview/metro2-information/ (last visited Mar. 12, 2018).

[37] Taxpayer Advocate Service, *supra*, at 228.

[38] National Consumer Law Center, *Major Changes in the Quick Tax Refund Loan Industry*, at 6 (Feb. 2010), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/report-ral-2010.pdf.

[39] *Id.*, at 10.

whether a portion of a consumer's tax refund would be offset for delinquent tax or other debts.[40] The IRS stated that its capacity to expedite return processing and deliver refunds within 10 days, particularly with e-filing and direct deposit,[41] decreased the need for RALs.[42] It noted that RALs, as well as RACs, were "often targeted at lower-income taxpayers."[43]

Removing the debt indicator led to a 72% decrease in RALs in the 2011 tax season, since it was the primary underwriting tool for the loans.[44] The prudential regulators subsequently required depository institutions to consider such underwriting factors when making RALs as income, employment, credit score, credit utilization, and recurring bill payment patterns, in order to assess the consumer's ability to repay a RAL if the refund was less than anticipated.[45] In addition, the largest tax preparation chains generally provide the depository institutions that originate their RALs with limited guaranties to cover anticipated losses associated with their loan programs.[46]

As tax preparers moved away from offering RALs, RACs became the main tax refund-related financial product on the market. Approximately 18.8 million returns for tax year 2014 had RAC indicators;[47] in addition, more than 39% of the 26.6 million EITC filers in tax year 2014, or 73% of the EITC filers who used paid preparers, requested a RAC.[48] A small share of EITC filers, 0.1% of EITC filers or 0.2% of EITC filers who used paid preparers, requested a RAL.[49]

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[40] Press Release, Internal Revenue Service, *IRS Removes Debt Indicator for 2011 Tax Filing Season*, IR-2010-89, (Aug. 5, 2010), *available at* https://www.irs.gov/newsroom/irs-removes-debt-indicator-for-2011-tax-filing-season.

[41] E-filing is a term that means filing a tax return electronically, as opposed to paper filing.

[42] Internal Revenue Service, *IRS Removes Debt Indicator for 2011 Tax Filing Season*, *supra*.

[43] *Id.*

[44] Taxpayer Advocate Service, *supra*, at 230.

[45] Office of the Comptroller of the Currency, *supra*; *see* FDIC enforcement action against Republic Bank & Trust, FDIC-10-079b, (Feb. 9, 2011), *available at* https://www.fdic.gov/bank/individual/enforcement/2011-03-87.pdf.

[46] *See* H&R Block, Inc., *supra*, at 2; *see also* Liberty Tax, Inc., *supra*, at 14.

[47] National Consumer Law Center, *Big Changes Burden Taxpayers: New Law Delays Refunds, Drives Demand for Loans; Immigrant Taxpayers Face Challenges*, at 5 (Mar. 2017), *available at* https://www.nclc.org/images/pdf/taxes/report-taxpayer-burden.pdf.

[48] The Brookings Institution, *Earned Income Tax Credit (EITC) Interactive and Resources*, (Dec. 21, 2016), *available at* https://www.brookings.edu/interactives/earned-income-tax-credit-eitc-interactive-and-resources/. EITC filers

Recently, RALs have resurfaced in the market. The IRS accepted more than 1.7 million returns with RAL indicators in 2017, compared to nearly 0.5 million a year earlier.[50] One of the adjustments to the tax code that went into effect in 2017 as a result of the Protecting Americans from Tax Hikes (PATH) Act required the IRS to hold refunds that included either the EITC or the Additional Child Tax Credit (ACTC) until after February 15 of each tax season.[51] This delay appears to have contributed to the tripling of demand for RALs in 2017, with one major tax preparation chain marketing its new RAL product as a "valuable life line" for taxpayers affected by the legislation.[52] The trend appears to have continued in 2018. The largest tax preparation firm reported that its 2018 RAL application volume increased 14% year-over-year from 2017 to 1.2 million.[53] Figure 1 shows the change in RAL demand over time, with 2017 RAL levels approaching 2010 counts but remaining below the 2002 peak.

requesting a RAC (10.4 million) represented approximately 55% of all filers requesting a RAC in tax year 2014 (18.8 million).

[49] *Id.*

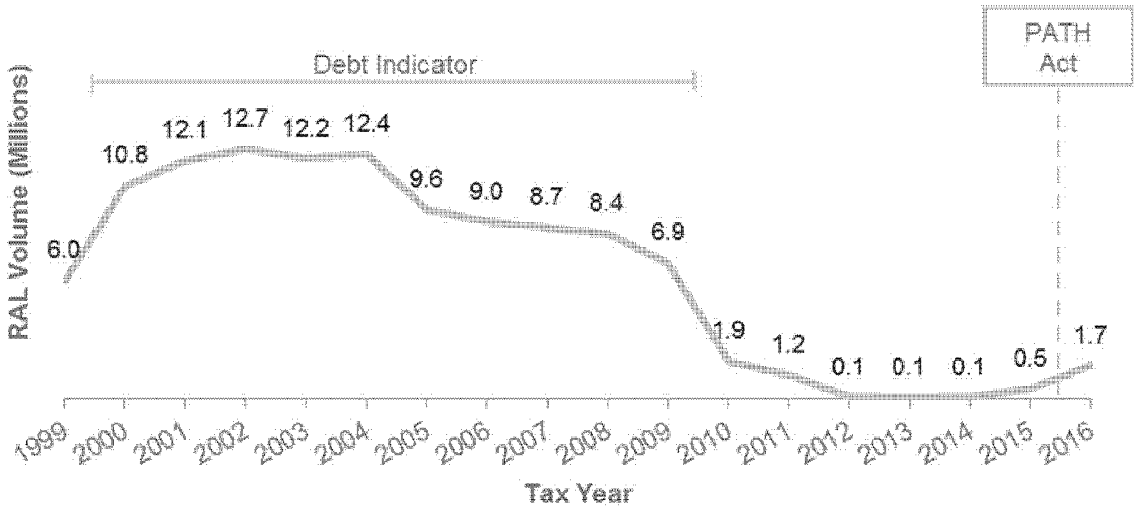
[50] Taxpayer Advocate Service, *supra*, note 2 at 227.

[51] Protecting Americans from Tax Hikes Act of 2015, *available at* https://waysandmeans.house.gov/the-protecting-americans-from-tax-hikes-act-of-2015/.

[52] Press Release, H&R Block, Inc., *H&R Block Announces Two New Offers: Refund Advance of Up to $1,250 and Free Federal 1040EZ*, (Jan. 9, 2017), *available at* https://www.hrblock.com/tax-center/newsroom/around-block/offers/tax-refund-advance-and-free-federal-1040ez-offer/.

[53] The 2018 RAL application volume refers to the number of RAL applications completed by February 28, 2018, the end of the 2018 RAL season for H&R Block. H&R Block, Inc., *H&R Block's (HRB) CEO Bill Cobb on Q3 2018 Results - Earnings Call Transcript*, (Mar. 6, 2018), *available at* https://seekingalpha.com/article/4153965-h-and-r-blocks-hrb-ceo-jeffrey-jones-q3-2018-results-earnings-call-transcript?part=single.

FIGURE 1: REFUND ANTICIPATION LOAN (RAL) DEMAND FROM TAX YEARS (TYS) 1999 TO 2016[54]



Product comparison

Current RALs are often no-fee 0% APR loans that are offered in conjunction with tax return preparation services.[55] Other RALs on the market today include interest or fees that, for example, result in a disclosed APR of 29.9% on a sample $1,000 loan for 21 days.[56] The tax preparation firms that offer RALs generally pay a fee to the depository institutions that originate

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54 Counts from Urban Institute and Internal Revenue Service, *Characteristics of Users of Refund Anticipation Loans and Refund Anticipation Checks* (2010) for tax years 1999 through 2007 and from Compliance Data Warehouse (CDW) for tax years 2008 through 2016 (as of Aug. 29, 2017). Cited from Taxpayer Advocate Service, *supra*, at 229.

55 Credit Karma introduced a free online tax filing service for the 2017 tax season, and added a no-fee RAL called an Earlybird Advance for the 2018 tax season. *See* Press Release, Credit Karma, *Credit Karma Tax Launches Earlybird Advance of $500 to $1000*, (Jan. 4, 2018), https://www.creditkarma.com/about/releases/credit-karma-tax-earlybird-advance-free-refund-advance-loans.

56 *See Legal Disclaimers* at https://www.sbtpg.com/fastcash-advance (last visited Jan. 2, 2018).

the loans,[57] but are often contractually prohibited from passing the fees on to the borrowers.[58] However, one tax preparation firm appears to allow franchisees to offset the cost of the RAL by adding optional fees, including a federal e-filing fee of up to $40.[59]

The average federal RAC cost charged by the major tax preparers we reviewed was approximately $37 in the 2018 filing season. The pricing structures varied across providers, with some charging additional fees for a particular disbursement method such as a paper check or direct deposit.[60] A consumer who files a federal form 1040 and state return without itemized deductions pays an average tax preparation fee of $176.[61] The purchase of a RAC costing $37 adds, on average, an additional 21% of the amount of the tax preparation fee to defer payment and to open a temporary bank account. For a consumer with a more complex return who incurs an average fee of $457,[62] the RAC fee adds 8% to the cost of tax preparation.

RALs and RACs are structured to meet different consumer needs. Consumers who apply for RALs are seeking advance funds, while those who apply for RACs are seeking to defer payment

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[57] H&R Block pays $32-$36 per RAL to the bank that originates the RALs it advertises. *See* H&R Block, Inc., *Form 10-K 2017*, *supra*, at 2.

[58] For example, Republic Bank & Trust specifically prohibits its tax providers from passing these fees to the taxpayer customers. *See* Republic Bancorp, Inc., *supra*.

[59] Kimberly Pierceall, The Virginian-Pilot, *No Fees for that $3,250 Refund Advance Loan from Liberty Tax? Think Again*, (Mar. 2, 2018), *available at* https://pilotonline.com/business/consumer/article_4accf2f9-b76a-5ce0-9404-2138eca89d5d.html (last visited Mar. 5, 2018); *2018 Advance Program Pricing* at https://bloximages.newyork1.vip.townnews.com/pilotonline.com/content/tncms/assets/v3/editorial/8/89/88919ffe-93c2-5e80-b99f-11cf69e658c8/5a970776e2dcc.pdf.pdf (last visited Mar. 5, 2018).

[60] We obtained 2018 RAC fees for H&R Block, Jackson Hewitt, Republic Bank & Trust, River City Bank, and Santa Barbara Tax Products Group. *See Flexible Options* at https://www.hrblock.com/financial-services/tax-refund-payment/ (last visited Jan. 26, 2018); Lomeli v. Jackson Hewitt Inc. et al., United States District Court, Central District of California, Case No.: 2:17-cv-2899, *available at* https://www.courthousenews.com/wp-content/uploads/2017/04/Jackson-Hewitt.pdf; *Pricing Plans* at https://www.republicrefund.com/products/pricing-plans.aspx (last visited Dec. 11, 2017); *2018 Freedom to Choose Pricing Tiers* at http://www.rcbral.com/pricing.aspx (last visited Jan. 26, 2018); *The Facts* at https://www.sbtpg.com/refund-transfer (last visited Jan. 26, 2018). Note that a RAC of the federal refund may be referred to as a federal RAC or federal refund transfer.

[61] National Society of Accountants, *supra*.

[62] *Id.*

of tax preparation fees or obtain a temporary bank account for direct deposit of their tax refund. Some RAL and RAC providers cross-sell their tax refund-related products; for example, at least one lender offers both products on the same application form, as well as additional RAL disbursement methods to consumers who also apply for RACs.[63] Many preparers also offer prepaid cards – sometimes company-branded cards – as RAL disbursement methods.[64]

Conclusion

Based on current trends, it appears that the growth in demand for RACs and RALs will continue over the near term. The delay of tax refunds until mid-February for EITC and ACTC recipients resulting from the PATH Act creates an increased demand for tax refund-related products. In order to obtain a refund, a consumer needs to prepare and file their taxes, may want a bank account to receive the refund or an account that is protected from other offsets, and may desire expedited access to loan funds before receiving their tax refunds. RACs and RALs are marketed to serve these needs.

[63] *See Bank Product Application and Agreement (Application/Agreement)*, at http://www.zillionforms.com/2016-Deleted/F700250198.pdf (last visited Feb. 28, 2018); *see also Easy Advance Plus*, *Easy Advance Basic*, and *preACK Easy Advance* at https://www.republicrefund.com/Products/EasyAdvance.aspx (last visited Jan. 24, 2018).

[64] Prepaid cards may carry additional costs for consumers such as ATM withdrawal and balance inquiry fees, monthly and transaction fees, and inactivity fees.

Spotlight: The Role of Bank Branches Today

Office of Card, Deposits, and Payments Markets

Michael Thompson

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*

Introduction

Bank branches have undergone significant changes in the last decade. Banks both large and small substantially reduced their branch footprints in the wake of the mortgage crisis.[1,2,3] The same period saw innovations in branch design and deployment, as well as the expansion of new channels for account servicing such as online and mobile banking, and many banks grew ATM networks and services.[4]

This spotlight first describes different bank branch models. That review covers the evolving role of bank branches with the implementation of technology-driven services offerings. In a subsequent Market Spotlight, we will detail the recent downward trend in the scope of branch networks.

Branch services

A traditional full-service bank branch is designed with the primary purpose of opening and servicing deposit accounts. Typically, a majority of staff, equipment, and retail space in a branch is dedicated to deposit account servicing. Many of the core services that consumers expect from a bank branch are defined by this function. Consumers can perform routine functions such as make a deposit, open an account, check their balance, and withdraw funds. Branches remain the primary channel for deposit account openings. Industry analysts have reported that 74% or more of deposit account openings occur in a branch.[5,6]

Loan origination is another key function of branches. For example, in 2017, a leading analyst reported that 62% of home equity loans, 59% of mortgages, 48% of automobile loans, and 38%

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[1] Matt Egan, *Wells Fargo is closing over 400 branches*, CNN Money (Jan. 13, 2017), *available at* http://money.cnn.com/2017/01/13/investing/wells-fargo-branch-closures/index.html.
[2] Tina Wadhwa, *America's biggest banks are closing hundreds of branches*, Business Insider (Oct. 23, 2016), *available at* http://www.businessinsider.com/bank-branches-around-the-world-are-shrinking-in-favor-of-digital-models-2016-10.
[3] Rachel Louise Ensign and Coulter Jones, *How Bank of America Ditched 1,567 Branches Across the U.S.*, The Wall Street Journal (Sept. 17, 2017), *available at* https://www.wsj.com/articles/how-bank-of-america-ditched-1-597-branches-across-the-u-s-1505646000.
[4] Mercator Advisory Group, *2017 ATM Market Benchmark Report,* (November 16, 2017).
[5] JD Power, *U.S. Retail Banking Satisfaction Study,* (April 26, 2018), *available at* http://www.jdpower.com/press-releases/jd-power-2018-us-retail-banking-satisfaction-study.
[6] Mercator Advisory Group, *Digital Banking: Shift to smartphones may require new support,* (March 2017).

of credit cards are originated in branches.[7] Many institutions use branch interactions as an avenue to promote loan products to depositors. Consumers commonly possess multiple products from their primary deposit account provider. Customer acquisitions and loan originations increasingly occur digitally via direct mail and customer emails; however, younger consumers, unlike their older counterparts, are just as likely to visit a branch to apply for a loan or open a credit card as they are to apply online.[8] Factors such as younger consumers having fewer credit cards and receiving fewer direct mail offers may contribute to their higher incidence of in-branch applications.

Consumers may visit branches to seek financial advice from branch bankers. Bankers may promote savings and time deposits, brokerage accounts, and investments. Some bank branches offer additional services to account holders, such as notary services, safe deposit boxes, and the ability to redeem Federal Savings Bonds.

Branch engagement

Today, branch services are often duplicative of services offered through other channels, such as telephone, mobile, and online banking as well as ATMs. However, branches are still utilized by a majority of consumers even as internet and mobile banking gain wider adoption. Among bank customers surveyed in 2017, 71% reported visiting a branch in the past twelve months. Among only millennial customers, the same share, 71%, reported visiting a branch in the past twelve months.

Consumers that visit branches are likely to do so on multiple occasions throughout the year. A leading industry analyst reports that on average, customers used a branch fourteen times a year and millennial customers used a branch eleven times a year.[9] A separate survey found that 68% of account holders visited a branch at least monthly and among account holders under age 35, 71% reported visiting a branch at least monthly. The high frequency of branch visits is in part due to the frequency that consumers visit branches solely to use an ATM—an action that could

[7] David W. Helin and Stephanie Sadowski, *Banking on Value: Rewards, Robo-Advice and Relevance, North America consumer Digital Banking Survey*, Accenture Consulting (July 25, 2017), *available at* https://www.occ.treas.gov/topics/bank-management/mutual-savings-associations/consumer-retail-banking-survey-summary-presentation-jul-2017.pdf.
[8] Mintel, *Bank Branch Innovations*, (Oct. 2017).
[9] JD Power, *2017 U.S. Retail Banking Satisfaction Study*, (April 27, 2017), *available at* http://www.jdpower.com/press-releases/jd-power-2017-us-retail-banking-satisfaction-study.

be performed whether or not the ATM is located at a branch. ATM cash withdrawals were the second-most-cited reason for visiting a branch, followed by check deposits at the teller counter. When restricted to branch teller transactions, a smaller portion of account holders, 39% (and 45% under age 35), report interacting with a branch teller on at least a monthly basis.[10]

Market research suggests that many customers that utilize digital services still value access to in-branch servicing. Digital banking users continue to consider proximity of branches when selecting new accounts.[11] Customer satisfaction surveys have repeatedly shown greater customer satisfaction among those engaged in both digital and in-branch channels.[12,13,14] One market analyst reports similar levels of satisfaction with individual services channels, suggesting that customer satisfaction is driven less by the type of servicing than it is by variety of engagement.[15] Many in industry promote omnichannel banking where branches remain a servicing option even for digital-first customers.

Value to banks and customers

Bank branches were traditionally the primary way that a bank would interact with its customers. The visibility of branches also drove awareness of the bank and, therefore, new customers as well.[16] Historically, branches have been the main vehicle through which banks attract the deposits needed to fund their lending businesses.

Today, even as more customers more frequently use online and mobile banking channels, many institutions continue to rely on branches to attract new customers and retain current customers.[17] Jonathan Velline, head of business strategy and administration for Wells Fargo,

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[10] Mercator Advisory Group, *Omnichannel and Branch Banking: Getting It Right,* (March 2018).
[11] Mintel, supra note 8.
[12] Daniela Yu & Jon Hughes, *Banks are getting their channel strategies wrong*, Gallup (Oct. 25, 2016), *available at* http://www.gallup.com/businessjournal/196640/banks-getting-channel-strategies-wrong.aspx.
[13] Beth Youra, *Most Bank Customers Would Trade Personal Banking for Digital Banking*, Gallup (April 27, 2015), *available at* http://news.gallup.com/opinion/gallup/182813/bank-customers-trade-personal-banking-digital-banking.aspx.
[14] JD Power, *2018 U.S. Retail Banking Satisfaction Study*, (April 26, 2018), *available at* http://www.jdpower.com/press-releases/jd-power-2018-us-retail-banking-satisfaction-study.
[15] Mercator Advisory Group, supra note 10.
[16] JLL Research, *Branch banks: Navigating a sea of industry change*, JLL (2017), *available at* www.us.jll.com/united-states/en-us/Research/US-Banking-Outlook-2017-JLL.pdf.
[17] Jeffry Pilcher, *Do Banks Need Branches in the Digital Age?*, The Financial Brand (Feb. 6, 2017), *available at* https://thefinancialbrand.com/63679/bank-credit-union-branch-network-strategy/.

stated in 2015 that "our stores are so central to the communities they serve... that we can't imagine not having that. Why would we take that away when it's such a strong part of the value we're delivering?"[18,19] More concretely, JPMorgan estimated in 2016 that each of the bank's branches "earns about $1 million in annual profit, but takes a decade to reach its full potential."[20,21]

For consumers who are less interested in using online or mobile banking, or who might require assistance with these services, bank branches provide access to financial services. For all consumers, bank branches can provide convenient access to banking services and a place to get personalized financial advice. Additionally, customers can perform large cash transactions at bank branches that ATMs cannot handle, which make branches important for cash-based businesses. Self-service branches can provide live assistance through video kiosks but do not house all of the functionalities of a traditional branch. Branches are uniquely valuable to banks as a means to help customers navigate complex financial situations, cross-sell products and services, and acquire and onboard new customers.[22]

Evolving branch service models

As many banks redesign and update branches and transition to a smaller overall branch footprint, many are creating or evolving two distinct types of branches: flagship and self-service.[23] Both service models aim to limit the resources expended on low-value transactions.

[18] Penny Crosman, *Wells Fargo holds fast to branches, ties them to digital channel*, American Banker (Feb. 24, 2015), *available at* https://www.americanbanker.com/news/wells-fargo-holds-fast-to-branches-ties-them-to-digital-channel.

[19] PYMNTS, *Wells Fargo Replaces, Restructures Exec Team*, PYMNTS (May 31, 2017), *available at* https://www.pymnts.com/news/banking/2017/wells-fargo-replaces-restructures-exec-team/.

[20] Freed, *U.S. banks want to cut branches, but customers keep coming*, Reuters (Aug. 22, 2016), *available at* https://www.reuters.com/article/us-usa-banks-branches-idUSKCN10X0D6.

[21] Branch profitability is a subjective measurement that will vary between banks and depends on a branch's purpose or function for the bank.

[22] Karen Augustine, *Rewards and better interest rates are U.S. consumers' top reasons for switching banks*, Mercator Advisory Group (Feb. 1, 2017), *available at* https://www.mercatoradvisorygroup.com/Templates/BlogPost.aspx?id=6101.

[23] Flagship and self-service models represent the current direction of branch strategy. Banks however have operated and continue to operate many types of branches such as large traditional branches with many teller lines, in-store branches (commonly grocery stores), small traditional branches, and engagement oriented community branches. Banks are overall moving toward smaller branches, a trend which began prior to the advent of digital delivery channels.

Flagship branches are often upscale, in high-traffic areas, and focus on providing personalized advice and communication with customers. Flagship branches aim to shift emphasis away from teller line transactions, which consume much of the retail space in a traditional branch. With mobile and online banking, ATMs, and in-branch self-service kiosks capable of handling many deposit servicing needs, more staffing and retail space at flagship branches can be devoted to driving sales and deepening customer relationships. Flagship branches also serve to create brand awareness among noncustomers. For example, at the far end of the spectrum of high-visibility, sales-oriented branches is the Capital One Café, located in high-traffic city neighborhoods and combining elements of coffee shops, co-working spaces, and branch sales staff.[24]

In contrast, self-service branches consist of electronic kiosks (which may provide video capabilities for advice and communication) and ATMs that allow customers to perform the various transactions normally fulfilled by branch tellers.[25] Self-service locations may also include some in-person teller staff to assist with and complete transactions. In addition, banks also deploy self-service kiosks in existing locations to lower transaction costs.[26]

Costs, staffing needs, and locations differ significantly across these two models (see sidebar, "Cost of a bank branch"). When assessing the branch networks of large banks, some have also proposed the development of community branches, which are smaller branches that focus on financial education and community engagement.[27] The community engagement model is not as prevalent among banks with vast branch networks. In general, banks are downsizing branch networks, reducing the average size of branches, and using increased automation to shift staff time away from lower-value transactions.

Implementations of new service models may vary by institution size. Technological change has disproportionately impacted the operations of the largest banks that have implemented online and mobile servicing features and deployed self-service functionality in branches. Smaller banks

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[24] *See* https://www.capitalone.com/local/.
[25] David Albertazzi, *Branch Technology Evolution: Capabilities to Meet Retail Banking Challenges,* Aite (Nov. 2016).
[26] One large regional bank estimated that 60 – 70% of branch transactions were low value-added and estimated that up to 80% could be automated. *See* Julie Conroy, *Instant Issuance: Driving Card Use and Self-Service Channels,* Aite (Sept. 2016).
[27] *Retail Banking 2020: Evolution or Revolution?,* PricewaterhouseCoopers (2014), *available at* https://www.pwc.com/gx/en/industries/financial-services/banking-capital-markets/banking-2020.html.

are able to incorporate new technology into their retail delivery, but often must rely on off-the-shelf solutions from vendors.

Cost of a bank branch

A bank can gain a branch through one of two methods. It can build a new bank branch (a "de novo branch"), or it can acquire a pre-existing branch from another depository. Acquisition of a branch can include the property alone, include the deposits and possibly assets as well, or be part of a broader acquisition of a bank.

In 2016, banks surveyed reported that the average land cost for a de novo branch was $930,000 and average construction costs (excluding land) were $1.5 million.[28] Annual fixed costs of large full-service branch range from $2-4 million (or more for flagship branches) with additional variable costs depending upon staffing and configuration of the branch.[29] Estimates from 2012 put renting, equipping, and staffing costs at 40-60% of branches' total operating costs with computer systems making up most of the rest.[30] In addition, staffing has become an increasingly costly component of in-branch servicing. A 2015 study of community bank and credit union teller transactions found that from 1992 to 2015, the number of transactions fell by 45.3% while staffing costs increased 90.1%.[31]

In addition to the costs of equipping and staffing a branch, accounting standards require ongoing expenses to account for the declining values of purchased assets. For example, branch equipment such as ATMs depreciates over the course of the equipment's useful life. The depreciation of these tangible assets is reflected in bank financial statements. Branch acquisitions also typically include an intangible asset, goodwill, which reflects the premium that the acquiring bank has paid in addition to a branch's value. Similar to depreciation, goodwill is amortized over time. Banks bear an ongoing reduction in net income to fund amortization and depreciation expenses.

The cost of operating a bank branch can vary widely according the branch service model. Larger branches are more costly to operate due to rent and staffing. Flagship branches, in addition to being large, are located in highly visible locations, and so the rent for these branches will tend to result in higher operating costs. Self-service technologies at branches can create significant cost savings by reducing both staffing as well as space needs. Up to 50% of the space in a typical branch is taken up by "teller-related activities."[32] Self-service technology such as videoconferencing allows banks to

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[28] Steve Reider, *Branch Costs and Size are Changing*, ABA Bank Marketing (Oct. 25, 2016), *available at* https://ababankmarketing.com/insights/branch-costs-and-size-are-changing/.
[29] Ed O'Brien, *Evolving Branch Banking Strategy*, Mercator Advisory Group (March, 2016)
[30] *Branches: Withering away*, The Economist (May 19, 2012), *available at* http://www.economist.com/node/21554746.
[31] W. Michael Scott, *Transforming the branch for sales and lower cost,* BAI (July 17, 2015), *available at* *https://www.bai.org/banking-strategies/article-detail/transforming-the-branch-for-sales-and-lower-cost*.
[32] Mitch Costom et al., *The untapped win-win in self-service banking*, Accenture Strategy (2015).

utilize staff across multiple branch locations. Many banks are beginning to rely more often on self-service branches and branded ATMs to establish a physical presence in a market. In contrast to branch presence, the number of financial institution-owned ATMs has modestly increased for several years.[33]

Branchless banking

A number of banks operate largely or entirely without branches, such as Ally Financial and USAA, and some banks with branch networks offer checking accounts products that do not feature branch access, such as Capital One's "Capital One 360." In addition, non-bank financial technology companies have emerged in recent years with branchless deposit account offerings. Several of these fintech companies have either applied for full bank charters (such as Varo Money), announced plans to purchase a chartered bank (such as Moven), or have become bank-owned (such as Simple, now a part of BBVA Compass). Many branchless deposit accounts, in particular those of monoline lenders, offer much higher annual percentage yields (APYs) than those offered by competitors that must recoup branch overhead expenses.

Many have speculated about the impact of this shift on bank branches. On the one hand, one of the biggest changes (and potential threats) in branches over the past 20 years is the adoption of new technologies. Online banks and fintech firms have operating models that may be better-situated to adapt to technological change. On the other hand, financial institutions have arguably adapted by incorporating new technology to make existing branches less costly to operate and more efficient. Evolving branch service models aim to reduce the volume of teller transactions and increase sales interactions. Technology is also employed in branches to improve teller transactions. For example, branch capture enables digital processing of checks, and cash counters reduce error and transaction times.

33 Mercator Advisory Group, *2017 ATM Market Benchmark Report*, (Nov. 16, 2017)

Conclusion

Bank branches remain a highly utilized channel for consumer deposit account opening and servicing, as well as for certain kinds of loan originations. Consumers across age groups report frequenting bank branches, as do users of online and mobile banking. Industry believes that branches will continue to be a fundamental service offering. However, many types of branch transactions are viewed by some banks as ripe for automation. New branch service models make use of technology to reduce teller costs and to refocus the branch experience on sales and customer relationships.

It is worthy of further consideration how closely self-service channels can substitute for traditional bank branches. While ATMs and self-service kiosks can likely fully replace deposit taking, banks and/or consumers might be unwilling to move other, more complex transactions to exclusively digital channels.

Market Intelligence

Market Information from RMR Market Offices

Spotlight: Earned-Wage Access Products

Office of Consumer Lending, Reporting, and Collections Markets| January 2019

Aarif Masani
Laura Udis

Market Spotlights provide a deep dive into one specific issue in a specific product line. They are intended to educate Bureau stakeholders on an important event or trend in a given product line.

**Note: Market Spotlights are internal work products of the Market Offices. They are intended for background informational purposes only and do not represent the view of the Bureau.*

Introduction

Background

Recent developments by federal regulators concerning short-term, small-dollar credit have brought renewed attention to credit products that may serve as alternatives to, or substitutes for, payday loans. The OCC withdrew its guidance on Deposit Advance Products (DAPs) that had effectively prohibited national banks from offering DAPs,[1] released a bulletin encouraging national banks to offer short-term, small-dollar loans,[2] and announced it would move ahead with a special purpose fintech charter.[3] Meanwhile, the National Credit Union Administration (NCUA) recently proposed a rule that would expand the scope of its Payday Alternative Loan program[4] and the Department of the Treasury released a report encouraging the FDIC to rescind its DAP guidance,[5] which the FDIC indicated it is considering.[6] Additionally, the FDIC announced it is seeking public comment on issues related to small-dollar lending.[7] Finally, the Bureau announced it plans to reconsider its 2017 Payday Rule.[8]

At the same time, some fintechs have developed earned-wage access (EWA) products as alternatives to payday loans. These companies address the lag between employees' hours worked and receipt of their paychecks by offering partial advance access to earned but unpaid wages. These advances are then withheld from subsequent paychecks.

Current payroll landscape

Most states require employers to pay wages at least weekly, biweekly, semimonthly, or monthly.[9] A Bureau of Labor Statistics study found that two-thirds of private businesses operate

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[1] Office of the Comptroller of the Currency, *Acting Comptroller of the Currency Rescinds Deposit Advance Product Guidance* (Oct. 5, 2017), *available at* https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-occ-2017-118.html.

[2] Office of the Comptroller of the Currency, *Comptroller Urges Banks to Meet Consumers' Short-Term, Small-Dollar Credit Needs* (May 23, 2018) *available at* https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-51.html.

[3] Office of the Comptroller of the Currency, *OCC Begins Accepting National Bank Charter Applications From Financial Technology Companies* (July 31, 2018), *available at* https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html.

[4] National Credit union Administration, *NCUA Wants to Expand Payday Lending Alternatives for Credit Unions, Consumers* (May 24, 2018) *available at* https://www.ncua.gov/newsroom/Pages/news-2018-may-expand-payday-lending-alternatives-credit-unions-consumers.aspx.

[5] Department of the Treasury, *Treasury Releases Report on Nonbank Financials, Fintech, and Innovation* (July 31, 2018) *available at* https://home.treasury.gov/news/press-releases/sm447.

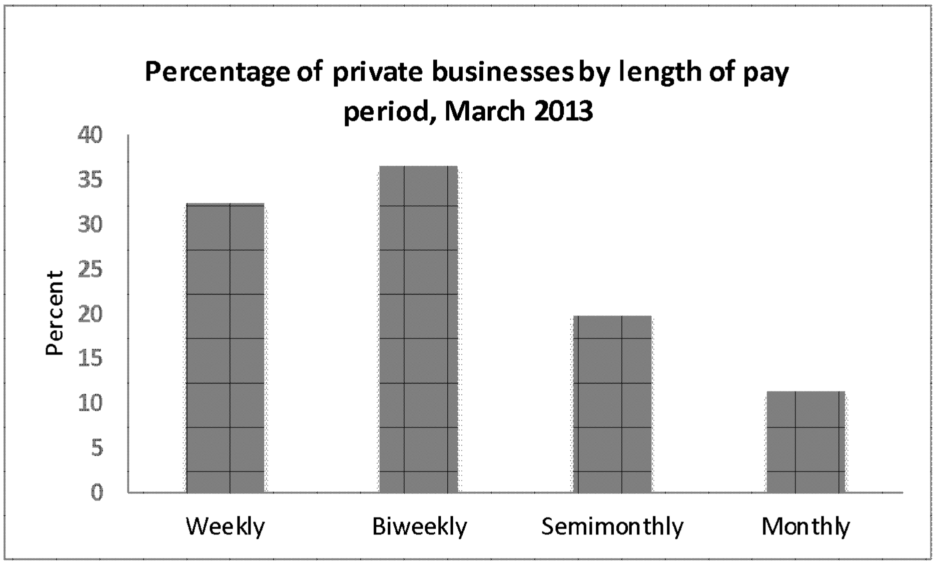
[6] *See* Ryan Tracy, *New FDIC Leader Joins Push to Re-Evaluate Banking Rulebook,* Wall Street Journal (Aug. 6, 2018) *available at* https://www.wsj.com/articles/new-fdic-leader-joins-push-to-re-evaluate-banking-rulebook-1533560401.

[7] Federal Deposit Insurance Corporation, *FDIC requests Information on Small-Dollar Lending* (Nov. 14, 2018), *available at* https://www.fdic.gov/news/news/press/2018/pr18084.html.

[8] *See* Consumer Financial Protection Bureau, *Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Dates* (Oct. 26, 2018), *available at* https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/ *and* Consumer Financial Protection Bureau, *CFPB Statement On Payday Rule* (Jan. 16, 2018), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/.

[9] *See* FindLaw, *Payday Laws and Your Right to a Timely Paycheck, available at* https://employment.findlaw.com/wages-and-benefits/payday-laws-overview.html (last visited Aug. 8, 2018)

under biweekly, semimonthly, or monthly pay periods.[10] A majority of Americans receive paychecks approximately every two weeks.



Source: U.S. Bureau of Labor Statistics[11]

The interval of time between the end of a pay period and receipt of a paycheck may be particularly pronounced for new employees when the length of time between the first day of employment and the first paycheck may be longer than subsequent paycheck intervals depending on where the hire date falls in a pay cycle. For all employees, the lag between paychecks may contribute to financial distress. A study by the Center for Financial Services Innovation found that 38% of respondents cited timing mismatches between income and expenses as a reason for using short-term, small dollar credit.[12]

Despite advancements in payment technologies over the past several decades, several obstacles prevent businesses from easily implementing shorter pay cycles. One industry expert cited cash flow limitations on businesses that depend on incoming payments and receivables, which subsequently need to be processed and deposited.[13] In the Bureau's 2017 Payday Rule, the Bureau noted that periodic wage payment "appears to be largely driven by efficiency concerns with payroll processing and employers' cash management."[14]

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[10] Bureau of Labor Statistics, *How frequently do private businesses pay workers?* (May 2014) *available at* https://www.bls.gov/opub/btn/volume-3/how-frequently-do-private-businesses-pay-workers.htm.

[11] *Id.*

[12] Levy, R. and Sledge, J., *A Complex Portrait: An Examination of Small-Dollar Credit Consumers*, Center for Financial Services Innovation *at* 6 (2012), *available at* https://s3.amazonaws.com/cfsi-innovation-files/wp-content/uploads/2017/01/31163518/A-Complex-Portrait-An-Examination-of-Small-Dollar-Credit-Consumers.pdf.

[13] *See* Pagliery, J., *Why do we get paid every two weeks instead of daily?* CNN Tech, (Feb. 10, 2016) *available at* http://money.cnn.com/2016/02/10/technology/daily-paychecks/index.html *and Online Payroll – Direct Deposit FAQ,* Intuit Quickbooks, *available at* https://help.quickbooks.intuit.com/en_US/kb/direct-deposit-dd-faq/000005614_en_US:SALESFORCE.modal (last visited Aug. 8, 2018)

[14] *See* Consumer Financial Protection Bureau, *Payday, Vehicle Title, and Certain High-Cost Installment Loans* (Nov. 17, 2017) *at* 54547, *available at* https://www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans.

Addressable market

The addressable market for these services is large. Any employee whose employer partners with one of these fintechs is eligible for employer-integrated EWA services. Additionally, any employee with consistent direct deposits can qualify for direct-to-consumer income smoothing services. Several large employers, including Walmart, McDonalds, and Home Depot already partner with EWA companies to provide their employees with access to earned wages.

Business Models

While business models vary across companies, some features of EWA products are ubiquitous:

Wage access is limited. Some companies allow a certain number of withdrawals per pay period, while others only allow access to a fixed dollar amount or percentage of earned wages.

Access to checking accounts or the employer's time, attendance, and payroll system is required. These companies view the consumer's salary and time and attendance records or require permission to view to a consumer's checking account data to verify predictable earnings or may require permission to withdraw funds to cover advances.

Companies offer additional financial services. These services vary from company to company and can include bank transfers, savings tools, payroll cards (which hold early-accessed wages in a debit account), and financial literacy/counseling.

Credit risk is generally nonexistent.[15] Since companies are offering access to wages that are *already earned* and the services typically integrate with an employer's payroll system, these fintechs have first call on a paycheck.

These companies can be broadly categorized in two ways: employer-integrated services and direct-to-consumer services.

Employer-integrated services

Several large firms partner with companies to provide earned-wage access to their employees. These EWA services integrate into an employer's HR/payroll system. Therefore, these products require employers to enroll with the service, which is subsequently offered to employees. These products market themselves as compatible with all HR/payroll systems, and do not require employers to pre-fund payroll; in other words, an employee's use of the early wage access product would not affect the employer's cash flow. These companies charge a usage-based or subscription-based fee, which some employers choose to subsidize.

These companies also advertise a number of benefits for employers, including:

> **Increased retention and associated savings.** One fintech claims its company partners have seen a 41% reduction in turnover for employees who use their service.[16]

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[15] While we use the term 'credit risk' here, whether EWA is considered 'credit' is an open legal question. See "Is it Credit?" on page 9.

[16] *See* https://www.dailypay.com/.

Additionally, the company claims that consumers are nearly twice as likely to apply for a job that pays daily.

Decreased absenteeism and increased motivation. 81% of employees say financial problems have affected their productivity, and companies market their services as solutions to financial problems that can increase productivity.[17]

Some of the largest employer-integrated early-wage access services are: (summary information is available in the Appendix)

PayActiv:[18] PayActiv integrates with an employer's payroll system to offer access to earned but unpaid wages to employees, including those without bank accounts. In addition to early wage access, PayActiv offers services including bill payments, bank transfers, financial counselling, and budgeting education.[19] PayActiv also offers a savings service that allows an employee to allocate units of time worked towards savings. The company believes that focusing on time rather than dollars leads to increased saving.[20] PayActiv charges a membership fee of $5 for each pay period in which the service is used. Employees can use the app multiple times within a pay period to access up to $500. In over 50% of cases, the membership fee is paid or subsidized by employers. PayActiv partners with Walmart to provide employees access to wages. As of January 2019, PayActiv had over 650,000 users who accessed over $1B in earned wages.[21] The company also offers its services through Automatic Data Processing (ADP), a large human resource management company with 700k+ employer clients representing 26M employees.[22]

DailyPay:[23] DailyPay integrates with HR and payroll systems and charges $1.25 for next-day transfers and $2.99 for instant transfers. Like other companies in this category, DailyPay links with HR and payroll systems and withholds or debits accounts after payday. Additionally, DailyPay offers tiered solutions for enterprises of different sizes. Approximately a third of users use DailyPay to transfer between $25 and $50, with about 80% transferring less than $100.[24] Companies who partner with DailyPay include:

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[17] For example, *see* http://www.wagebank.com/learn-more/ *and* Consumer Financial Protection Bureau, *Financial wellness at work (Aug. 2014)* at 8, *available at* https://files.consumerfinance.gov/f/201408_cfpb_report_financial-wellness-at-work.pdf

[18] https://www.payactiv.com/

[19] *See* https://www.payactiv.com/employees/#benefits

[20] Todd Baker and Snigdha Kumar, *The Power of the Salary Link: Assessing the Benefits of Employer-Sponsored Fintech Liquidity and Credit Solutions for Low-Wage Working Americans and their Employers* (Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Working Paper No. 88, May 2018) *at* 6, *available at* https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/working.papers/88_final.pdf.

[21] *See* PayActiv, *PayActiv Crosses $1B in Processed Funds for Timely Earned Wage Access to the Underserved and Underbanked Workforce* (Jan. 14, 2019), *available at* https://www.payactiv.com/billion-processed-funds-for-timely-earned-wage-access-underserved-underbanked-workforce/.

[22] *See* PayActiv, *PayActiv Joins ADP Marketplace to Provide Workers with Timely Access to Earned Wages* (July 25, 2018) *available at* https://www.payactiv.com/payactiv-adp-marketplace-timely-access-to-earned-wages/ *and* https://www.adp.com/.

[23] https://www.dailypay.com/

[24] *See* Kelsey Gee, *Workers Get Faster Access to Wages With These New Apps,* Wall Street Journal (Nov. 24, 2017) *available at* https://www.wsj.com/articles/apps-let-workers-make-every-day-a-payday-1511528400.

DoorDash, RLS Logistics, and UCode. The company claims that 5% of the U.S. workforce has access to DailyPay.[25] DailyPay also offers its services through ADP.[26]

Instant Financial:[27] Instant offers employees free and immediate access to 50% of that day's wages through its payroll card.[28] The company profits through its partnerships with employers, including: McDonalds, Yum! Brands (Taco Bell's parent), and Bloomin' Brands (Outback Steakhouse's parent). Of 1,300 employees at a franchise group of 54 McDonald's locations who have the Instant app, roughly 20% accessed their wages every day.[29]

FlexWage:[30] FlexWage allows employers to manage their employees' early access to earned wages. Employers can set parameters such as frequency of access, minimum and maximum allowable amounts, and fees. The average transaction amount is $~240, with 1.2 transactions per month per enrolled employee. Adoption rates range from 15 – 35%, with higher take-up in quick-service retail industries and lower takeup in call centers, manufacturing, and construction.[31] Additionally, FlexWage offers payroll cards in conjunction with its wage access product. The company markets its wage access product as a way to encourage payroll card adoption, which has lower associated costs than traditional payroll methods. FlexWage also partnered with a New York-based financial empowerment organization to offer WageGoal, another earned-wage access product. WageGoal charges $5 per advance and also allows employers to manage access. FlexWage also offers its services through ADP.[32]

Even:[33] Even allows employees of partner companies to access up to 50% of their earned but unpaid wages in their pay period. Even charges $6 to $8 a month for access, though employers can choose to subsidize the fee.[34] On average, users take out $200 in earned-wage advances.[35] Even also offers its services alongside PayActiv to Walmart employees. As of November 2018, more than 300,000 Walmart employees use Even, up from 80,000 in March 2018.[36] As part of its partnership with Walmart, Even also offers

[25] *See* https://www.dailypay.com/movement. Methodology not disclosed.
[26] *See* DailyPay, *ADP Makes A Bold Change, available at* https://business.dailypay.com/adp-new-daily-pay-benefit (last visited Sept 18, 2018).
[27] https://www.instant.co/
[28] Instant FAQ's, *available at* https://www.instant.co/faq/ (last visited Aug. 8, 2018).
[29] *See* Gee.
[30] http://flexwage.com/ aka "WageBank".
[31] Based on a Project Catalyst Office Hours discussion with Frank Dombrowski, founder and CO of Flexwage, in November 2016 and a CLRC Markets meeting with Frank Dombroski (Founder, CEO of FlexWage) in September 2018. Here, 'adoption' is defined as the percent of employees that sign up for FlexWage's service over the total number of employees. FlexWage speculates that takeup differs due to average age differences in the workforce of different industries—older workforces in certain industries are less mobile-centric and may be less likely to use their service.
[32] *See* FlexWage, *FlexWage Solutions Joins ADP Marketplace to Offer WageBank to Help Companies Eliminate Predatory Lending for Employees* (Nov 10, 2015), *available at* http://flexwage.com/blog/flexwage-solutions-joins-adp-marketplace-to-offer-wagebank-to-help-companies-eliminate-predatory-lending-for-employees/.
[33] https://even.com/
[34] *See* Jeff Kauflin, *VC's Bet $40 Million On Money App For Those Living Paycheck To Paycheck,* Forbes (July 19, 2018), *available at* https://www.forbes.com/sites/jeffkauflin/2018/07/19/payday-loans-be-gone-a-growing-set-of-startups-are-gunning-to-unseat-them/.
[35] Based on a CLRC Markets meeting with Quenten Farmer (COO, Even) in November 2018.
[36] *Id.*

advances based on projected earnings from the next pay cycle.[37] This feature is not strictly earned-wage access and is outside the scope of this report (see below). In addition, the company shows upcoming schedule and earnings information for Walmart employees, as well as an 'Ok to spend' number based on users' bank account data.[38] The company previously offered an income smoothing service called 'Pay Protection' that used algorithms to automatically save money from above-average paychecks and deposit money on below-average paydays; however, Even discontinued the service in 2017.[39]

Cardplatforms:[40] Cardplatforms is a payroll card provider that is piloting an EWA program called InstantWage for employers who use its payroll cards to disburse wages. InstantWage allows consumers to access up to 50% of earned net income on their payroll card. The company charges $3-$5 per transaction but is moving towards a subscription-based pricing model. The average advance is ~$80. According to the company, many users who advance their earned wages subsequently use InstantWage for bills such as utility payments.[41]

Other services: Some companies coordinate with employers to offer installment loans against unearned wages to employees at significantly lower cost than comparable available credit options.[42] Similar to these earned-wage products, repayments on these loans are drawn before wages are paid, significantly reducing credit risk and collections costs. Essentially, these loans are collateralized by wages. Since these loans are *not* strictly earned-wage access products, they are outside the scope of this report.

Direct-to-consumer services

At least two companies offer limited EWA directly to qualifying consumers—meaning employees can use these products without any involvement from employers. To qualify, a consumer must have consistent direct deposits into a checking account and typically must provide the firm access to view his or her bank account transactions and access to the account for repayment. These companies operate by verifying that a consumer has consistent and predictable direct deposits. Direct-to-consumer companies include:

Earnin[43] (formerly Activehours): Earnin provides EWA to qualifying employees of up to $500 per pay period. To qualify, employees must receive wages through direct deposits on a regular schedule and either have a fixed work location *or* an online

[37] Based on an internal briefing memorandum from an August 2017 Project Catalyst meeting with Even.
[38] Based on a CLRC Markets meeting with Quenten Farmer (COO, Even) in November 2018.
[39] Even cited a variety of factors that played a part in their decision to stop "even-ing." In particular, the model depended on contributions from above-average paychecks to even out below-average paychecks. However, the process of debiting accounts in above-average pay periods impeded some members' ability to manage their own finances. The company concluded that there were too many situations in which their income smoothing advances simply did not support a useful outcome. *See* Jane Leibrock, *Why Even stopped evening*, Even Blog (Dec. 14, 2017), *available at* https://blog.even.com/why-even-stopped-evening-2ee0fe4d8671.
[40] http://cardplatforms.com/
[41] All information is based on a CLRC Markets meeting with Jeff Foster (Founder & CEO, Cardplatforms) in January 2019.
[42] *See* Baker and Kumar *at* 8. Some of these companies are: Salary Finance (a UK company expanding to the USA in mid-2018), Ziero Finance (dba "HoneyBee"), and True Connect Loans.
[43] https://www.earnin.com/

timekeeping system.[44] To use the app, an employee must link their bank account and add their timesheets through the app or have their time worked tracked automatically.[45] After linking a user's bank account and analyzing paycheck deposit history, Earnin establishes a maximum pay-period dollar limit starting at $100, with the potential to increase over time to $500. Earnin also offers a service called 'Balance Shield' that sends up to $100 to a user's account whenever the account balance falls below $100. Earnin charges no fees; instead, the company asks users for tips of up to $14 each time they use the service (though users can refrain from tipping). As of 2014, the average advance amount and tip was $70 and $2, respectively.[46] Earnin also has a special partnership with Uber that allows drivers to access their wages immediately through the Earnin app.

Dave[47]: Dave is an app that connects with a consumer's checking account to project cash flow using 3 – 18 months of checking account history. If a consumer is in danger of overdrafting and is within 10 days of their next paycheck, Dave provides a $75 ACH transfer interest-free to be repaid from the consumer's next paycheck. If the advance is not repaid, the app will not allow another advance until the first is repaid. There is no limit to the number of advances a user can take, but Dave requires a 3-day cooling-off period. The app also offers budget tracking and balance notifications. To qualify, a user must have a minimum of $200 in direct deposits twice a month and a current account balance of more than $75.[48] Dave charges a $1 per month subscription fee and allows users the option to tip, with the average tip at less than $3. As of September 2017, Dave had ~20,000 users; 30% use its advance service, and 20% of those are repeat borrowers. The typical user earns $40-$70k per year. A quarter of users experienced 10 – 12 overdrafts in the past year.[49]

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[44] *See* Earnin, *Who can use Earnin? available at* https://help.earnin.com/hc/en-us/articles/213412107-Who-can-use-Earnin- (last visited Aug. 8, 2018).

[45] Earnin can track hours worked by tracking a user's location. This option works for users who have a fixed work location away from home and whose timesheets do not meet Earnin's timesheet requirements. Earnin can also track hours worked by accessing data through online timekeeping systems. *See* How do I upload my timesheet to Earnin, and what are the requirements? a*vailable at* https://help.earnin.com/hc/en-us/articles/213412517-How-do-I-upload-my-timesheet-to-Earnin-and-what-are-the-requirements- (last visited Aug. 8, 2018).

[46] These figures are based on an internal Markets discussion with Activehours that took place in 2014. Earnin does not disclose average advance amounts or tips.

[47] https://dave.com/

[48] *See* Dave, *How's it work? Available at* https://support.dave.com/hc/en-us/articles/360002649751-How-s-it-work last visited Aug. 8, 2018).

[49] Based on a CLRC Markets meeting with Jason Wilk (Founder and CEO, Dave) and others in September 2017.

Effectiveness as an Alternative to Short Term Credit

One research paper estimated that the maximum amount of additional liquidity that a low-income working family would need to deal with monthly fluctuations in income and expenses is between $700 and $980.[50] While individual employer policies on the proportion of accessible wages vary, the potential monthly utilization for a typical low-income family whose employer allows access of up to 50% of wages would be approximately $500, though true utilization depends on when access occurs in the pay cycle.[51] This suggests that while EWA could partially offset income volatility, a need for additional liquidity may still exist.

While EWA companies market themselves as alternatives to other short-term, small-dollar credit options, there is limited available evidence to support this assertion. A survey conducted by PayActiv asked its users what they would do if they didn't have timely access to earned but unpaid wages.[52] The survey produced the following results:

- "I would have paid an overdraft fee" – 31%
- "I would have taken a payday loan" – 22%
- "I would have deferred a bill and paid a late fee" – 38%
- "Other" – 9%

While the survey results appear to show that EWA *does* function as an effective alternative to short-term, small-dollar credit, the value of the survey is uncertain. Details on methodology – including number of respondents and how respondents were chosen – were not disclosed. Additionally, limited data is available on whether or not respondents utilized short-term, small-dollar credit options in the pay period *following* their use of EWA—after which respondents would have received a below-average paycheck.[53]

Inclusion and cost to consumers

A direct cost comparison between earned-wage access companies and short term credit companies is complicated by differences in operating models, both between EWA and short

[50] The author arrived at this estimate by using data from a 2015 JP Morgan Institute (JPMI) study on income volatility. The JPMI study found that the maximum concurrent monthly income and expense shocks for the bottom two income quintiles after deducting deposits was $1000 - $1400. This amount was adjusted downwards by 30% to reflect the voluntary capacity for families to increase income or decrease expenses. The author cited research that shows reductions of 11% - 17% in total monthly spending in reduced income months. *See* Baker *at* 15 *and* J.P. Morgan Chase Institute, *Weathering Volatility: Big Data on the Financial Ups and Downs of U.S. Individuals (May 2015) at* 16, *available at* https://www.jpmorganchase.com/corporate/institute/document/54918-jpmc-institute-report-2015-aw5.pdf.

[51] The median income of the two lowest income quintiles used by the Harvard and J.P. Morgan Institute studies is approximately $23.3k, or roughly $1k per pay period (2 weeks). A user who accesses 50% of earned wages halfway through the pay period could access $250 per pay period, or $500 a month. This per-pay-period amount is roughly in line with the average accessed amounts at some EWA companies.

[52] *See* footnote 21

[53] A summary statistic released by Even showed that ~28% of its users took out a payday loan in the months before signing up for the service, and fell to 20% in the four months after users signed up for Even. However, the data was based on usage behavior from December 2017 – September 2018 and does not correct for seasonality. No other details on methodology were disclosed. *See* Ken Sweet, *Advance pay service may reduce use of payday loans,* The Associated Press (Nov. 7, 2018), *available at* https://www.apnews.com/6ec19f9ce0684a3f9ce96711f4006ba1.

term creditors and within the EWA industry itself. However, several EWA companies market their products as cheaper alternatives to short-term loans.[54]

Researchers found that the cost of a payday loan was approximately six times higher than a comparable $200 wage access through PayActiv (which charges $5/month).[55] Employer-subsidized wage access programs would further decrease direct costs to employees.

In general, earned-wage access companies can charge lower rates than traditional short-term, small dollar credit because EWA companies do not typically face:

- Direct marketing/acquisition costs
- Fraud-related expenses
- Credit risk
- Brick & mortar expenses, for lenders who operate storefronts

Accessibility

Given the various types of short-term credit and the adoption of mobile-enabled lending by some short-term lenders, drawing a concrete comparison between the accessibility of short-term credit products and earned-wage access products is difficult. However, as the adoption of these fintechs by large employers implies, these companies are highly scalable, and—when implemented—are easily accessible online or through mobile devices.

Challenges

Implementation

In interviews conducted as part of a working paper on EWA companies, executives of employee-integrated companies expressed concerns about the length of time involved to acquire corporate customers and implement their EWA solutions. In order to keep the sales cycle short and startup costs low, some companies are focusing on seamless integration with payroll and HR systems, as well as continued education and promotion of the service to employees.[56] For example, several EWA companies have announced partnerships with ADP to offer their services to employers using ADP's systems.[57] Additionally, at least one company is offering free integration to employers of a certain size.[58]

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[54] For example, *see* https://www.payactiv.com/impact/ *and* https://www.instant.co/about/.

[55] In their comparison, the researchers assumed a rate of $15 per $100 for a 14-day, $200 payday loan. In the Bureau's Payday Rule, the Bureau found that the median storefront payday loan fee and loan term is $15 per $100 and 14 days, respectively. *See* Baker and Kumar *at* 10 and Consumer Financial Protection Bureau, *supra* note 14, *at* 54477.

[56] *See* Todd Baker, *Fintech Alternatives to Short-Term Small-Dollar Credit: Helping Low-Income Working Families Escape the High-Cost Lending Trap* (Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Working Paper No. 75, May 2017) *at* 58, *available at* https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/75_final.pdf.. These interviews were conducted in early 2017.

[57] These include PayActiv, DailyPay, and FlexWage.

[58] *See* http://www.wagegoal.com/.

Is it credit?

In its 2017 Payday Rule, the Bureau stated:

> *The Bureau notes that some efforts to give consumers access to accrued wages may not be credit at all. For instance, when an employer allows an employee to draw accrued wages ahead of a scheduled payday and then later reduces the employee's paycheck by the amount drawn, there is a quite plausible argument that the transaction does not involve "credit" because the employee may not be incurring a debt at all. This is especially likely where the employer does not reserve any recourse upon the payment made to the employee other than the corresponding reduction in the employee's paycheck.*
>
> *Other initiatives are structured in more complicated ways that are more likely to constitute "credit" under the definition set forth in § 1041.2(a)(11) and Regulation Z. For example, if an employer cannot simply reduce the amount of an employee's paycheck because payroll processing has already begun, there may be a need for a mechanism for the consumer to repay the funds after they are deposited in the consumer's account.*[59]

Efficacy of EWA

Since EWA products are a recent development and there is limited available public research about them, the potential benefits and drawbacks of income smoothing are yet to be determined. However, a New York University professor and director of the school's Financial Access Initiative research center pointed out that being paid less frequently may actually *help* people save money.[60] Additionally, one EWA company that previously offered advances for income smoothing cited expense volatility as an impediment to the usefulness of income smoothing in general.[61]

[59] *See* Consumer Financial Protection Bureau *at* 54547. The Bureau excluded certain earned-wage access programs from the 2017 Payday Rule's coverage, provided that they meet certain conditions. These conditions include that the programs a) advance only against accrued wages, b) do not require an employee to pay any charges or fees in connection with an advance, other than a charge for participating in the program, and c) have no legal or contractual claim against the employee based on the employee's failure to repay in the event the amount advanced is not repaid. The Bureau separately excluded no-cost advances that use zero fee, tip-based models, provided they meet similar conditions. See *Id.*, at 54873, § 1041.3(d)(7).

[60] *See* Gee.

[61] See footnote 39.

Appendix: Earned-Wage Access Companies

Company Name	Type	Max Accessible Amount	Fees	Additional Services
PayActiv	Employer-integrated	$500 per pay period	$5 for each pay period the service is used (can be subsidized by employers)	Automatic savings, bill payments, bank transfers, financial counselling, budgeting education, pharmacy discounts
DailyPay	Employer-integrated	N/D	$3 for instant transfers, $1.25 for next-day transfers	None
Instant Financial	Employer-integrated	50% of earned wages	N/D	Payroll cards
FlexWage	Employer-integrated	N/D	N/D	Payroll cards
Even	Employer-integrated	50% of earned wages	$6 to $8 per month (can be subsidized by employers)	
Earnin	DTC	$500	free (optional tips)	Balance Shield (free $100 advance when user's account is in danger of going negative)
Dave	DTC	$75	$1/month (optional tips)	Budget tracking
CardPlatforms	Employer-integrated	50% of earned wages	$3 - $5 per transaction	Payroll Cards

6.2.5 Reconsideration of Payday Rule

Introduction

The Division of Research, Markets and Regulations ("RMR"), in collaboration with the Legal Division, is in the process of drafting two Notices of Proposed Rulemaking (NPRMs) for release in January 2019 with respect to reconsideration of the Bureau's rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans ("Payday Rule").[1]

Overview

The Payday Rule focuses primarily on two types of short-term, small dollar loan products: payday loans and single-payment vehicle title loans. To obtain a payday loan a consumer generally provides the lender with proof of income (e.g., a pay stub) and a post-dated check or authorization to debit the consumer's checking account. The loan is due at the consumer's next scheduled payday or receipt of benefits, typically within two weeks. The usual fee for a payday loan is $15 per $100 borrowed. Vehicle title loans are typically for a somewhat larger amount ($700) and longer term (30 days) with a comparable cost. Instead of providing proof of income plus a post-dated check, the consumer turns over to the lender the consumer's vehicle title as collateral.

Payday loans are lawful in 34 states.[2] State laws vary in a number of respects including, e.g., the maximum loan size, maximum fee, maximum number of loans, minimum period between loans, and other factors. In the states where payday loans are permitted there are over 2,000 lenders and about 14,350 stores.[3] In addition, an undetermined number of online lenders offer payday loans; these lenders often claim either a tribal affiliation or an offshore presence and do not register with or consider themselves subject to state payday loan laws. Estimates as to the number of consumers using payday loans annually range from 2.5 million to 12 million.[4]

1.

[1] 82 Fed. Reg. 54472 (Nov. 17, 2017).

[2] Recently, Ohio enacted a law that, when implemented on April 27, 2019, will effectively prohibit short-term payday and vehicle title lending.

[3] John Hecht, Jefferies, LLC; Short Term Lending Update: Moving Forward with Positive Momentum (2018).

[4] The lower estimate comes from a survey conducted by the Federal Deposit Insurance Corporation (FDIC) and is on a household basis, *see 2015 FDIC National Survey of Unbanked and Underbanked Households,* at 2, 34, available at: https://www.fdic.gov/householdsurvey/2015/2015report.pdf and the higher estimate is from research conducted by Pew Charitable Trusts and is on an individual basis, *see Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2013), available at: http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

Single-payment vehicle title loans are lawful in 18 states, again subject to certain limitations that vary from state to state. There are an estimated 8,000 locations offering vehicle title loans (although this includes some locations which offer installment loans secured by a vehicle title). The number of consumers who use vehicle title loans each year is estimated at between 1.7 million and 2 million.[5]

Starting in 2012, the Bureau obtained loan-level data from a number of payday and vehicle title lenders and published a series of research reports focusing on the outcomes for consumers using such loans. The Bureau found, for example, that close to one-quarter of consumers who took out such loans ended up rolling over or reborrowing nine or more times in a row and that more than half of all loans are part of such lengthy sequences. The Bureau also found that 20 percent of payday loan sequences and 33 percent of single-payment vehicle title loan sequences ultimately end in default, with 20 percent of single-payment vehicle title loan sequences ending in loss of the vehicle.[6]

The Bureau concluded in the Payday Rule that it is an unfair and abusive practice as defined in the Dodd-Frank Act for a lender to make a short-term or balloon payment loan without first making a reasonable determination that the consumer has the ability to repay that loan according to its terms. The rule mandates specific underwriting to prevent the unfair and abusive practice but exempts certain "step-down" loans (short-term loans of maximum $500 with up to two repayment extensions that would each pay down the original principal by at least one-third) and other loans. We refer to these as the ability to repay or ATR provisions.

Separately, the Bureau conducted research with respect to the practice of online payday and payday installment lenders (i.e., lenders offering installment products with payments timed to coincide with the consumer's payday and collected directly from the consumer's checking account) in seeking to debit payments from borrowers' checking accounts. The Bureau found that a number of lenders repeatedly attempted to debit borrowers' accounts after prior attempts were returned for insufficient funds and that this practice generated substantial bounced check fees for consumers without generating much in the way of payments for lenders. For example, the Bureau found that after two consecutive failures, the third presentment had only a 27 percent chance of success and that after three consecutive failures the rate of success dropped to 17 percent.[7]

1.

[5] The lower estimate is from the FDIC's estimate of household use, see footnote 3 above, and the higher estimate of individual borrowers is from research conducted by Pew Charitable Trusts, see Auto Title Loans: Market Practices and Borrowers' Experience (2015), available at: http://www.pewtrusts.org/-/media/assets/2015/03/autotitleloansreport.pdf.

[6] *CFPB Data Point: Payday Lending* (2014); *Single Payment Vehicle Title Lending* (2016); *Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products (2016)*

[7] *Online Payday Loan Payments* (2016).

The Bureau concluded in the Payday Rule that, with respect to short-term and balloon payment loans and also with respect to certain high-cost installment loans, the practice of presenting a debit for payment from a consumer's bank account after two consecutive failures is unfair and abusive unless the lender obtains a new and specific authorization from the consumer to permit further debits. The rule also requires for these products that lenders provide disclosures to consumers before making an initial attempt to collect funds from the consumer's account as well as prior to an "unusual" attempt, such as an attempt at a time other than a regularly scheduled payment or for an amount other than a regularly scheduled amount. We refer to these as the payment provisions of the Rule.

History and current status

The Bureau issued the Payday Rule in October 2017; it was published in the Federal Register in November 2017, shortly before the change in leadership. The rule formally took effect in January 2018, but the rule does not require compliance until August 19. 2019 (the "compliance date").

On January 16, 2018, the Bureau issued a statement announcing that it would engage in rulemaking to reconsider the rule. Following briefings by RMR and the Legal Division, the Acting Director decided that the Bureau should propose to rescind the ATR provisions but not the payment provisions. On October 26, 2018, the Bureau issued a public statement announcing that it expected to issue an NPRM in January and that the Bureau was "currently planning to propose revisiting only the ability-to-repay provisions and not the payments provisions, in significant part because the ability-to-repay provisions have much greater consequences for both consumers and industry than the payment provisions." The statement also indicated that the Bureau planned to address the compliance date.

On April 8, 2018, a payday lending trade association filed a lawsuit in the United States District Court for the Western District of Texas challenging the Payday Rule. After issuing the statement described above, the Bureau informed the court of its intent to issue an NPRM in January. On November 6, 2018, the court issued an order granting the plaintiffs' motion to stay the compliance date for both the ATR and payment provisions; the Bureau did not oppose that motion although a group of *amici* – one of whom has subsequently sought leave to intervene – did. Under the terms of the order, the stay of the compliance date will remain in effect pending further order of the court, and the court has scheduled the next status conference in the case for March 2019. In the meantime, litigation of the case has also been stayed.

RMR has drafted two NPRMs which are undergoing internal review, including review by the Legal Division. The first will propose to rescind the ATR provisions of that Rule and set forth the Bureau's reasoning for doing so. The second NPRM will propose to postpone the compliance date for those provisions to allow time for the Bureau to consider the comments received on the

NPRM proposing rescission and issue a final rule. This second NPRM also seeks comment on whether to extend the compliance date for the payment provisions. The NPRMs will signal that the Bureau also plans to seek comment on the rule's scope of coverage at a later time; we anticipate the team will draft a request for information during the comment period on the first two NPRMs. This will provide a vehicle to explore concerns raised recently by certain groups of lenders about the products to which the payment provisions should apply as well and arguments they offered to support adding or modifying exemptions to the Rule.

6.2.6 Policy on Disclosure of HMDA Data

Introduction

The Bureau is planning to issue in December final policy guidance concerning the public disclosure of the 2018 data that will be reported to the Bureau starting January 1, 2019, pursuant to the Home Mortgage Disclosure Act (HMDA).[8] This is one of several HMDA-related projects which currently are underway. Other projects are described in the next section.

Overview

HMDA, enacted in 1975 and implemented by Regulation C[9], is a "sunlight" statute intended to enable the public and public officials to determine whether lenders are serving the housing needs of their communities; to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[10]

HMDA generally applies to mortgage lenders who have at least one office in a metropolitan area. It requires covered lenders to collect specified information with respect to covered mortgage loans and applications, including information about the borrower(s) (such as ethnicity, race, and sex), the property (such as State, country, and census tract), and the terms of the proposed or approved transaction (such as loan amount). Lenders must report the information to the government on a loan-by-loan and application-by-application basis using the "loan application/register" (LAR) format. The information must be reported annually by March 1 of the year following the calendar year in which the information was collected.

1.

[8] HMDA is codified at 12 U.S.C. §§ 2801 *et. seq.*

[9] 12 C.F.R. Part 1003.

[10] The first two of these purposes are set forth in the text of the Act. The third was inferred by the Board of Governors of the Federal Reserve System as a result of amendments to HMDA which expanded the scope of the information lenders are required to collect and report. *See* 54 FR 51356, 51357 (Dec. 15, 1989) (Congress did not expressly amend the purposes section of the Act in amending the substantive provisions.)

HMDA requires financial institutions to make their LAR information, modified in accordance with regulations issued by the Bureau to protect applicant and borrower privacy, available to members of the public on request by March 31 of the year following collection. HMDA also requires the government to make the data, with appropriate privacy-based modifications, publicly available. There is no statutory deadline for the latter release,

History and current status of policy on data disclosure

The Dodd-Frank Act transferred rulemaking authority for HMDA to the Bureau from the Board of Governors of the Federal Reserve System (Board) and directed the Bureau to implement several changes to HMDA's implementing regulation, Regulation C. Among other changes, the Dodd-Frank Act expanded the scope of information (data points) relating to mortgage applications and loans that institutions must collect and report under HMDA. The Dodd-Frank Act identified 13 specific new data points (including age, credit score, total loan costs or total points and fees, prepayment penalty term, loan term, and property value). In addition, the Dodd-Frank Act granted the Bureau discretionary authority to require additional data points to further HMDA's purposes.

In October 2015, the Bureau issued the 2015 HMDA Final Rule, which, among other changes, amended Regulation C to include the new data points specified in the Dodd-Frank Act, added a number of additional data points pursuant to the Bureau's discretionary authority, and made revisions to certain preexisting data points to clarify the requirements and provide greater specificity in reporting.[11] Most of the 2015 HMDA Final Rule took effect on January 1, 2018, and institutions will start reporting the new data required by the Rule during the HMDA filing season that begins January 1, 2019, and runs until the end of February.

In promulgating the 2015 HMDA Final Rule, the Bureau announced that it would be taking over from the Board the responsibility for intaking and making public HMDA data. In the Rule the Bureau also relieved financial institutions of the obligation to themselves provide a modified LAR to members of the public on request; instead the Bureau stated that financial institutions could refer the public to the Bureau's website where the modified LARs could be obtained. These aspects of the 2015 Rule took effect in 2017. In January, 2018, the Bureau launched a web-based application it built for the purpose of processing HMDA data; that application substantially streamlined the submission and processing processes. The Bureau made the 2017 "modified LARs" available on request on March 31st of this year and released the 2017 composite HMDA dataset on May 4, 2018, more than four months earlier than had been the Board's standard practice.

1.

[11] 80 Fed. Reg. 66128 (Oct. 28, 2015).

In addition to the changes to HMDA described above, the Dodd-Frank Act directed the Bureau to develop regulations to require modification of HMDA data that will be available to the public for the purpose of protecting applicant and borrower privacy. Accordingly, the 2015 HMDA Final Rule also provided that the Bureau will modify HMDA data prior to public release where the risk to applicant and borrower privacy outweigh the benefits of disclosure in fulfilling HMDA's purposes. The Bureau stated at the time that in applying this balancing test to specific data elements the Bureau would seek public comment on proposed exclusions and modifications to the data disclosed to the public.

In September 2017, the Bureau issued for public comment proposed policy guidance describing the Bureau's application of the balancing test and how the Bureau proposed to modify the data before making it public.[12] The policy proposed to redact certain data elements such as credit score and to report other data elements such as loan amount in ranges in order to reduce re-identification risk.

After reviewing the comments, RMR, in collaboration with the Legal Division and the Office of Fair Lending and Equal Opportunity ("OFLEO"), submitted recommendations to the Acting Director concerning the final policy guidance the Bureau should issue. The Acting Director agreed to those recommendations. RMR has drafted final policy guidance which has undergone legal review and is now in the clearance process. Separately, the Office of Technology and Innovation ("T&I) is in the process of making programming changes to the HMDA filing system it has built so that as creditors file their LARs the requisite exclusions and modifications will be made and the data will be ready for public release. These programming changes must be completed before January 1st when the new filing season begins.

Although the Acting Director agreed to allow the data modifications to be determined via final policy guidance this year, he also decided that, going forward, the exclusions and modifications as well as the Bureau's approach to determining them under the balancing test should be embodied in a "legislative rule" promulgated pursuant to the Administrative Procedure Act. RMR will begin drafting a Notice of Proposed Rulemaking once the Bureau issues the final policy guidance. The release of this proposal will provide the public with an opportunity to submit comments with respect to proposed exclusions and modifications, which will enable the Bureau to issue a legislative rule based on a new administrative record and in light of the Bureau and stakeholders' experience in applying the final policy guidance to 2018 HMDA data. The Bureau can only amend a final legislative rule through notice and comment rulemaking.

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[12] 82 FR 44586 (Sept. 25, 2017).

6.2.7 Reconsideration of 2015 HMDA Final Rule and Implementation of the EGRRCPA Amendments

Introduction

The Bureau has announced an intention to reconsider aspects of the 2015 HMDA Rule and also to amend Regulation C to incorporate amendments to HMDA adopted as part of the Economic Growth, Regulatory Reform, and Consumer Protection Act (EGRRCPA)[13], which the President signed in May of this year.

Overview

As noted above, the 2015 HMDA Final Rule implemented the new data points specified in the Dodd-Frank Act, added a number of additional data points pursuant to the Bureau's discretionary authority, and made revisions to certain preexisting data points to clarify the requirements and provide greater specificity in reporting. In addition, the 2015 Rule made certain changes to the types of mortgage loan transactions as to which data must be reported, including requiring reporting with respect to open-end lines of credit such as home equity lines of credit (HELOCs). The Rule also established loan-volume thresholds that create exemptions for financial institutions originating less than 25 closed-end mortgages or 100 open-end lines of credit in either of the two preceding years.

In August 2017, the Bureau issued a rule to temporarily increase to 500 the loan-volume threshold for open-end lines of credit such that fewer institutions would be required to report data with respect to open-end lines of credit than under the 2015 HMDA Final Rule.[14] The Bureau did so because new data gave the Bureau reason to question the estimates as to the number of institutions who would fall outside the original exemption and the burden that the requirement to report open-end lines of credit would impose on institutions making fewer than 100 such loans. The Bureau stated it would consider a permanent increase to this threshold before the temporary one expires in January 2020.

On May 24, 2018, the President signed the EGRRCPA into law. Among other things, that Act creates a partial HMDA exemption which relieves most banks and credit unions originating fewer than 500 closed-end loans in each of the two preceding years from the obligation to report most of the data points specified in the Dodd-Frank Act or added in the Bureau's rule with respect to such loans. The Act also provides the same partial exemption with respect to open-

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[13] Public Law 115-174. This law is sometimes referred to as S.2155 or as the "Crapo bill."

[14] 82 Fed. Reg. 43088 (Sept. 13, 2017)

end lines of credit for most banks and credit unions originating fewer than 500 open-end lines of credit in each of the two preceding years.

History and current status of reconsideration and implementation of EGRRCPA

In December 2017, the Bureau announced that it intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule. The Bureau and the prudential regulators also announced that they expected that any supervisory examinations of 2018 HMDA data submissions (which as described above will be the first submissions governed by the 2015 HMDA Final Rule and are due by March 1, 2019) will be diagnostic to help institutions identify compliance weaknesses and will credit good-faith compliance efforts.

After Congress enacted EGRRCPA, RMR's HMDA subject matter experts focused on implementation of EGRRCPA's HMDA provisions. In August 2018, the Bureau issued an interpretive and procedural rule, without notice and comment, to clarify which institutions are covered by EGRCCPA's partial exemptions and which data points do not need to be reported by institutions covered by the exemptions.[15] The Bureau stated that it intended to engage in formal notice and comment rulemaking to incorporate the terms of the interpretive and procedural rule into Regulation C and further implement EGRRCPA. RMR currently is preparing a Notice of Proposed Rulemaking that generally proposes to do so.

RMR, in collaboration with the Legal Division and OFLEO, recently submitted a set of options and recommendations to the Acting Director for reconsideration of the 2015 HMDA Rule. The most time sensitive aspect of those recommendations concerns the threshold for reporting with respect to open-end lines of credit because, absent further action by the Bureau, the temporary 500-loan threshold will expire at the end of 2019, and institutions originating between 100 and 500 open-end lines of credit will be required to begin collecting data starting in late 2019 with respect to open-end applications that closed after January 1, 2020.

The Bureau's fall 2018 Unified Agenda of Regulatory and Deregulatory Actions stated that the Bureau anticipated releasing a HMDA NPRM in March 2019. The Bureau can extend that time if need be and state a new anticipate release date in the spring 2019 Unified Agenda.

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[15] 83 Fed. Reg. 45325 (Sept. 7, 2018).

6.2.8 Debt Collection Rulemaking

Introduction

RMR, in collaboration with the Legal Division, is working towards preparing a Notice of Proposed Rulemaking (NPRM) which would propose a regulation to govern certain practices by debt collectors.

Overview

Typically, if a creditor is unable to collect a debt after an extended period of time, the creditor will either retain a (third party) debt collection company to collect the debt on a contingent fee basis or sell the debt to a debt buyer. There are an estimated 8,500 debt collection and debt buying firms generating over $11 billion in annual revenue.[16] Large firms have most of the market share, with a long tail of smaller firms, including many small firms that focus on one particular type of debt or one geographical region.

A survey conducted by the Bureau from December 2014 to March 2015 found that almost one-third of consumers (32 percent), or approximately 70 million consumers, reported being contacted over the preceding year by a creditor or debt collector about a debt.[17] Most consumers who were contacted about a debt in collection (72 percent) reported that they had been contacted about two or more debts. Debt collection is one of the most complained about consumer financial products or services in the Bureau's complaint system, with approximately 84,500 debt collection complaints submitted during 2017 alone.

Federal regulation of third-party debt collection is based primarily on the Fair Debt Collection Practice Act (FDCPA), enacted in 1977 "to eliminate abusive debt collection practices by debt collectors" and "to [e]nsure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged."[18] Many states have "mini-FDCPAs" that largely or wholly mimic the FDCPA.

The FDCPA has not been significantly amended since 1977. Although the FTC has had FDCPA enforcement authority since the statute's enactment, no agency had substantive rulemaking authority until the Dodd-Frank Act granted such authority to the Bureau (along with joint enforcement authority with the FTC). As a result, there are no implementing regulations. Parties

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[16] Edward Rivera at IBIS World, *Debt Collection Agencies in the U.S.* (December 2016) (also cited in *Fair Debt Collection Practices Act: CFPB Annual Report 2017*, at n. 4, *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Fair-Debt-Collection-Practices-Act-Annual-Report.pdf). .

[17] Consumer Experiences with Debt Collection, January 2017, *available at*: https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf.

[18] The FDCPA is codified at 15 U.S.C. §§1692 *et seq.*

seeking to understand their rights and duties must interpret extensive and evolving case law, with the Supreme Court issuing three FDCPA decisions in the last two years and another FDCPA decision likely to be issued next year. Industry participants and consumer advocates alike have urged the Bureau to issue a debt collection rule to provide greater clarity to all stakeholders and to address changes in the marketplace that have occurred since 1977, such as the emergence of newer communications technology. A July 2018 Department of Treasury report also recommended that "the Bureau establish minimum effective federal standards governing the collection of debt by third-party collectors."[19]

History and current status

The Bureau took the first step towards this rulemaking in 2013 by issuing an Advanced Notice of Proposed Rulemaking, which generated over 350 substantive comments (and over 23,000 comments total).[20]

In July 2016, the Bureau issued an "Outline of Proposals Under Consideration" and initiated a process to obtain formal input from small entities potentially covered by the rulemaking as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA). That statute requires the Bureau to convene an interagency process which also includes the Office of Management and Budget and the Office of Advocacy within the Small Business Administration. In the SBREFA process, government agencies consult with "small entity representatives" prior to proposing a rule that could have a significant economic impact on a substantial number of small businesses, non-profits, or governments. The Bureau conducts the SBREFA process by publicly issuing an outline of the policy interventions it is considering and an initial assessment of their potential impacts on small entities, and then meeting in person with the small entity representatives for a day-long session to gather feedback on specific ideas. The three agencies then synthesize the feedback and produce a report recommending follow up actions for the Bureau to take in connection with the rulemaking process. The Bureau issues the report with the NPRM. Consistent with its general practices, the Bureau also engaged in extensive outreach based on the outline with other types of stakeholders.

Based on the input received through the SBREFA process and stakeholder outreach, and in light of the priorities and approach to rulemaking of the Acting Director and his leadership team, RMR, in collaboration with the Legal Division, prepared recommendations to focus the rulemaking on certain communication practices and on improving consumer disclosures. This summer the Acting Director approved those recommendations. RMR staff have drafted a Notice

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[19] See U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation (July 2018), at 130-131.

[20] 78 Fed. Reg. 67848 (Nov. 12, 2013).

of Proposed Rulemaking which is undergoing review within RMR and soon will be ready for review by the Legal Division.

The Bureau's fall 2018 Unified Agenda of Regulatory and Deregulatory Actions stated that the Bureau anticipated releasing the NPRM in March 2019.

6.2.9 EGRRCPA

Introduction

In addition to implementing the HMDA provisions of the EGRRCPA as discussed in a prior section, RMR, in collaboration with the Legal Division and other parts of the Bureau, is taking a number of other steps to implement the EGRRCPA.

Overview

EGRRCPA amended certain federal consumer financial laws that the Bureau implements and administers, including by adjusting certain of the mortgage provisions of the Dodd-Frank Act, and the rules that the Bureau has issued to implement those provisions. EGRCCPA also amended the Fair Credit Reporting Act (FCRA) to give consumers a right under federal law to place freezes on their credit reports.

The Bureau has publicly stated that most of the provisions of EGGRCPA take effect without any Bureau action -- that is, they are self-effectuating. Two provisions, however, require rulemaking, although EGRRCPA does not set a deadline for such rulemaking.

PACE Loans -- The Dodd-Frank Act amended the Truth in Lending Act (TILA) to require creditors, before making a residential mortgage loan, to first determine whether the consumer has the ability to repay the loan. Section 307 of EGRRCPA directs the Bureau to prescribe regulations that "carry out the purposes of" ability-to-repay requirements with respect to Property Assessed Clean Energy (PACE) financing. As defined in the statute, PACE financing is financing to cover the costs of home improvements that result in a tax assessment on the consumer's real property. This property tax assessment creates a lien with priority over any preexisting mortgages. The financing contracts are between consumers and local governments, but private companies market and originate the financing with the help of home improvement contractors. EGRRCPA mandates that the regulations the Bureau issues for PACE account for the "unique nature" of the financing in developing ability-to-repay requirements. EGRRCPA further authorizes the Bureau to gather information about PACE financing and mandates consultation with certain state and local entities.

Escrows – The Dodd-Frank Act amended TILA to require creditors making certain "higher priced" mortgage loans to establish for a period of five years an escrow account for the payment of taxes and insurance. Exercising exemption authority granted to it by the Dodd-Frank Act, the Bureau exempted institutions which (together with affiliates) have under $2.0 billion in assets (indexed for inflation), originated 2,000 or fewer mortgages (excluding loans held in portfolio) in the prior year, and made at least one loan in a rural or underserved area.[21] Section 108 of the EGRRCPA directs the Bureau to issue a rule to generally exempt from the escrow requirement loans made by an insured depository institution with assets of $10 billion or less which together with its affiliates originated 1,000 or fewer first mortgages in the prior year and that otherwise meet some of the preexisting criteria in the Bureau's rule.

In addition to these mandated rulemakings, the EGRRCPA will effectively require the Bureau to engage in rulemakings to amend certain provisions of the Bureau's existing rules to conform or harmonize those rules to the self-effectuating provisions of the Act. RMR also has identified a number of places where the Bureau may wish to engage in rulemaking to clarify the statutory requirements and to otherwise facilitate industry compliance. These include not only certain mortgage-related provisions in the EGRRCPA but also the FCRA amendments.

Finally, the EGRRCPA contains a provision stating that it is the "sense of the Congress" that the Bureau should "endeavor to provide clearer, authoritative guidance" with respect to certain issues that have arisen under the Bureau rule integrating mortgage origination disclosures under TILA and the Real Estate Settlement Procedure Act (RESPA). This rule is referred to as the ("TILA-RESPA Integrated Disclosure rule or "TRID").[22]

History and current status

As previously discussed, in August the Bureau issued an interpretive and procedural rule to implement the amendment to HMDA contained in the EGRRCPA and stated that it intends to incorporate these interpretations and procedural provisions into Regulation C via notice-and-comment rulemaking.

Additionally, in September 2018, the Bureau issued an interim final rule to update certain model forms that the Bureau had issued under the FCRA to include new language that is required by the Act to explain the availability of the free credit freezes under federal law.[23] This rule assured that financial institutions could make the changes to their disclosures required by the EGRRCPA and still enjoy the benefits of the safe harbor provided by the model form, as well as providing an alternative means of compliance to reduce implementation costs.

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[21] 78 Fed. Reg. 4757 (Jan. 22, 2013).

[22] 78 Fed. Reg. 79730 (Dec. 31, 2013).

[23] 83 Fed. Reg. 47027 (Sept. 18, 2018).

The Bureau's fall 2018 Unified Agenda for Regulatory and Deregulatory Actions indicates that, as a first step towards issuing a regulation governing PACE loans, the Bureau expects to issue either an Advanced Notice of Proposed Rulemaking (ANPR) or a Request for Information (RFI) in February 2019. RMR is currently in the process of developing an ANPR. The Unified Agenda also places an escrow rulemaking in the pre-rulemaking category with unspecified "pre-rule activity" expected in June 2019. Finally, the Unified Agenda states that further rulemaking to conform existing rules to the EGRRCPA or provide further clarity are considered longer-term actions. Although that designation generally means that no action is expected in within 12 months, the Bureau has also indicated that it is monitoring the market in case there are developments that warrant changing the timelines.

Separately, the Bureau is undertaking steps to update its regulatory implementation and supervisory materials to conform to EGRRCPA. For example, in November, the Bureau updated two of its small entity compliance guides to reflect statutory changes made by the EGRRCPA. RMR is also working with the Legal Division and the Office of Supervision Policy ("OSP") to provide more and better public, written guidance under TRID and other regulations.

6.2.10 Expiration of Temporary GSE QM (aka "The Patch")

Introduction

RMR in collaboration with the Legal Division and Bureau stakeholders is engaged in policy and legal analysis to present options and recommendations with respect to a provision of the Bureau's Ability to Repay/Qualified Mortgage (ATR/QM) Rule. The provision is scheduled to expire in January 2021.

Overview

As previously noted, the Dodd-Frank Act amended TILA to prohibit a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the loan. The Dodd-Frank Act further amended TILA to provide that if a loan is a "qualified mortgage" (QM) a creditor or assignee may presume the loan has met the ability to repay requirement.

The Dodd-Frank Act establishes certain minimum requirements for a mortgage to be deemed a QM and authorizes the Bureau both to establish additional requirements and also to create exemptions for certain of the Dodd-Frank Act requirements. The Bureau, through rulemaking, defined several types of QMs.[24] The "General QM" includes a requirement that the consumer's

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[24] 78 Fed. Reg. 6408 (Jan. 30, 2013).

debt-to-income ratio when the loan is consummated is less than or equal to 43% and further requires that debt and income must be calculated in accordance with provisions set forth in Appendix Q to the rule. Other types of QM include a QM for loans originated by small creditors and held in portfolio and a QM for FHA, VA, and USDA loans, as defined by the Federal agencies that manage those programs.

The Bureau's rule also creates, on a temporary basis, a QM category for mortgages that are eligible for purchase or guarantee by Fannie Mae or Freddie Mac (the government-sponsored enterprise (GSE)-eligible loans) to be QMs (the "Temporary GSE QM" or "patch"). When the rule was adopted, in the immediate wake of the mortgage crisis, the mortgage market was highly risk averse. The Bureau believed temporarily allowing creditors making GSE-eligible loans the benefit of the presumption of compliance with ability to repay afforded by QM status would help ease the transition to the ATR/QM rule. The Temporary GSE QM expires when the conservatorship[25] of Fannie Mae or Freddie Mac ends or January 2021, whichever occurs first.

RMR estimates that approximately 98% of consumer mortgages originated today are QMs. Of the consumers who obtained mortgages in 2016 and 2017, RMR estimates that 720,000 to 1,000,000 mortgages satisfied the Temporary GSE QM definition but would not have met the General QM definition. Whether these loans would have been made in the absence of an extension of the Temporary GSE QM and, if so, who would have made them, is uncertain.

History and current status

As discussed in the Assessments section below, the Bureau is currently engaged in assessing the effectiveness of the ATR/QM rule, as required by the Dodd-Frank Act. A report of that assessment is due to be published by January 10, 2019. The Bureau has made clear, however, that the report will not itself make policy recommendations but rather will contain findings that may be helpful in informing the policy analysis.

If the Bureau were to decide to allow the patch to expire, early notice would be necessary to allow the market to prepare for the transition and minimize disruption, as many stakeholders currently expect the Bureau to extend the patch. If the Bureau were to decide that, before allowing the patch to expire, changes are needed in the General QM definition or Appendix Q, the Bureau could extend the patch either concurrently with, or in advance of, changes to the QM rule. Any extension of the patch, and any amendment to the QM rule would, of course, require notice and comment rulemaking which would need to be completed sufficiently in advance of the patch's scheduled expiration in January 2021 to avoid market disruption.

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[25] A description of the conservatorship established by FHFA during the financial crisis over Fannie and Freddie can be found here: https://www.fhfa.gov/Conservatorship/Pages/History-of-Fannie-Mae--Freddie-Conservatorships.aspx.

RMR has prepared preliminary briefing materials for the Acting Deputy Director on RMR's best estimate on the impact in the mortgage markets of the expiration of the Temporary GSE QM definition. RMR is working with External Affairs to solicit stakeholder input and is working with the Legal Division to analyze legal constraints and risks, in addition to conducting policy analysis of potential options. RMR expects to present options for action and recommendations in the first quarter of calendar year 2019.

6.2.11 Assessment of Bureau Significant Rules

Introduction

As required by the Dodd-Frank Act, the Bureau recently issued a report of its findings on the effectiveness of the Bureau's remittance rule in meeting the rule's objectives and the Bureau's statutory objectives. The Bureau is scheduled to release two more assessment reports in early January 2019 (Mortgage Servicing and ATR/QM).

Overview

Section 1022(d) of the Dodd-Frank Act ("Assessment of Significant Rules") requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. Under Section 1022(d):

- The assessment must address, among other relevant factors, the rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau.
- The assessment must reflect available evidence and any data that the Bureau reasonably may collect.
- The Bureau must publish a report of the assessment not later than five years after the effective date of such rule or order.
- Before publishing a report of its assessment, the Bureau must invite public comment on recommendations for modifying, expanding, or eliminating the significant rule or order.

In 2016, the then-Director determined that the Remittance Rule[26] (which took effect in October 2013) as well as one of the mortgage loan servicing rules and the Ability-to-Repay/Qualified

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[26] 77 Fed. Reg. 6194 (Feb. 7, 2012).

Mortgage rule (which both took effect in January 2014) were significant rules for purposes of Section 1022(d).[27]

History and current status

In fall 2016, RMR launched teams to develop the plans for each of the three assessments with each team led by an economist from the Office of Research. In March, May, and June 2017, respectively, each team published and sought public comment on its assessment plans as well as on recommendations for modifying, expanding, or eliminating the rule.

The assessment plans for both the servicing and ATR/QM assessments called for the collection of de-identified loan-level (and, in the case of ATR/QM, application-level) data spanning the pre and post rule periods and also called for voluntary surveys and structured interviews of market participants. The assessment teams have obtained and analyzed these data, as well as other data available to the Bureau through a variety of sources, and have drafted detailed reports containing the findings from the assessments. Those draft reports are now going through the clearance process.

In addition to these assessments, in the spring RMR expects to launch an assessment of the Bureau's TILA-RESPA Integrated Disclosures rule—generally referred to as "TRID." That Rule which took effect in October 2018 consolidated disclosures that were previously required under the TILA and RESPA into a single disclosure provided at the time of application and a single disclosure provided at closing. Acting Director Mulvaney raised concerns about the absence of cost-benefit analysis in current assessments and related reports. RMR therefore plans to work with the to-be-launched Office of Cost Benefit Analysis to address the incorporation of such analysis into future assessments and related reports.

6.2.12 Section 1071 Small Business Data Collection Rulemaking

Introduction

RMR in collaboration with the Legal Division, OFLEO, and other Bureau stakeholders has been working on developing policy options and taking other steps related to a Dodd-Frank Act required rulemaking regarding applications for credit by certain types of businesses.

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[27] The Bureau concurrently issued two servicing rules which took effect in January 2014. One rule was issued under TILA and addressed certain disclosures, 78 Fed. Reg. 10901 (Feb. 14, 2013); the other was issued under RESPA and governs, among other thing, the processes for servicing delinquent loans and application for loan modifications or other forms of loss mitigation, 78 Fed. Reg. 10695 (Feb. 14, 2014). The Bureau determined that the RESPA rule is a significant rule.

Overview

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect, report to the Bureau, and publicly disclose, subject to Bureau regulations, specified data regarding applications for credit by women-owned, minority-owned, and small businesses. The stated purposes of Section 1071 of the Dodd-Frank Act are to provide regulators and the public with data that will facilitate fair lending enforcement and enable private and public entities to identify business and community development needs of women-owned, minority-owned and small businesses. Although most of the laws the Bureau implements cover lending only to consumers for personal, family, or household purposes, the ECOA covers business borrowers and commercial lending as well.

Although there is no single definition of what constitutes a small business, by any reasonable measure the vast majority of the over 27 million firms in the United States are small businesses, with nearly 23 million of them being firms without any employees and over 26 million of them having less than $1 million in annual sales. Over 99% of women-owned and minority-owned firms are small businesses. In 2017, RMR estimated that the small business lending market was roughly $1.4 trillion in size.

History and current status

Because Congress did not impose a deadline for the Section 1071 rulemaking, the Bureau elected to defer work on this rule until after it had completed rulemakings for which Congress did impose deadlines and also until after completing the required HMDA rulemaking. The rationale for prioritizing HMDA was that what the Bureau learned there would be very instructive when it came to addressing the similar but more complicated Section 1071 rulemaking and that the technology built for the HMDA data collection could support Section 1071 data collection as well.

After completing the HMDA rulemaking towards the end of 2015, the Bureau created an Office of Small Business Lending within RMR and recruited the subject matter experts needed for this rulemaking with the expectation that the rulemaking would focus on credit applications by small businesses (including women-owned and minority-owned small businesses) and not on applications by women-owned and minority-owned businesses that are medium or large businesses. A cross-Bureau rulemaking team was also assembled including representatives from the Legal Division, OFLEO and Technology and Innovation.

In May of 2017 the Bureau published a white paper on the current state of the small business lending marketplace,[28] published a request for information (RFI) to obtain broad input from

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[28] *Key dimensions of the small business landscape* (2017).

stakeholders on the 1071 rulemaking[29], and held a field hearing in Los Angeles. The Bureau received 713 comments on the RFI.

The Bureau's Unified Agenda for spring 2018 included a Section 1071 rulemaking as being in the pre-rulemaking stage. This summer the Acting Director decided, in light of other Bureau priorities and resource limitations and the challenges of this rulemaking, that work on the rulemaking should be suspended. Accordingly, the Bureau's fall 2018 Unified Agenda lists this rulemaking as a long term action.

Although the policy making work that was underway has been suspended, the Office of Research is continuing work on a survey of lenders to obtain estimates of the one-time costs lenders would incur to collect and report application data. The results of this survey will inform policy choices and the required consideration of costs and benefits of a proposed rule once the rulemaking recommences. Pre-testing of the survey instrument has been completed and RMR is preparing recommendations for next steps.

6.2.13 Re-examining Disparate Impact under the Equal Credit Opportunity Act

Introduction

RMR, the Legal Division, and OFLEO are engaged in policy and legal analysis to present options for reexamining disparate impact (DI) liability under the Equal Credit Opportunity Act (ECOA). A DI theory of liability generally prohibits actions that have discriminatory effects unless those actions are justified by a business need that cannot be met through an alternative which would have a less discriminatory effect. The Acting Director announced in May that the Bureau would reconsider DI theory under ECOA in the wake of Congress' rejection of the Bureau's indirect Auto Lending Bulletin, as discussed below.

Overview

ECOA was enacted in 1974 and amended substantially in 1976.[30] It makes it unlawful for a creditor to discriminate against applicants "on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract)" and also proscribes discrimination "because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under [the Act]." This statutory text arguably can be read to prohibit: (1) disparate treatment/intentional discrimination, or (2) disparate treatment/intentional discrimination and certain actions which

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[29] 82 Fed. Reg. 22138 (May 15, 2017).

[30] The ECOA is codified at 15 U.S.C. §§1691 *et. seq.*

have a disparate impact (DI) on a protected class. In 1977, the Federal Reserve Board (the Board), which had rulemaking authority under ECOA, interpreted ECOA to prohibit actions which have a disparate impact (DI) on a protected class. The Board amended Regulation B to provide that under the ECOA and Regulation B "Congress intended an 'effects test' concept . . . to be applicable to a creditor's determination of creditworthiness."[31]

The Dodd-Frank Act (Dodd-Frank Act) transferred rulemaking authority under ECOA from the Board to the Bureau (except with respect to auto dealers where rulemaking authority was retained by the Board). In December 2011, the Bureau issued an Interim Final Rule recodifying Regulation B as it had been adopted by the Board. The Bureau also issued examination procedures under ECOA that follow the preexisting procedures of the prudential regulators, encompassing DI examinations. In addition, in April 2012, the Bureau issued a Bulletin stating, "As the [Bureau] exercises its supervisory and enforcement authority, it will consider evidence of [DI] as one method of proving lending discrimination under the ECOA and Regulation B."

In March 2013, the Bureau issued a further Bulletin addressing the practice known as "dealer mark-up" in the auto financing market. Under that practice, indirect auto lenders – that is, lenders who purchase automobile loan contracts from dealers – establish a "buy rate" for a consumer based on the consumer's credit profile but permit dealers to mark-up that rate and earn increased compensation when the contract is sold to the auto lender. This Auto Lending Bulletin reaffirmed the Bureau's view that ECOA includes DI and went on to state that DI could be applied to this practice if it "result[s] in disparities on a prohibited basis." Subsequent to issuing the Bulletin the Bureau brought and settled a number of enforcement actions against indirect auto lenders based on DI theories.

In December 2017, the U.S. Government Accountability Office determined that the Auto Lending Bulletin constituted a rule within the meaning of the Congressional Review Act and thus was subject to congressional review. A joint resolution of disapproval of the Bulletin was passed by both Houses of Congress providing that "such rule shall have no force or effect," and on May 21, 2018, the President signed the resolution into law. The same day, the Bureau issued a statement on the joint resolution and included an announcement that "the Bureau will be reexamining the requirements of the ECOA." The Bureau's statement referenced both the resolution of disapproval and also the Supreme Court's 2015 decision in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project* (*Inclusive Communities*), in which, by a 5-4 vote, the Supreme Court, in an opinion authored by then-Justice Kennedy, held that the Fair Housing Act of 1968 encompasses DI claims.

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[31] 42 Fed. Reg. 1242 (Jan. 6, 1977).

History and current status

Earlier this year, the Bureau's General Counsel was instructed to request an informal opinion from the Office of Legal Counsel (OLC) at the U.S. Department of Justice with respect to whether, in light of *Inclusive Communities,* ECOA encompasses DI. On February 1, 2018, the Deputy Assistant Attorney General in OLC sent an e-mail stating that "[a]lthough the text of ECOA does not provide a definitive answer, OLC "believe[s] that ECOA may reasonably be interpreted to embrace a [DI] theory of liability."

In response to the Bureau's announcement of its intent to reconsider DI, RMR, OFLEO and the Legal Division, have drafted a briefing memorandum for the Acting Director. The memorandum identifies options the Bureau could pursue as part of the reexamination of DI under ECOA and contains brief estimates of the potential benefits, resource requirements, and legal risks of each option. A planned briefing was postponed due to a scheduling conflict and has not yet been rescheduled.

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

Consumer Financial Protection Bureau

April 24, 2019

Briefing memorandum for the Director

Major Priorities for Regulatory Program

DATE	TBD
TIME	TBD
LOCATION	TBD
PARTICIPANTS	TBD
STAFF CONTACT	Diane Thompson, Redacted, Susan Singer, Redacted, Dan Sokolov, Redacted
ASSOCIATE DIRECTOR APPROVAL	Tom Pahl David Silberman 04-24-19 TBP

Objective

The purpose of this briefing is to set forth options and elicit your views on resource-intensive rulemakings RMR should work on from now through the end of FY2021.

Timing Considerations

Although there is no immediate deadline looming, deciding your top priorities for resource-intensive rulemakings will help Bureau leaders manage stakeholders' expectations and enable RMR to allocate its current resources effectively and assess its future resource needs.

Background

When RMR briefed you about the Spring 2019 Unified Agenda on February 21, we said we would return with a slate of recommended regulatory priorities. You said you were interested in the projects and workstreams RMR would recommend, with information about resources required, importance to the Bureau, and importance to stakeholders. This memorandum sets forth options for resource-intensive rulemakings the Bureau could undertake between now and the end of the FY 2021.

RMR believes that there are more resource-intensive rulemakings that the Bureau could do and that stakeholders want the Bureau to do than the Bureau as a practical matter could actually do. For that reason, RMR has sought to identify which resource-intensive rulemakings are the most viable options for work over approximately the next three years.

In identifying these rulemakings, RMR has given great weight to whether: (1) rules would be responsive to a congressional mandate; (2) rules would address a market failure that demonstrably has caused or is likely to cause significant consumer harm; (3) rules would eliminate or decrease unnecessary or undue regulatory burdens; (4) rules would provide clarity in the standards which may increase compliance or foster innovation; (5) rulemaking is already on-going; and (6) necessary agency resources would be available to engage in the rulemaking. While such factors are useful in identifying resource-intensive rulemakings that are the most viable options, RMR recognizes they are not (either individually or collectively) the be-all-and-end-all. RMR also considered comments of stakeholders in the Call for Evidence.

RMR seeks your initial decisions on the resource-intensive rulemakings as they are the biggest and longest-lasting projects RMR undertakes. These decisions will help RMR determine, subject to your guidance, what other projects RMR will do and assign resources efficiently across projects.

Resources Available for Rulemakings

In evaluating the number of resource-intensive rulemakings that are realistic over about the next three years, RMR's current allocation of resources provides a useful frame of reference. Estimates of these allocations are reflected in the pie chart below. The resource estimates in the pie chart are reasonably robust but not precise. The estimates are based on managers' observations and on a limited collection of data from staff.

As shown in the pie chart below, with our current allocation of resources other than management and administrative operations, RMR spends about 50% of its resources on rulemakings, policy development, and reviews of regulations. Of these rulemaking resources, roughly 50% of them are used on resource-intensive rulemakings and 50% of them are used on other rulemaking activities. For purposes of this memorandum, RMR considers "resource-intensive rulemakings" to include any rulemaking that would require at least 5 FTE in RMR.

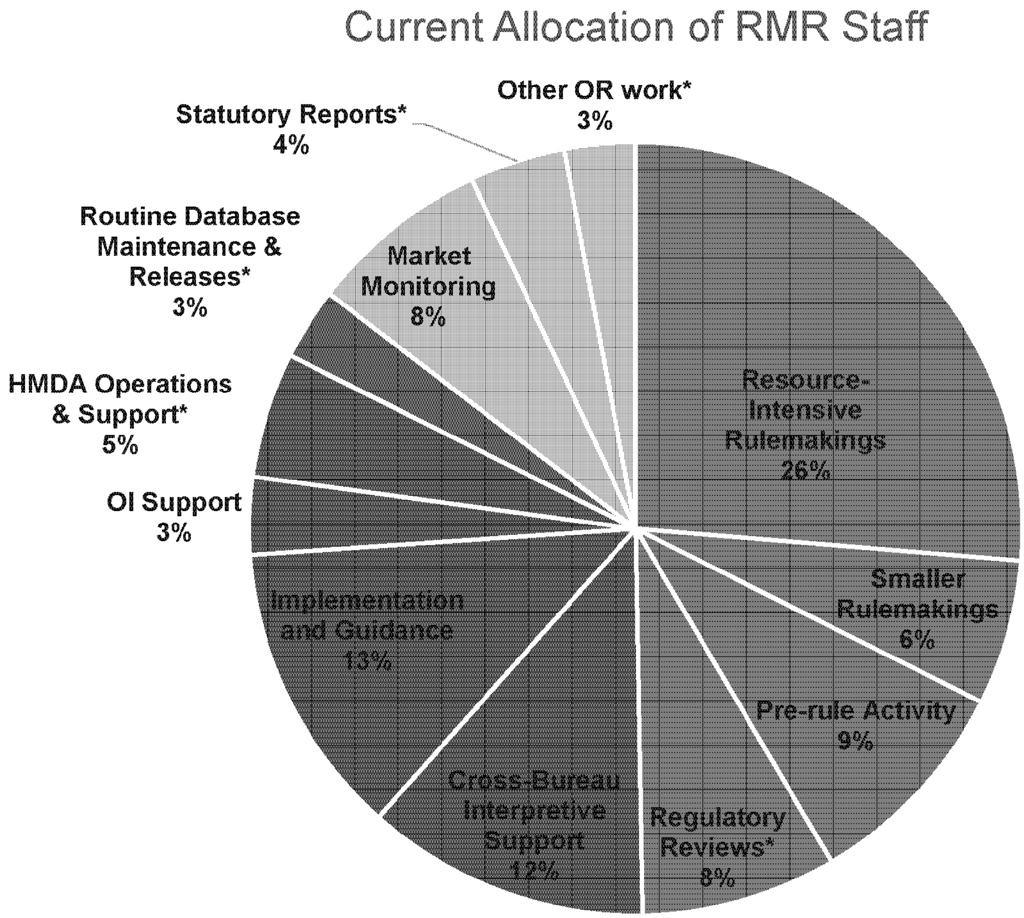
As the pie chart shows, roughly 50% of RMR's resources are allocated to activities other than rulemaking. This 50% includes the resources allocated to Research and Markets that are not expended in connection with specific rulemakings.[1] RMR generally believes the amounts reflected for non-regulatory matters represent the minimum staffing levels needed to perform the current functions of RMR, although RMR is committed to identifying, considering, and implementing changes to perform these functions more efficiently and effectively.

We understand that in the Strategy and Resource Alignment initiative we will be exploring the functions RMR performs and the resources allocated to those functions. Decisions made in that process could, of course, change RMR's capacity to undertake resource-intensive rulemakings. Note, too, that RMR has not sought any exceptions from the hiring freeze for the Office of Regulations beyond paralegal hiring (and replacing the Assistant Director) pending further discussion and clearer direction as to the level of future rulemaking activity, as discussed in this memorandum. For purposes of this memorandum, RMR treats current staffing levels and functions as givens.

Based on its current function, headcount, and resource allocation, RMR can manage about four active, resource-intensive rulemakings at a time. For this purpose, RMR considers a rulemaking to be "active" when the agency has made initial policy decisions and launched work on a SBREFA

[1] Note that the resources allocated to producing research publications for the Bureau are in various workstreams; RMR has asterisked the slices that include the production of research publications.

Outline of Proposals or an NPRM; work prior to this point (e.g., an RFI or an ANPR) is considered "pre-rule." Holding constant its current functions and resource allocations, RMR believes that it would require a minimum of 5 FTEs for each additional active, resource-intensive rulemaking beyond four.[2] For purposes of this memorandum, RMR is identifying options using the assumption that it can conduct four active, resource-intensive rulemakings at any given time between now and the end of FY2021.



*These allocations include research output/publications.

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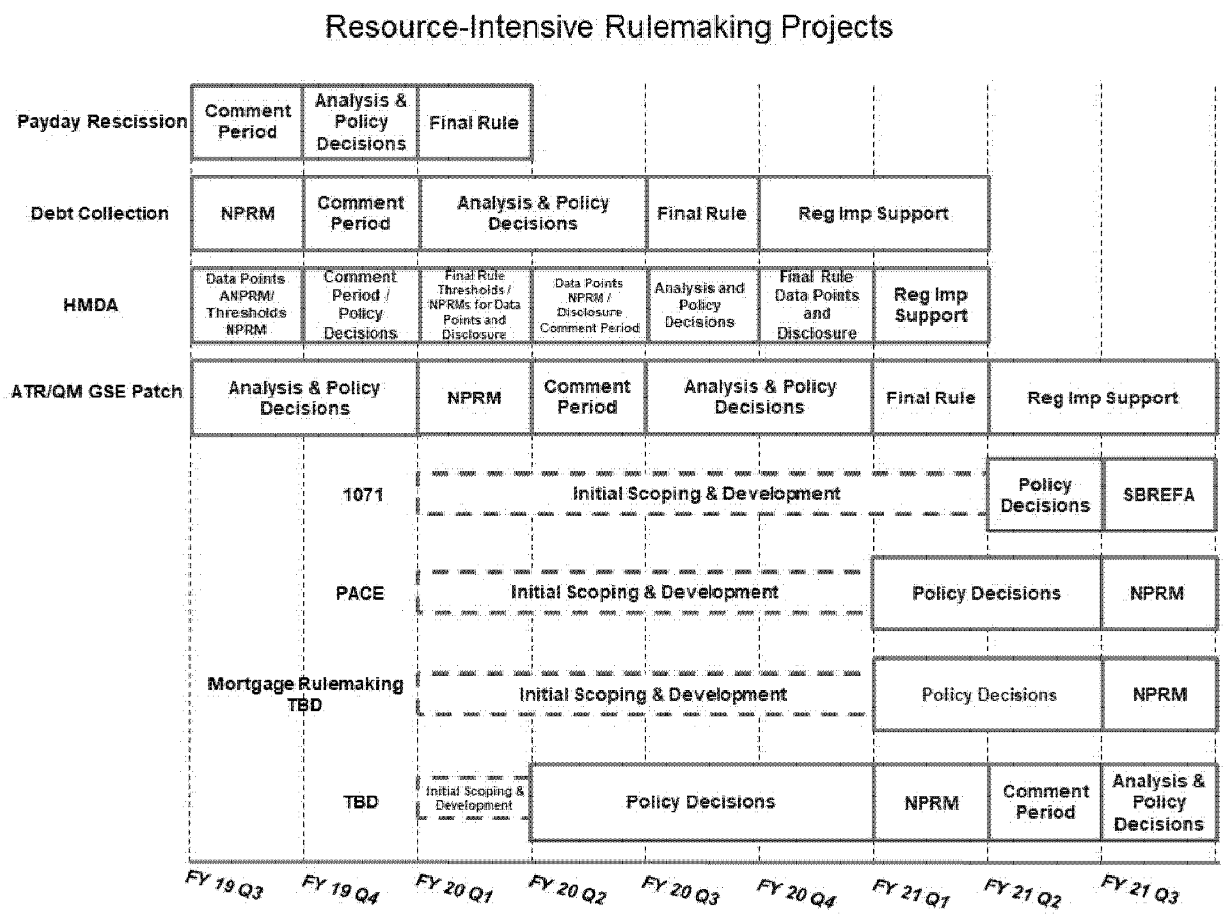
[2] While we have identified as resource-intensive any rulemaking that uses at least 5 FTE across RMR, most of RMR's current resource-intensive rulemakings use more than 5 FTE across RMR. Additionally, administrative, management, and operational support are unaccounted for in this resource allocation, which could require additional increases in headcount to support an expanded rulemaking docket.

Recommendation and Alternatives for Resource-Intensive Rulemakings

RMR sets forth below options for resource-intensive rulemakings through the end of FY2021, although completing some of these rulemakings would extend beyond the end of FY2021. In identifying these options, RMR considered each of the five factors set forth above.



CFPB-0001186

FY2019 to FY2020 Resource-Intensive Rulemakings

RMR currently is working on three resource-intensive rulemakings: (1) payday loan rule reconsideration (including the postponement of the mandatory underwriting provision compliance date and the consideration of the payday rulemaking petition); (2) debt collection; and (3) HMDA reconsideration (including engaging in rulemakings to revise thresholds, implement EGRRCPA, reconsider data points, and adopt by rule privacy-based disclosure requirements). The specific factors which support the Bureau continuing work on these three rulemakings are set forth in Table 1.

Table 1 FY2019-20	Congressional Mandate?	Prevents/mitigates market failure causing significant consumer harm	Reduces regulatory burden	Increase clarity to increase compliance or innovation	Rulemaking in progress	Resources are/would be available
Payday ATR Rescission	N	N	Y	Y	Y	Y
Debt Collection	N	Y	Y	Y	Y	Y
HMDA	N	N	Y	Y	Y	Y
ATR/QM "Patch"	N	Y	Y	Y	N	Y[3]

[3] To maintain high standards for quality in process and outcomes, RMR likely would need to add a mortgage market expert to the Markets team if the Bureau runs rulemakings in ATR/QM, PACE, and HMDA alongside the concurrent TRID assessment, and, as we recommend below, begins to ramp up for another major mortgage rulemaking.

As this table indicates, each of these rulemakings is designed, at least in part, to relieve regulatory burden. That is most obviously true of the payday rule because the mandatory underwriting provisions of the 2017 Payday Rule—which the Bureau's NPRM proposes to rescind—would have resulted in an approximate 65% reduction in payday revenue and a near-complete elimination of single-payment vehicle title loans. The HMDA rulemaking would have a less dramatic effect on regulatory burden, but the NPRM that the Bureau is releasing if made final would relieve an estimated 750 to 1,700 community banks and credit unions of the obligation to collect and report data on closed-end mortgages and upwards of 700 of the obligation to collect and report data on HELOCs for two years and 400 of the obligation to collect and report thereafter. The HMDA ANPR could result in a rulemaking to further reduce burden—especially for larger FIs—to the extent that the information received identifies data points whose costs appear to outweigh their benefits.

The debt collection rulemaking—which has been ongoing for a number of years and for which the Bureau will be issuing an NPRM in May—addresses a number of regulatory goals. The FDCPA was enacted in 1977 in part to impose restrictions on the conduct of debt collectors because the inability of consumers to choose their debt collector significantly decreases the extent to which competition among firms constrains collectors from engaging in conduct which harms consumers. The FDCPA has never been significantly amended and there have been no implementing regulations and so substantial uncertainty has been created as to what the statute requires. Rulemaking would clarify for collectors and consumers what is required under the FDCPA, increasing compliance, reducing regulatory burden, and fostering the innovative use of electronic media to communicate with consumers. Rulemaking also would enhance and improve the information consumers receive in disclosures required under the FDCPA.

RMR expects the payday lending rulemaking to continue into FY2020 and debt collection and HMDA to continue through FY2020. Completing the full slate of HMDA rulemakings will take us into the beginning of FY 2021.

Assuming the Bureau has the capacity to engage in four active, resource-intensive rulemakings at this time, RMR believes that there is one open slot for a resource-intensive rulemaking in FY2019-2020.

RMR recommends filling this slot with a rulemaking to address the expiration of the Qualified Mortgage "GSE patch" as well as related changes to the ATR-QM Rule, such as modifying or supplementing Appendix Q. In January, 2021, the GSE patch is scheduled to expire. The market's fear of potential liability under the ability-to-pay requirement, coupled with its uncertainty about how to show that a loan meets the DTI requirement for a General QM under Appendix Q, could result in a substantial market disruption and contraction in access to credit. RMR will be forwarding a recommendation shortly concerning a rulemaking to address the expiration of the GSE patch. The contemplated rulemaking could, at a minimum, address Appendix Q's application to calculating and documenting less traditional sources of income, such as self-employment income, and also would facilitate innovation in the use of new technologies to verify income. The rulemaking also could consider adjustments to the General QM definition that would expand its contours by, e.g., increasing the DTI threshold to enable creditors to make more loans without fear of liability. The Bureau made clear in conducting the assessment of the ATR-QM Rule that it contemplated rulemaking after the assessment was complete. RMR has been analyzing policy options over the past several months. All of these considerations lead RMR to recommend that ATR-QM be added to the current set of rulemaking priorities.

FY2021 Resource-Intensive Rulemakings

If FY2019-20 resource-intensive rulemakings discussed above do not hit major unexpected hurdles, and if RMR's capacity and resource allocation remain roughly as-is, then RMR could activate four new resource-intensive rulemakings beginning sometime in FY 2020 and continuing into FY2021. RMR has identified a number of candidates. The candidates and factors bearing on which resource-intensive rulemakings the Bureau could address are shown in Table 2. We have not included in this table potential rulemakings to address the meaning of abusiveness under Section 1031 or the application of ECOA to disparate impact claims; those topics are discussed separately in the next section of this memo.

Table 2 FY2021-	Congressional Mandate?	Prevents/mitigates market failure causing significant consumer harm	Reduces undue regulatory burden	Increases clarity to increase compliance or innovation	Rulemaking in progress	Resources are/would be available
PACE	Y	Y	N	N	Pre-rule (ANPR)	Y
1071	Y	Y	N	N	Pre-rule (RFI)	?
Loan Originator Compensation Rulemaking	N	N	Y	Y	N	?[4]
RESPA Section 8	N	Y	Y	Y	N	?
Data: data access, data aggregation	Y	Y	N	Y	N	?
Electronic Disclosures (in credit cards)	N	N	Y	Y	Y	?[5]

[4] See supra note 3 concerning the need for more mortgage market expertise. The Office of Research notes that specialists in Industrial Organization would be very helpful for either a Loan Originator Compensation Rulemaking, a RESPA Section 8 rulemaking, or a Data Aggregation rulemaking. The Office of Research has some specialists with this background but more of them would be useful if the Bureau were to engage in multiple rulemakings implicating this expertise.

[5] RMR has four disclosure experts, so the scope and depth of the disclosure testing and evaluation we could do for this rulemaking would depend on our ability to retain the experts we have and on competing demands on the experts (such as Office of Innovation's disclosure trials and other rulemakings that may require disclosure testing and evaluation).

As this table indicates, three of the candidates are ones where Congress has directed the Bureau to engage in rulemaking: PACE, Section 1071, and Section 1033 (consumer access to data). For the first two, substantial pre-rulemaking activity already has taken place, including the recent PACE ANPR and the 2017 RFI seeking comments under Section 1071. The combination of the congressional mandate and the fact that a good deal of work already has been done make PACE and Section 1071 leading candidates in RMR's view.

Of the remaining potential rulemakings listed on Table 2 there are four—including the mandated Section 1033 rulemaking—which RMR views as strong contenders to fill the remaining "slots" (assuming these slots are not taken up by abusiveness and disparate impact). We briefly describe the case for each below.

RESPA Section 8 -- RESPA Section 8(a) generally prohibits the payment of fees or any "thing of value" pursuant to an "understanding or agreement" for real estate referrals. Section 8(c) states that subsection (a) shall "not be construed" to cover a number of different type of specified arrangements, including arrangements for the payment of "bona fide compensation" for goods or services actually furnished by the entity making the referrals. There is considerable uncertainty about the scope of the general prohibition in subsection (a) and the scope of the identified practices in subsection (c). That uncertainty has been heightened by the Bureau's Marketing Services Agreement Bulletin which predates the *PHH* decision and addresses fact patterns similar to those addressed by the *PHH* decision. Disagreements within industry as to the state of the law create considerable friction in the efficient provision of services to consumers, including housing counseling. A rulemaking could bring needed clarity to this area, relieving regulatory constraints on market participants who read Section 8 more broadly than necessary and differentiating between situations in which payments for referrals pose risks of significant consumer harm from those where the referrals fees are more benign by, e.g., drawing upon approaches that have been developed in the antitrust context for evaluating tying arrangements. RMR staff have had to wrestle with a number of these issues in the context of individual regulatory inquiries, EAPs, and work on the Marketing Services Agreement Bulletin, but RMR has not started any pre-rulemaking work.

Loan Originator Compensation -- The Bureau's "LO comp" Rule implements prohibitions on paying compensation to loan originators which varies based upon the terms of the transaction. Among other things, these prohibitions—which were designed to prohibit incentives to steer consumers to unfavorable mortgage terms—preclude creditors from reducing a loan originator's compensation either to fund a price reduction offered to the consumer to meet competition or if a loan originator commits an error. A rulemaking that addressed the prohibition on reducing compensation in these circumstances could relieve burden and also could enable consumers to obtain a loan from a lender with whom the consumer may otherwise prefer to do business without having to accept a higher price. A rulemaking also could permit creditors to adjust compensation for certain loans made by Housing Finance Agencies to moderate- and low-income consumers in order to make these loans more profitable for creditors and thereby facilitate access to credit for these consumers.[6] A small team within RMR, in collaboration with Legal, has begun to look at some of the legal issues that would be implicated by an LO comp rulemaking, including the scope of the Bureau's authority to permit compensation to vary in these circumstances.

Section 1033/Access to Data -- The DFA directed the Bureau to conduct a rulemaking to establish standards pursuant to which a consumer could, on request, obtain information in a standardized electronic format from the consumer's financial service providers about the consumer's account, including transactional data and data on fees and charges incurred. The access of consumers and their agents to such information could facilitate the development of new or improved products or services and new or improved methods of underwriting and could lower the consumer's costs of switching between product providers. There is currently some evidence that providers seek to limit the information that data aggregators can access on consumers' behalf in order to reduce the risk that customers exit. A rulemaking on data aggregation could reduce barriers to obtaining such data and thereby facilitate competition.[7] A rulemaking also potentially could address consumer understanding of data permissioning or regulatory uncertainty under the Fair Credit Reporting Act with respect to the obligations of data aggregators and of financial

[6] A rulemaking on just the HFA issue would likely not qualify as a resource-intensive rulemaking.

[7] Viewed through an economic lens, Section 1033 authorizes the Bureau to establish or clarify rights with regard to certain consumer data. Assuming that the current allocation is not an efficient outcome, such clarification could lead to more efficient outcomes.

institutions that facilitate access to consumers' data that they hold. The Bureau issued an RFI in 2016 seeking information about practices surrounding consumer-authorized data sharing and in 2017 published principles for such data sharing, but the Bureau has not engaged in other pre-rulemaking activity. Note that this rulemaking would address one of the topics the Bureau has announced will be part of its upcoming policy symposia series.

Electronic Disclosures in Credit Cards --Rules governing electronic disclosures have not kept pace with technology, creating uncertainty, inefficiency, and ineffectiveness in a range of markets. RMR has begun a non-resource intensive regulatory review of the credit card rules under Regulation Z (announced in prior Unified Agendas) and has a group working on electronic disclosures more generally. Adding electronic disclosure issues to the scope of this project would transform it into a resource-intensive rulemaking. Such a rulemaking could help build a template for addressing electronic disclosure concerns in consumer finance more generally. It also could facilitate innovation, by clarifying when issuers can provide disclosures electronically and updating the requirements for the substance and format of a disclosure when provided electronically, enabling issuers to leverage the capabilities that electronic media provide for customized and interactive disclosures. These changes would potentially enhance the effectiveness of the disclosures and would reduce the burden of providing paper disclosures where required to do so today.

# # #

RMR believes that all of the additional resource-intensive rulemakings discussed above have merit. Bureau stakeholders have expressed interest in each of them. As discussed above, taking current resources and commitments as a constraint, RMR believes it could conduct two additional resource-intensive rulemakings beyond the 1071 and PACE rulemakings.

Given the size of the mortgage market, and its importance to consumers, RMR recommends that some of the additional resource-intensive rulemaking resources be put toward a mortgage market rulemaking. RMR could not, however, support both a RESPA Section 8 and Loan Originator Compensation rulemaking at full scale at the same time, absent significant additional hiring. Both rulemakings pose challenging legal and economic questions and draw heavily on the same limited legal and economic subject matter expertise. On balance, RMR leans towards prioritizing the

RESPA Section 8 rulemaking largely because of concerns about some of the legal and policy issues implicated by a full-scale Loan Originator Compensation rulemaking.

For the other additional, resource-intensive rulemaking, RMR recommends prioritizing a Section 1033 rulemaking over an electronic disclosure rulemaking. Doing so would discharge this congressional directive and facilitate innovation across a variety of markets, although RMR notes either of these two rulemakings would advance the Bureau's work on innovation.

We would expect to reflect generally the decisions made concerning these resource-intensive rulemakings in the Fall 2019 Unified Agenda. We will work with you to confirm, or revise, any decisions about rulemaking priorities for FY2021 in time for the Spring 2020 Unified Agenda. Our next steps would include providing you more information about the applicable market failure and the extent of regulatory uncertainty, as well as the known and obtainable evidence of consumer harm on these possible rulemaking topics. If you wanted us to keep going, we would provide you a sense of the major policy options and obtain your further policy direction before launching any rulemaking.

Other Potential Resource-Intensive Rulemakings

As noted above, RMR has not included in its analysis above two possible resource-intensive rulemakings which the Bureau has indicated that it might conduct. One would be a rulemaking to consider amending Regulation B to either revise provisions relating to the disparate impact theory to provide clarity in the standards which would increase compliance and reduce regulatory burden or to eliminate provisions relating to the disparate impact theory on the grounds that the Bureau cannot or should not interpret ECOA to encompass such theory. The other would be a rulemaking to provide greater definition to the meaning of abusiveness under the Dodd-Frank Act.

The Bureau has announced it is planning to hold symposia on both of these topics. Those symposia may help assess the potential value and costs of such rulemakings. RMR anticipates that rulemakings on either of these topics would create substantial public controversy, generate massive public input, and have significant resource and litigation implications. RMR of course has and can do rulemakings in these circumstances, but in light of the stakes, RMR believes that it would be better to assess these rulemaking topics separately and after the symposia provide a better sense as to the scope and direction they could have.

Other Potential Projects in the Regulatory Program

In Tabs 1 and 2 RMR identifies potential rulemaking and guidance projects, including the rulemakings mentioned above, and reviews of regulations. At current capacity and allocation, RMR could start or complete only some of these projects by FY2021. We can firm up which projects RMR will do, and at what scale, by FY2021 after RMR receives your views on resource-intensive rulemakings.

In general, projects in Tabs 1 and 2 would still have value after FY2021, but a few of the regulatory review projects in Tab 2 (such as collecting baseline data to review the prepaid and payday payments rules) would become impracticable if not done before then.

RMR has launched some of the projects in Tabs 1 and 2 (such as the remittance rule RFI, the TRID assessment, and the Section 610 review of overdraft rules). Projects that have launched are marked with an asterisk, but they may not be staffed at full capacity. Overall, there is considerable flexibility in the staffing and timing of these projects and in their deliverables: many projects can be done more or less quickly, with a broader or narrower scope, and with a greater emphasis on notice-and-comment rulemaking versus other policy tools including informal guidance and engagement with market participants. Your decisions on priorities will guide RMR in deciding which of these smaller projects to staff and how to staff them, as RMR engages in initial policy development and scoping in order to launch new rulemakings you identify as priorities.

RMR is prepared to give you more information about any of these projects. RMR can offer you a preliminary assessment of any other projects you may have in mind for RMR.

Conclusion

RMR seeks your guidance about the resource-intensive rulemakings it should expect to work on into FY2021. RMR can supply you more information on request about the options or any other aspect of the potential regulatory program.

External Affairs has asked us to inform you that they believe there are significant and varying stakeholder considerations to each of the priorities outlined in this memo. EA also believes that, as the Director makes decisions, these should be informed by consideration of expected external stakeholder reactions. EA will provide an overview of external stakeholder positions on each rulemaking and looks forward to reviewing these inputs with the Director. RMR agrees that stakeholder positions should be a consideration in your decisions.

Attachment(s)

Tab 1: Menu of Potential Rulemaking, Guidance, and Other Policy Projects
Tab 2: Menu of FY2019-20 Regulatory Review Projects

Tab 1: Menu of Potential Rulemaking, Guidance, and Other Policy Projects

Subject Matter	Project Name	Benefit[8]
Credit Cards	*CFPB Collect – Credit Cards**	Regulatory burden reducing
	*Open-end Credit and Credit Card Regulation Z Regulatory Review**	Innovation facilitating; Regulatory burden reducing
Credit Reporting	*Accuracy*	Innovation facilitating; Regulatory burden reducing
	Consumer Reporting – Credit Repair Organizations Disputes	Regulatory burden reducing
	Consumer Reporting – Model Form for Disclosure of Use of Consumer Report for Employment	Regulatory burden reducing
	EGRRCPA 301 -- credit freezes (follow up to Interim Final Rule)	Regulatory burden reducing
	Identity Theft	
	Advance Live Checks	
Credit Reporting; EFTA	*Data Aggregators (Section 1033 rulemaking)*	Innovation facilitating; Statutory implementation
Cross Cutting	*Electronic Disclosures**	Innovation facilitating; Regulatory burden reducing

[8] The benefits identified are confined to three major categories: statutory implementation, regulatory burden reducing, and innovation facilitating. We have not identified here other major benefits that could flow from these projects, including increased access to credit, enhanced regulatory clarity, or improved consumer transparency, for example.

Debt Collection	*Information Flows/First-Party Debt Collection Issues*	
Deposits	*Reg CC** *Overdraft in Deposits*	Statutory implementation
Fair Lending	*Disparate Impact/ECOA*	Regulatory burden reducing
Fair Lending; Credit Reporting	*Alternative Data*	Innovation facilitating; Regulatory burden reducing
Mortgage	*Loan Originator Compensation Rulemaking**	Regulatory burden reducing
	*PACE Rulemaking**	Statutory implementation
	RESPA Section 8 Rulemaking	Regulatory burden reducing
	Regulation Z Mortgage Rescission Right	
	TRID post-assessment rulemaking	Regulatory burden reducing
	*Appraisals**	Statutory implementation
	*EGRRCPA 101 QM Threshold**	Statutory implementation
	*EGRRCPA 107 Manufactured Housing/ Loan Originator Compensation**	Statutory implementation
	*EGRRCPA 108 Escrow Requirements**	Statutory implementation
	*EGRRCPA 106 SAFE Bulletin/PRA**	Statutory implementation
	*EGRRCPA 109 TRID Guidance**	Statutory implementation
	Servicing Post-Assessment Follow-Up	

Mortgage; Open-end Credit, Credit Cards	*LIBOR Guidance**	
Payments and other electronic funds transfers	*Regulation E Modernization – Regulatory Review**	Innovation facilitating; Regulatory burden reducing
	Overdraft in Payments	
	*Remittances Temporary Exception, 100 Threshold, Countries List**	Regulatory burden reducing
	*Regulation E Modernization Faster Payments Issues**	Innovation facilitating; Regulatory burden reducing
Regulatory Housekeeping	*Adjust Regulatory Thresholds for Inflation*	Statutory implementation
	*Rulemaking on Guidance/ Formalizing Guidance Procedures**	
Small Business Lending	*Small Business Loan Data Collection (Section 1071) Rulemaking*	Statutory implementation
Small Dollar	*Larger Participant Installment Lender Rulemaking* *Payday Rulemaking Petition and Other Possible Scope Adjustments*	
Student Lending	*EGRRCPA 602 Rehabilitation of Private Education Loans**	Statutory implementation
UDAAP	*Clarifying UDAAP/Abusiveness Authority*	

*Indicates an active project

Tab 2: Menu of FY 2019-20 Regulatory Review Projects

Subject Matter	Project Name
Credit Cards	*RFA 610 Review for CARD Act* *Discretionary Regulatory Review of Regulation Z Subparts B and G*
Deposits	*RFA 610 Review for Overdraft**
Mortgage	*Collect data on one-time cost to implement 2015 HMDA rule and/or pre-rule ongoing costs to establish a baseline for the assessment*** *RFA 610 Review for SAFE Act* *TRID 1022 Assessment**
Payments and other electronic funds transfers	*Collect transactional data for a baseline for an assessment of prepaid rule*** *Collect data on one-time cost to implement the prepaid rule***
Small Dollar	*Collect transactional data for a baseline for an assessment of payday payments rule*** *Collect data on one-time cost to implement the payday payments rule***

*Indicates an active project

**Indicates a project that would need to be done by early FY2020. We believe transaction data older than 12-18 months are expensive for firms to retrieve. We also believe that information about one-time implementation costs dissipates quickly.

Call for Evidence Initiative

Summary Report Part 2: Research, Markets, and Regulations

Table of Contents

CFPB-0001202

Introduction

BACKGROUND AND PURPOSE

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

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

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

METHODOLOGY AND DEFINITIONS

In January 2018, the Deputy Chief of Staff convened a Call for Evidence Working Group, consisting of the Deputy Associate Directors and select staff from RMR, SEFL, EA, CEE, Legal, and Consumer Response. The Working Group prepared a list of proposed RFI topics and publication sequence that were approved by then-Principal Policy Director Brian Johnson. Division leadership assigned staff from each division to carry out the principal drafting of the RFIs, which were subsequently reviewed and approved by division leadership and Brian Johnson.

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

Altogether, over 88,000 comments were received across the 12 dockets, although the vast majority of these comments were from a series of coordinated campaigns in which individuals submitted identical or substantially similar form letters. Form letters notwithstanding, the Bureau received substantial and broad input on all RFIs, with comments received from national trade groups, consumer advocacy groups, academics, state and Federal agencies, state attorneys general, individual entities, and individual consumers, among others.

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

At the division level, each docket was assigned to a team of one to four subject matter experts who reviewed all the comments received on the docket, tagged the comments according to the universal and RFI-specific tagging schemes, and identified representative sentiments in the substantive comment letters.

The Director's Office requested that comment summary reports for this initiative provide representative sentiments for a limited number of topic areas that were determined to be central to the RFI. For this report, reviewers have interpreted this request as a direction to reflect the diversity of perspectives and voices across the range of comments received on particular topics, not to determine which views were most frequent or representative of particular types of commenters. That is, although only one or two quotes may be provided for a particular commenter type, we do not intend to suggest that those views are shared by all members who fall within the group.

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

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

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

1. Rulemaking Processes

2. Adopted Regulations and New Rulemaking Authorities

Background

The Dodd-Frank Act transferred to the Bureau "consumer financial protection functions" previously vested in certain other Federal agencies, effective July 21, 2011.[1] The transfer included "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[2] The Dodd-Frank Act authorizes the Bureau to "exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law."[3] Further, the Act generally authorizes the Bureau to "prescribe rules and issue orders ... as may be necessary or appropriate to carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[4] Relying on these and other authorities, the Bureau has promulgated a number of rules, some mandated by Congress and others discretionary.

In March 2018, the Bureau published two RFIs related to the regulations administered by the Bureau and its rulemaking authorities. The first RFI focused on the rulemakings adopted by the Bureau and the new rulemaking authorities given to the Bureau by the Dodd-Frank Act (Adopted RFI). The second RFI focused on the regulations and rulemaking authorities that were in place before the Bureau existed for which the Dodd-Frank Act transferred rulemaking authority from other agencies to the Bureau (Inherited RFI).[5] Except as explained below, this part of this report discusses comments received in response to the Adopted RFI.

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[1] Section 1061; 12 U.S.C. 5581.

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

[3] Section 1022(a); 12 U.S.C. 5512(a).

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

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

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

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

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

METHODOLOGY SPECIFICALLY FOR ADOPTED REGULATIONS AND NEW RULEMAKING AUTHORITIES RFI

Note on Overlap between Adopted and Inherited RFIs: Because some of the new rulemakings adopted by the Bureau, at least in part, amended inherited regulations or relied on inherited rulemaking authorities, there is overlap between the two RFIs and the public comments they elicited. Comments received in response to the Adopted RFI are described primarily in this part of this report. Those responsive to the Inherited RFI, along with cross-cutting issues that may relate to both adopted and inherited rules and authorities, are described primarily in part 3 below. We note that many comment letters received on these two RFIs discussed both adopted and inherited rules and authorities. Because of this overlap, we have combined discussion of the comments received on the Adopted and Inherited RFIs for the RFI Topic Areas and the Representative Sentiments sections for the Adopted RFI, as discussed in more detail just below.

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

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

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

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

Representative Sentiments: The Bureau received comments relating to 19 adopted rulemakings or adopted rulemaking authorities.[6] Below, this report provides representative sentiments for comments relating to the seven adopted rulemakings for which we received the greatest number of comments.[7] The representative sentiments included below are meant to provide a flavor of the most numerous substantive comments that the Bureau received on these topics.[8] We have tried to select the most succinct articulations of each issue found among the comment letters, even though that resulted in some commenters being quoted more frequently than others.

Two topics implicate both adopted and inherited rules or rulemaking authorities: electronic disclosure and innovation. These cross-cutting topics are discussed in part 3 of this report. These issues also are discussed in this part on the adopted topics where relevant comments were among the most numerous on a particular topic. The "innovation" topic discussed in part 3 below only includes comments that specifically used the keywords "innovation" or "innovate." Other comments that relate to innovation were included in this part, even if they did not specifically use the term "innovation" or "innovate," if

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

[7] To improve the clarity of representative sentiments, where appropriate, we have made non-substantive formatting changes and have omitted non-substantive footnotes.

[8] The representative sentiments are not intended to reflect all the issues that were raised by commenters on a particular topic.

these comments were among the most numerous on a particular topic. Finally, several comments received on the Adopted RFI discussed no-action letters. These comments related to no-action letters are discussed in part 4 in relation to the Guidance RFI.

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

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

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

In selecting representative sentiments, we have focused on actionable comments (that is, specific suggestions for the Bureau to undertake specific rulemaking activity, or expressing support for current practices). We have not included comments that simply recite historical background, even where such recitation may imply a complaint about Bureau practices, or that make generalized statements without specific suggestions. However, the latter two types of comments were included in the relevant counts concerning substantive comments. The representative sentiments provided below are grouped by (1) trade groups, (2) consumer advocacy groups, (3) other industry,[9] and (4) others.[10] We have not indicated below where multiple commenters addressed an issue using substantially similar language due to space constraints.

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

10 The "other" category includes individual consumers, Federal, state or local governments, academics/researchers and other entities that submitted anonymously.

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

Comment Summary

Total comments: 216[11]

Substantive comments responsive to this RFI submitted on this docket: 98[12]

Substantive comments referred from other RFIs: 22[13]

Substantive comments responsive to other RFIs submitted on this docket: 117 (26 of which are also responsive to this RFI)[14]

Substantive and responsive comments received from:[15]						
	Individual Entities					
Individual Consumers	Depository Institutions and Credit Unions	Non-Depository Institutions	Industry Trade Groups	Consumer Advocacy Groups	Government (i.e., other Federal agencies, state and local governments, US Senators)	Other (e.g., academia, non-consumer advocacy groups, etc.)
11 (+1)[16]	10 (+2)	24 (+7)	35 (+7)	12 (+3)	2	4 (+2)

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

[12] 194 comments were submitted to this docket and are posted on Regulations.gov under CFPB-2018-0011. Regulations.gov indicates the count for the docket is 218, but only 194 items are actually posted; 3 items had been posted but were removed because they were duplicates of other posted items. Due to subject-matter overlap between the Bureau's adopted and inherited rules and rulemaking authorities, many comments submitted on the Adopted RFI contained information relevant to the inherited rules and/or inherited rulemaking authorities. For simplicity, in this data, we do not detail how many comments letters submitted on the Adopted RFI relate only to the adopted rules, relate only to the inherited rules, or relate to both. Instead, for this total, a comment submitted on this docket is considered relevant to this docket if it is either relevant to: (1) the adopted regulations and/or the new rulemaking authorities; or (2) the inherited regulations and/or the inherited authorities.

[13] This total reflects comment letters submitted on the Rulemaking Processes or Guidance RFIs that are relevant to the adopted regulations and/or the new rulemaking authorities.

[14] Five comments submitted and posted on this docket were neither relevant to this docket nor relevant to any other RFI docket.

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

[16] The numbers in parentheses reflect the number of additional substantive comments submitted on the Rulemaking Processes or Guidance RFIs that were relevant for this RFI.

RFI Topic Areas

	Topic	Description	Total Number of Comment Letters[17]
1	TILA-RESPA Integrated Disclosures (TRID)	Amendments to Regulations X and Z to integrate certain mortgage disclosures under the respective regulations. Regulation X is the implementing regulation for the Real Estate Settlement Procedures Act (RESPA), and Regulation Z is the implementing regulation for the Truth in Lending Act (TILA).	63 27 trade groups 4 consumer advocacy groups 26 other industry 6 other
2	Remittances	Amendments to Regulation E to address remittance transfers by requiring, for example, consumer disclosures and establishing procedures for cancellation and error resolution. Regulation E is the implementing regulation for the Electronic Fund Transfer Act (EFTA).	32 12 trade groups 3 consumer advocacy groups 14 other industry 3 other
3	Mortgage Servicing	Amendments to Regulation X and Regulation Z to address various elements of mortgage servicing, including, *inter alia*, periodic statements, loss mitigation procedures, consumer requests for information, and the crediting of payments.	32 13 trade groups 7 consumer advocacy groups 6 other industry 6 other
4	Ability-to-Repay/Qualified Mortgages (ATR/QM)	Amendments to Regulation Z to require minimum standards that creditors must use before extending certain closed-end mortgage loans to determine consumers have the ability to repay.	30 17 trade groups 5 consumer advocacy groups 6 other industry 2 other
5	Prepaid Accounts	Amendments to Regulation E and Regulation Z to extend coverage to prepaid accounts with tailored disclosure requirements, limited liability and error provisions, periodic statements, and overdraft credit protections.	29 11 trade groups 7 consumer advocacy groups 9 other industry 2 other

[17] The total number of comment letters for each topic includes the comment letters relevant to that topic regardless of whether the comment letter was submitted to the Adopted, Inherited, Rulemaking Processes, or Guidance RFI.

	Topic	Description	Total Number of Comment Letters[17]
6	Loan Originator Compensation and Qualifications	Amendments to Regulation Z provisions related to loan originator compensation and qualifications.	29 15 trade groups 4 consumer advocacy groups 6 other industry 4 other
7	Debt Collection	Advanced notice of proposed rulemaking to implement the Fair Debt Collection Practices Act (FDCPA) through notice-and-comment rulemaking.	23 15 trade groups 4 consumer advocacy groups 4 other industry 0 other

Representative Sentiments

1. TRID[18]

Commenter Type	Representative Sentiments
Trade groups	**<u>Curing violations</u>:** "Presently, Section 130(b) prevents creditors from correcting significant, yet obviously clerical and easily-remedied errors—for example, in instances where a settlement agent's [Closing Disclosure (CD)] leaves the loan calculation table blank or inserts zeroes for the values—because to be effective for Section 130(b) correction purposes, a lender must adjust the account such that the consumer does not pay more than the disclosed charges or dollar equivalent of the APR disclosed at closing. In instances where the CD is obviously defective and not simply inaccurate—and particularly where the [Loan Estimate (LE)] or other disclosure document in the loan file makes evident that the correct information had been properly disclosed to the consumer—the Bureau should consider using its discretionary authority to permit correction of obvious clerical errors without requiring windfall reimbursements." – Housing Policy Council (HPC) (-0080)[19] **<u>Waiting periods</u>:** "The TRID Rule includes strict waiting periods that can be waived in the case of a 'bona fide personal financial emergency.' Few creditors grant such waivers because they are concerned that a regulator or court will later determine that the emergency did not qualify as a bona fide personal financial emergency under the rule. … The official interpretations only provide one example of a qualifying bona fide personal financial emergency: 'The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period. …' … Therefore, we request that the Bureau provide additional examples of qualifying events that creditors may actually encounter." – MBA (-0084) **<u>Redesigning disclosures</u>:** "The TRID Rule contemplates the provision of certain disclosures in some, but not all, cases, such as appraisal and foreclosure liability disclosures. These dynamic disclosures create heightened quality assurance and quality control burdens for companies. Due to the variable nature of these disclosures, lenders must determine whether they are appropriate in each particular origination. This burden could be easily avoided if these variable disclosures were simply replaced by standard, nondynamic disclosures." – U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (CCMC) (-0093)

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

[19] Comments quoted in this part 2 were submitted on the Adopted RFI docket (CFPB-2018-0011) unless otherwise noted.

Consumer advocacy groups	**Guidance/rulemaking process**: "The CFPB should not re-open the Integrated Disclosure rules. … [T]he CFPB put an extensive amount of time and effort developing the proposed TILA-RESPA Integrated Disclosure rules … including conducting consumer testing and focus groups to get direct feedback from consumers on whether the disclosure was accessible and useful. The CFPB also solicited input from the public, including consumer advocates and industry participants. The agency did not favor consumer concerns more than those of industry members, but properly focused on the question of whether consumers could understand disclosures intended to convey key information." – six consumer advocacy groups (-0097)[20] (emphasis omitted) **TRID overall effectiveness**: "The know-before-you-owe rule provides consumers essential information when shopping for mortgages, combining in a single form the disclosures required by the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). Integrating the requirements of two different statutes was a challenge, and the new form is a major improvement that helps consumers understand the key terms of their mortgages and helps them comparison shop. The provisions limiting deviance from estimated disclosures and providing final disclosures three business days before closing prevent bait-and-switch tactics and enable borrowers to check for errors or surprises." – California Reinvestment Coalition (CRC) (-0070)
Other industry	**Title insurance**: "Current regulation requires a complicated formula that discloses to consumers an inaccurate price for title insurance in most real estate transactions. For more than three years ALTA has been trying to work with the Bureau to address this issue and, despite overwhelming evidence, the Bureau has yet to resolve this matter or consider alternatives. Research shows that the majority of consumers this rule is intended to help find it confusing. Amending the rule to require the disclosure of the actual cost of title insurance is the best way to achieve the Bureaus missions to ensure consumers are provided with timely and understandable information to make responsible decisions about financial transactions." – Gaylene Anderson (Inherited -0016) **Legal liability**: "There needs to be a 'safe harbor' dollar amount that can be used without taking on the risk of being out of compliance. With such a 'safe harbor' dollar amount, it would still be possible for individual Financial Institutions to prove higher amounts if they so choose. Words such as 'reasonable' within any regulation should always trigger a safe harbor amount and that amount should be included in the guidance. It is not reasonable for our government regulators to expect Financial Institutions to take the risk of being out of compliance just because of differing opinions on what is Reasonable." – State Bank of Chandler (Guidance -0007) **Redesigning disclosures**: "The TRID rule introduces too many trivial and prescriptive requirements. The Bureau needs to revisit the disclosures and the processes to simplify and clarify. The combination of rounding, alphabetizing, confusing definitions of business days in combination with

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

	questionable placement of financial information adds to confusion not clarity. The misplacement of lender credits that prevents the consumer form [sic] actually seeing the total loan costs causes confusion and can lead to decisions based on misinformation. The convoluted approach to calculating title insurance premiums has been addressed and continues to cause tremendous confusion in the marketplace. The forms are confusing, not simple; misleading not direct, and offer more questions than answers."[21] – Shane Jackson (-0041)
Others	**Redesigning disclosures:** "The LE and CD are confusing, complex, misleading, and lead to more questions than answers. The forms should be redesigned with consumers in mind, not relying on academics but rather relying on the thousands of professionals who are involved with the origination and settlement service process. If the forms will not be redesigned in entirety, the lender credit disclosure location needs to move to Box A from Box J.[[22]] To tell consumers to compare Box A when the lender credit is not in Box A is misleading the consumer and making the consumer unwittingly choose an option that may indeed be worse for them." – Anonymous (-0088)

2. Remittances[23]

Commenter Type	Representative Sentiments
Trade groups	**Simplification of disclosure requirements:** "Currently, the Remittance Rule requires [remittance transfer providers (RTPs)] to provide a written pre-payment disclosure when the sender requests a transfer. This requirement has proven to be unduly burdensome for remittance transfers for several reasons. First, written disclosures increase the length of time for RTPs to process transactions because they must first generate and print a pre-payment disclosure receipt. Next, the requirement also has increased the cost to operate (i.e., ink, paper, labor costs and training). Some of our member RTPs have had to implement new or updated software and systems to generate the required information on the pre-payment disclosure. These additional out-of-pocket expenses are unnecessarily burdensome to RTPs and provide little in the way of consumer protection. In addition to the written pre-payment disclosure, the Rule requires RTPs to provide the sender with a receipt once the payment is made which includes the same information provided on the pre-payment disclosure, the dates of availability of the funds, and information regarding the sender's error resolution and cancellation rights. Thus, for each transaction, RTPs must provide two separate printed receipts and the same information from the pre-payment disclosure must be re-printed on the final receipt. This duplicative effort provides no further

[21] The commenter may have intended to say that the convoluted approach to calculating title insurance premiums has "not" been addressed.

[22] Box A is the section of the TRID forms with the "Origination Charges" heading, and Box J is the section with the "Total Closing Costs" heading.

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

	value to the customer." – Money Services Business Association (MSBA) (-0065) **<u>Error resolution</u>:** "[The Bureau should] [s]upport [a] statutory amendment to the Dodd-Frank Act to shorten the length of time within which a sender must assert error (currently 180 days) and to a timeframe (e.g., 60 days) that would be equally protective of consumer rights, but increase the ability of the provider to correct the error. It is unlikely that a sender would require six months to discover an error, and such time period is three times the 60-day period that a consumer has to assert an error under Subpart A of Regulation E. A 180-day time period within which to report an alleged error rewards senders who are dilatory in pursuing their rights and makes it more difficult for providers to seek recourse for the out-of-pocket losses they have to bear. The Associations understand that the elongated timeframe is set forth in the Dodd-Frank Act and request that the Bureau support an amendment to Section 1073 of the act to shorten the timeframe to be consistent with the error resolution time period set forth in Subpart A of Regulation E." – The Clearing House Association, L.L.C., CBA, Bankers Association for Finance and Trade, and ABA (-0055) (emphasis omitted) **<u>Cancellation rights</u>:** "This requirement creates additional burdens for RTPs who must be able to immediately stop a transaction when the order is cancelled by the sender and the funds have not yet been picked up or deposited into the account of the designated recipient. As a result of this requirement, many of our members have had to implement a cut-off time for money remittances prior to the close of business each day to provide the customer the ability to cancel the transaction. Given the shortcomings of existing technologies, many RTPs do not have the ability to cancel a transaction once it is completed. Thus, some of our members have had to manually delay the submission of all transactions to ensure that an order can be cancelled by a consumer in this 30-minute window if requested. However, when a transaction is delayed there is a risk that the exchange rate could change during the 30-minute delay window. Thus, many Financial Institutions and MSBs have simply decided not to provide remittance services which restricts consumer choice and limits competition in the marketplace. Not only has the manual delay of all transactions increased the regulatory burden and expense associated with each transaction but implementing a delay of all the transactions creates hardships for senders who need their money delivered to their intended recipient as soon as possible." – MSBA (-0065) (emphasis omitted)
Consumer advocacy groups	**<u>Do not modify the rule</u>:** "The undersigned organizations support the CFPB's remittance rule and urge the bureau not to revisit or weaken it. A 'remittance transfer' means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The experience of our organizations is that the remittance rule us [sic] working and is protecting money sent abroad and the financial security of U.S. residents who send this money. Prior to the remittance rule, customers had inadequate up-front information about fees and exchange rates needed to compare the cost of different services. Our surveys show that consumers now have more confidence when sending remittances. Moreover, the volume of remittances is up but the cost is down since the CFPP [sic] rule was adopted. The average cost of sending remittances has fallen to 5.67% in 2018 down from 6.75% in 2013." – 32 consumer advocacy groups (-0100)[24] **<u>Enforcement</u>:** "We also urge the CFPB to ensure that (a) consumers receive accurate information regardless of the provider used to send funds abroad, and (b) the promises made to consumers about

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

	costs and times for funds availability are enforced. Consumer complaints to the CFPB indicate that too often consumers believe that they are sending enough money to pay for an important bill, but deceptive exchange rates and transaction costs eat away at the actual amount that their family receives." – CRC (-0070)
Other industry	**<u>Safe harbor threshold</u>:** "The exemption under Regulation E needs to be raised to a much higher number than 100 remittances per year. When the regulation was issued in 2013, the Credit Union provided about 800 remittances per year. Since we were over the 100 exemption threshold, we had to enter into a contract with a new vendor as we did not have the capability or resources to be compliant with the regulation. While we did not pass on the entire cost to our members, we did have to raise the fee that we charged and require our members to request this service on-line instead of in-person. Five years later, the Credit Union still only does about 800 international remittances per year for our more than 287,000 members. The Credit Union clearly offers remittances as a service to our members and not as a money-maker. The exemption should be raised so that other credit unions who stopped offering this service can again offer their members this service." – American Airlines Federal Credit Union (-0068) **<u>Cancellation rights</u>:** "The Bureau should also remove consumers' ability to cancel a transfer for 30 minutes (or longer) following initiation of a transaction because of the associated compliance burden. This requirement has created an unduly burdensome compliance concern for credit unions." – Michelle Hunter (-0183)
Others	**<u>Safe harbor threshold</u>:** "Because the Bureau prides itself on being a data-driven organization, data obtained by the Bureau must play a key role in identifying and prioritizing the agency's actions, including in the realm of rulemakings. Unfortunately, it is not uncommon for Bureau rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. A good past example of this was the Remittance Transfer Rule where the safe harbor threshold was set at 100 remittances per year." – Jim Morrell (-0108) **<u>Modify the rule</u>:** "Congress and the CFPB must work together to protect consumers. Unfortunately, the remittance transfer rule is limiting access to this important financial product and making it needlessly more expensive for consumers. I urge you to exercise your authority to amend this burdensome and harmful rule so that credit unions can more easily offer international remittances products to their customers." – Rep. Andy Barr (Ky.) (-0196)

3. MORTGAGE SERVICING[25]

Commenter Type	Representative Sentiments
Trade groups	**Foreclosure hold:** “Servicers need time to review documents submitted by a borrower to determine if the borrower’s loss mitigation application is complete, and, if so, implement a foreclosure hold. The current mortgage servicing rule does not provide any period of time for this process, even though the Bureau has acknowledged in other parts of the rule that a servicer may need up to five days to evaluate documents submitted by a borrowers. The Bureau should interpret 12 C.F.R. § 1024.41(g) to require a servicer to halt progress towards foreclosure within five business days of receipt of a complete loss mitigation application.” – AFSA (-0061) **Evaluating incomplete loss mitigation applications:** “Section 1024.41(c)(2)(ii) permits a servicer to evaluate an incomplete loss mitigation application if the servicer has exercised ‘reasonable diligence’ in obtaining documents and information to complete a loss mitigation application, but the application remains incomplete for ‘a significant period of time under the circumstances.’ The lack of specificity around these vague standards, and the risk of violating the general prohibition against evaluating an incomplete loss mitigation application, has encouraged many servicers to completely forego use of this exemption. The Bureau should offer additional guidance, and perhaps a safe harbor, to enable servicers to rely on this carve out.” – MBA (-0084) **Small servicer exemption:** “The Bureau should extend the small servicer exemption to fully exclude application of the following provisions found in RESPA’s Regulation X, including for successors in interest: Subpart C – Mortgage Servicing, including: mortgage servicing transfers, error resolution procedures, requests for information, force-placed insurance requirements; and 1024.17 – Escrow accounts.” – CUNA (-0034)
Consumer advocacy groups	**Effectiveness of the Bureau’s Mortgage Servicing rules:** “The [Bureau’s Mortgage Servicing rules] have made a significant, positive impact in the lives of homeowners by providing better access to loan information and by helping to prevent avoidable foreclosures, including for successors in interest (widows and orphans). The rules require fair and common sense procedures surrounding force-placed insurance, servicing transfers, and review of borrowers for loss mitigation. The rule has helped align the incentives of servicers with investors, homeowners, and communities.” – CRC (-0070) **Exemptions for home equity lines of credit and reverse mortgages:** “If [the Bureau] opens Regulation X’s servicing provisions, it should … repeal exemptions for home equity lines of credit and reverse mortgages.” – 32 consumer advocacy groups (Inherited -0064)[26]

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

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

	Consumer protections when transferring servicing: "[A]dopt a comprehensive regulatory framework for addressing the many servicing problems that occur at or near the time of a transfer of servicing. These problems are often caused by servicers' inability to communicate with each other adequately and reconcile account records. … The adopted regulations do not go far enough in helping borrowers avoid unwarranted or unnecessary costs from getting the runaround when loss mitigation is pending at the time of servicing transfer." – six consumer advocacy groups (-0097)
Other industry	**Exemptions for credit unions from the Bureau's Mortgage Servicing rules**: "I recommend … that credit unions be exempt from this rule because of the burdensome nature it places on our ability to service loans and comply. This allows us to focus on more efficient ways to communicate with successors of properties subject to loans. These procedures are best developed locally and within each organization." – Truliant Federal Credit Union (Inherited -0079)
Others	**Effectiveness of the Bureau's Mortgage Servicing rules**: "The CFPB … create[d] new mortgage servicing rules to make it easier for borrowers - particularly borrowers who were in trouble - to understand exactly how much they owe. The rules require servicers to provide a billing statement that simply and clearly outlines the amount of money that a borrower owes, the current interest rate on the loan, and the servicer's contact information so that they can pay their bill or arrange a modification. … [T]hese rules resulted in increased efficiency and transparency in mortgage servicing and loss mitigation, as well as increased access to mortgage information and foreclosure relief." – Sen. Elizabeth Warren (Mass.) (Inherited -0035)

4. ATR/QM[27]

Commenter Type	Representative Sentiments
Trade groups	**Temporary government-sponsored enterprise (GSE) QM**: "To provide certainty for markets and to expand access to credit, the GSE patch should be extended indefinitely. Further, the Bureau should grant QM status to jumbo loans that meet GSE purchase or guarantee criteria except for the loan amount (i.e. loans too large for GSE purchase or guarantee). GSE eligibility is currently capped at $453,100 for a one-unit property, and at $679,650 in designated high-cost markets. Loans exceeding this amount do not qualify for QM status under the GSE patch, even if they otherwise meet GSE underwriting standards. This unnecessarily increases the cost for these loans and unfairly disfavors consumers in the jumbo loan market." – MBA (-0084) **Ability to cure**: "The ATR rule must expressly permit lenders to correct errors and deal directly with consumers to resolve harmless or clerical errors or omissions." – ABA (-0048)

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

	Appendix Q: "Appendix Q should be simplified and the Bureau should release much clearer, binding guidance for its use and application. The BCFP should, in particular, review Appendix Q standards for determining borrower debt and income levels to mitigate overly prescriptive and rigid requirements and to provide greater latitude to offset debts with readily available liquid assets. Review of these requirements should be sensitive towards self-employed and non-traditional borrowers who do not ordinarily prepare profit-and-loss statements or balance sheet statements." – CBA (-0107)
Consumer advocacy groups	**ATR/QM general**: "These rules have restored sense to the market by ensuring that lenders have an incentive to make loans homeowners can afford and to make safe loans. The CFPB has balanced the need for robust affordability requirements with flexibility for smaller institutions. While section 101 of Public Law No. 115-174 expands the small creditor exemption for loans held in portfolio, the CFPB should implement this requirement as narrowly as possible, in order to preserve access to affordable mortgage loans. Any other changes to the QM rule should similarly be narrowly crafted and should follow a regular process of notice and comment to consider the impact of any changes both on responsible underwriting that supports consumers and the costs of compliance and access to credit." – five consumer advocacy groups (-0063)[28] **Residual income**: "The CFPB should not re-open the rule at this time, but instead should monitor implementation and further collect data on its impact, including on the increasingly expanding market of non-QM lending. If the CFPB does re-open the rule, however, the Qualified Mortgage rule should maintain its limited approach to institutional exemptions but carve out riskier products, such as high-cost mortgages and land installment contracts. Moreover, the CFPB should actively study how to incorporate predictive residual income measures into the ability to repay analysis." – six consumer advocacy groups (-0097)
Other industry	**QM definition**: "The Bureau should consider all credit union mortgage loans that are held in portfolio to be qualified mortgage (QM) loans. The reason for the ability-to-repay rule was to ensure that lenders gave quality loans to borrowers which could also be sold on the secondary market. By following the ability-to-repay rule, the mortgage became a QM which afforded the lender certain legal protections. It can be strongly presumed that if a credit union holds its mortgage loans in-house that it would be extra prudent in making sure that it is giving its borrowers loans that are of a high quality and that have been strongly underwritten. It makes sense that loans held in-house should be given the same protections as those sold in the secondary market." – American Airlines Federal Credit Union (-0068) **ATR/QM general**: "An appropriate balance between consumer access and consumer protection lies in a dramatic simplification of the Ability to Repay Rules and the definition of Qualified Mortgage. First, a Qualified Mortgage should be defined as a mortgage that at consummation qualifies for purchase by a government sponsored enterprise or is eligible for insurance or guarantee by a government agency. No further qualifications should apply. Second, the criteria for Ability-to-Repay should be overhauled. In the case of credit unions, the ability to repay should be demonstrated by adherence to underwriting standards established by the secondary market. If a credit union wants to keep a loan in portfolio, the ability to repay should be

[28] Comment letter submitted jointly by Woodstock Institute, Equal Voice Action, Heartland Alliance for Human Needs & Human Rights, Illinois Asset Building Group, and Partners in Community Building, Inc.

	demonstrated by duly adopted underwriting criteria that verify income and expenses and calculate debt-to-income. The result strikes a proper balance ensuring consumer access and affording reasonable regulatory relief that enables a credit union to serve its members." – Sun East Federal Credit Union (-0066) **Appendix Q**: "Require the Bureau to revisit the Dodd Frank Act requirement which in Section 1411 amends the TILA by adding Section 129C and allow the creditors that have assumed the risk to establish the underwriting criteria that meet the requirements of the statute. Implementing the Appendix Q requirement does not allow the level of risk-based evaluation that provides consumers with the broadest choice of options for which they might qualify. Nothing in the DFA directs the regulator to implement underwriting guides. Further, as written and in spite of DFA provisions that allow for evaluating the entire financial position, the existing rule basically ignores many assets that effect ability to repay. This prevents a more holistic approach to evaluating the consumer ability to repay, places the underwriting determination in the wrong hands and creates potential inequity for those that have large amounts of liquid reserves that have been excluded by post DFA underwriting guidelines caused mostly by the Bureau's overly prescriptive rule." – Shane Jackson (-0041) (emphasis omitted)
Others	**ATR/QM general**: "Regulation Z pertaining to Ability-to-Repay/Qualified Mortgages needs to be examined and should allow more liberty to financial institutions lending practices. The current regulation is truly challenging for self-employed borrowers, borrowers with seasonal or intermittent income, borrowers seeking smaller-than-average loan amounts, borrowers who use asset derived income to repay the loan, borrowers with debt-to-income ratios above 43 percent, lower-income borrowers, minority borrowers and borrowers in rural areas." – K B (-0006)[29]

5. Prepaid Accounts[30]

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

[29] The commenter indicated his or her name as "K B."

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

	Definition of prepaid account: "ABA recommends that the Bureau revise the definition of a prepaid account in Regulation E … to make clear the distinction between checking accounts and prepaid accounts. The current vague definition presents a trap for banks, which cannot know whether they comply with the regulation. Clarifying the definition will not diminish consumer protections, promotes choices for consumers, and encourages simplified checking accounts that regulators have encouraged banks to offer." – ABA (-0048) **Pre-acquisition disclosures:** "The Bureau should remove the long form disclosure from the Rule as it is redundant to information already provided to the consumer and, according to the Bureau's own research, is likely to overwhelm and confuse consumers when provided pre-acquisition. … The Bureau should remove the requirements for electronic disclosures provided under the Rule to be responsive to varying screen sizes and to be machine readable. … The Bureau should remove the short form disclosure for additional fee types as it is potentially misleading and not informative. … The calculations required to disclose additional incidental fee types (5% Fees) are overly difficult and should be removed from the Rule. … The Bureau should remove compulsory use language requirements from the disclosure requirements for payroll and government benefit cards."[31] – Network Branded Prepaid Card Association (-0067)
Consumer advocacy groups	**General:** "[T]he problems with prepaid cards are well-documented, as is the need for rules to ensure the safety and transparency of prepaid products. The CFPB's prepaid rule is a commonsense rule that provides clear fee disclosure, access to account information, error resolution rights, and protection against inappropriate and dangerous credit features. Moreover, in constructing the rule, the Bureau took a measured approach. When industry expressed concerns, the Bureau responded, making amendments and twice delaying the effective date. We urge the Bureau to keep the rule in its present form and stick to the April 1, 2019 implementation date." – Consumers Union (-0089) **Credit features:** "The prepaid rules will encourage companies to develop savings and budget tools, not to push people into spending more than they have and overdrafting. The rules do not stop people from being offered credit, and do not even prevent credit from being loaded onto or linked to a prepaid card, as long as the consumer affirmatively accesses the credit first rather than drawing on it indirectly through overdrafts. … The credit provisions in the rule are a compromise that should be left intact and not weakened further." – 42 consumer advocacy groups (-0078)[32] **Definition of prepaid account:** "We also urge the bureau to reject any call to narrow the definition of 'prepaid account' in order to exempt newer fintech products. … The rule appropriately covers not only physical plastic cards but also newer forms of prepaid accounts that operate online and through mobile devices. … The CFPB should provide guidance on the distinction between safe bank accounts ('checkless checking') and prepaid accounts to provide clarity to industry and avoid evasions. … This is important for two reasons. First, banks that have long offered safe bank accounts that they did not view as prepaid accounts are seeking clarity. Second, it is essential that prepaid accounts not be allowed to evade the prepaid rule simply by styling

[31] This quote contains multiple bolded headings from the comment letter. The bolding has been removed in this document for readability.

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

	themselves as checkless checking accounts." – 42 consumer advocacy groups (-0078) (emphasis omitted)
Other industry	**<u>Credit features</u>:** "By leaving in place the 30-day cooling period where a prepaid account issuer or its affiliate issues a linked credit product, the Bureau puts these issuers at a disadvantage vis-à-vis prepaid account issuers that contract with unaffiliated entities to offer linked credit products. Additionally, the Bureau puts at a disadvantage consumers who want a prepaid account with a linked credit product from such prepaid account issuers because there is a reasonable risk that these consumers will be confused as to why, with some prepaid accounts, they have to go through a separate process to obtain credit not long after having gone through the process to register the prepaid card and, with other prepaid accounts, they do not. … [With respect to overdraft services,] [w]e encourage the Bureau to permit consumers to opt-in to overdraft and to address any concerns regarding transparency through the short- and long-form disclosures rather than by applying Regulation Z to overdrafts. The Bureau has not sought to prohibit any forms of fees elsewhere in the Prepaid Rule. Instead, it has favored an approach that ensures consumers generally have access to transparent information prior to acquiring a prepaid account. The Bureau should adopt the same type of approach with respect to any back-end fees that could arise from permitting consumers to opt-in to overdraft." – Mastercard (-0044) **<u>Pre-acquisition disclosures</u>:** "Green Dot is, and always has been, supportive of clear and conspicuous disclosure of material account-usage fees to consumers prior to the acquisition of a prepaid account. However, we believe the highly-prescriptive nature of the disclosure requirements set forth in the Rule can confuse consumers rather than help them understand the product's features and fees. We also believe that the rigid nature of the forms and nature of disclosures mandated by the Rule may inhibit product innovation. To that end, we believe the Bureau should consider whether (1) the long form disclosure is necessary and (2) the short form disclosure should be limited to including only the prescribed set of static fees. … We further believe that the Bureau should consider abandoning the current disclosure requirements in the Rule and adopting, as an alternative, a more flexible overall disclosure framework that maintains the important goal of providing meaningful disclosure to consumers that is consistent with disclosure rules currently applicable to checking accounts." – Green Dot Corporation (-0103) **<u>Definition of prepaid account</u>:** "[T]he Bureau … should exclude other cards … which (i) are not marketed to the general public; and (ii) are not a traditional account substitute. These products include utility refund cards, security deposit refund cards and cards used to compensate survey or limited pilot participants. The Prepaid Rule is not well suited for cards that are not marketed to the general public and are not traditional account substitutes. For example, the Prepaid Rule's pre-acquisition disclosures, including the disclosures related to fees, overdraft features, and FDIC insurance coverage, do not enable consumers to comparison shop, because consumers of these products only have a single prepaid card option. Moreover, prepaid cards that are not marketed to the general public tend to have terms that are simpler than those for publicly available [general purpose reloadable] cards, and, therefore, the pre-acquisition disclosure requirements risk consumer confusion." – Visa (-0104)
Other	**<u>CAB survey on the effectiveness of the prepaid rulemaking</u>:** [The CAB Chair and Vice Chair implemented a survey of current and former members to solicit input on several RFIs. The survey included five items related to the RFI about adopted regulations and new rulemaking authority.] "*Item 1: Below is a list of adopted CFPB regulations i.e., regulations promulgated by the Bureau pursuant to new rulemaking authority granted by the Dodd-Frank Act or using its discretionary authority. Please share your opinion*

regarding how effective these regulations are or will be in meeting the CFPBs statutory purpose and responsibilities. … For each of the adopted regulations, respondents could select one of five options: effective, somewhat effective, somewhat ineffective, ineffective, and no opinion. … 5. Rules Governing Prepaid Accounts: 28 (71.79%) found the rule effective or somewhat effective; 6 (15.39%) found the rule ineffective or somewhat ineffective; 5 (12.82%) had no opinion." – CAB (-0010)

6. LOAN ORIGINATOR COMPENSATION AND QUALIFICATIONS[33]

Commenter Type	Representative Sentiments
Trade groups	**Definition of loan originator:** "The Bureau should revise the broad definition of loan originator. The Bureau has adopted a broad definition of loan originator to cast a 'wide net' in ensuring consistency across persons that may have financial incentives, this effectively subjects anyone who comes in contact with a residential mortgage at a credit union to be labeled as a loan originator." – NAFCU (-0087) (emphasis omitted) **Prohibition on dual compensation:** "The Rule, however, carves out a sweeping and unfair exception to its prohibition on payments to loan originators. Because the definition of 'loan originator' does not include 'creditors', large banks and other lenders are free to compensate their employees on a commission basis. Thus, when consumers pay loan origination fees to a creditor, that creditor is free to share a portion of that fee with its employees in the form of commissions. As noted under the Rule, loan originators like mortgage brokerages are prohibited from paying compensation to their employees/loan officers." – National Association of Mortgage Brokers (Inherited -0044) **Pricing concessions:** "We understand that the rule does not prohibit a loan originator from decreasing his or her compensation to defray the cost, in whole or part, of an *unforeseen* increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer, or an *unforeseen* actual settlement cost not disclosed to the consumer. However, in many instances, the cost elements that loan originators want to cover from their own 'pocket'—which would benefit the consumer—relate to oversights, not unforeseen transactional events." – ABA (-0048)
Consumer advocacy groups	**Effectiveness of the Bureau's Loan Originator rule:** "The limits on loan originator compensation contained in the Dodd-Frank Act and in the CFPB's rule are important consumer protections that fundamentally improved the mortgage market and reduced the incentives that mortgage originators had to benefit themselves financially by placing borrowers in more expensive loans. … [Prior to the rule,] [b]orrowers often paid brokers an upfront fee and were under the impression that the broker would obtain

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

	the best possible loan for the borrower. Yet, the borrower was unaware that the lender was paying a commission – or a yield spread premium – to the originator. The premium increased with the interest rate or other loan terms. These deceptive practices grossly inflated the cost of a mortgage, even when borrowers qualified for a better deal." – six consumer advocacy groups (-0097) **<u>Revisions to definition of loan originator required by statute</u>:** "[W]e urge the CFPB to draw the exemption required by section 107 of Public Law No. 115-174 for certain employees of manufactured home retailers as narrowly as possible to protect homeowners and the market." – 44 consumer advocacy groups (-0091)[34]
Other industry	**<u>Prohibition on dual compensation</u>:** "Due to the way the rule is implemented creditors that self-fund enjoy much more flexibility with respect to pricing than traditional non-self- funding originators do. This inequity reduces consumer choice, can cause less than fully informed consumer decisions and has not justifiable support as a consumer protection. If anything it produces just the opposite result. To the extent that the rule's provisions are retained, all entities should be treated the same, without regard to their source of funding or compensation. And, while it will take legislative action to change the treatment of secondary market sales; the other disparate approaches to the rule can be changed by the agency." – Shane Jackson (-0041) **<u>Exemptions from the Bureau's Loan Originator rule</u>:** "Prior to the adoption of loan originator compensation rules, the NCUA regulated this activity specifically in rule 701.21(c)(8). The rule requires incentives or bonuses to be established with internal controls and reviewed annually. Incentives cannot be paid on a per loan basis but awarded on the overall performance of the credit union. In short, CFPB can accomplish the purposes of the Dodd-Frank Act by simply including a subsection that states: 'Federally insured credit unions that structure loan originator compensation in a manner consistent with NCUA Regulation 701.21(c)(8) are deemed to be in compliance.'" – Clearview Federal Credit Union (-0076)
Others	**<u>Effectiveness of the Bureau's Loan Originator rule</u>:** "CFPB also amended Regulation Z to change the rules about how mortgage companies are paid to prevent conflicts of interest. The Loan Originator Compensation rule sets out new training and qualification standards for loan originators and prevents them from getting kickbacks for selling borrowers higher cost loans. Before the financial crisis, the compensation for mortgage originators was often structured to incentivize them to steer consumers into higher price loans. To fix this mismatch of incentives, the rule prohibited any compensation scheme that adjusted the terms or transaction costs of the loan." – Sen. Elizabeth Warren (Mass.) (Inherited -0035)

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

7. Debt Collection[35]

Commenter Type	Representative Sentiments
Trade groups	**Communications**: "When considering an industry that is dependent on communications as much as the receivables management industry is, without an update to address the tectonic shift in modern technology that has occurred over the same time period, the regulations are in desperate need of an update that incorporate new modern technologies. To read the FDCPA, one would think the use of a telegram is a common practice in debt collection. In fact, the only modes of communication addressed in the FDCPA are by 'mail' (seven references), 'telephone' (five references), and 'telegraph' (three references). Absent are any references to cell phones, personal computers, e-mails, texting, smartphone apps, voicemail, and the Internet. The lack of clarity as it relates to modern technology in the FDCPA has resulted in a complex patchwork of judicial decisions, many of which come to contradictory conclusions, stretching from coast to coast." – Receivables Management Association International (Inherited -0072) **Rulemaking scope (creditors)**: "[T]he Bureau should ensure that any regulations clearly treat creditors and third-party debt collectors differently. Moreover, any debt collection rules the Bureau promulgates should neither unduly restrict a creditor's ability to contact its customer, nor impose onerous and pointless validation requirements upon a creditor." – AFSA (Inherited -0047)
Consumer advocacy groups	**Communications**: "The CFPB should enact regulations that enforce and strengthen collectors' legal obligations to comply with any cease communication requests, whether written or oral. … Consumer privacy is a critical concern. … Privacy is relevant to particular methods of communication (discussed below) and in the CFPB's proposal to allow limited content messages … these limited content messages would violate 1692c(b) and consumer privacy. The CFPB should abandon this proposal. The CFPB should increase consumer control over the debt collection process by clearly articulating the FDCPA requirement that communications cease when the consumer indicates that the communications are inconvenient. … The CFPB should further clarify that collectors must comply with communication preferences whether expressed orally or in writing. … Debt collection regulations can also promote consumers' ability to advocate for themselves by requiring all collectors with online payment portals to allow consumers to express communication and language preferences, submit disputes, and ask questions about the alleged debt online. Regardless of the communication method, the CFPB should clarify that FDCPA disclosure requirements and privacy protections always apply to all communications by debt collectors." – 46 consumer advocacy groups (-0077)[36] (emphasis omitted) **Statute of limitations**: "Disclosures about time-barred debts are not sufficient to protect the least sophisticated

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

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

	consumer from the range of abusive and deceptive practices that some collectors engage in when collecting time-barred debts. Instead, the CFPB should prohibit all efforts to collect on time-barred debt. The risks that any communications will be deceptive and will be misunderstood by the consumer and will result in injury are simply too great. Alternatively, if the CFPB allows continued collection of time-barred debt it should enhance consumer protections by: prohibiting deceptive offers to 'settle' a time-barred debt that imply that the collector still has the ability to file a lawsuit; forbidding suits on a 'revived' debt; requiring repetition of a time-barred debt disclosure in each communication; limiting collection of time-barred debts to written communications that can be monitored and that included tested disclosures that enable consumers to understand the time-barred nature of their debt; prohibiting oral collection efforts, which will be inherently deceptive and abusive and cannot be easily reviewed or monitored; and prohibiting the sale or transfer of time-barred debts, as the buyers of such debts are more likely to lack accurate information on the debt and the consumer and to engage in deceptive abusive practices." – 46 consumer advocacy groups (-0077)
Other industry	**<u>General approach to rulemaking</u>:** "Courts across the nation have, with the lack of formal rules, issued a host of different and often conflicting standards for virtually every aspect of collections. The result is, simply put, a web of different standards and rules across states and sometimes across cities and counties. … [W]e urge the Bureau to apply its rulemaking to accounts that are charged-off or go into default after the effective date of the rules. … In the debt collection rulemaking, there should also be a close look at the importance of promoting communication between collectors and consumers, including the potentially harmful impact of unduly restrictive contact caps and modern communication methods (e.g., email, cell phone, text and voicemail messages) that are not reflected in the Fair Debt Collection Practices Act enacted that was enacted over four decades ago." – Encore Capital Group (-0133) **<u>General technology updates</u>:** "Please move forward on long awaited debt collection rules so those of us who try to comply with the spirit of FDCPA can operate our agencies like any other business in 2018 instead of the 70's. Please give us a 'safe harbor' rules that protect consumers and the relationship between debtors and collectors will improve drastically and immediately. … Let us use technology like Autodialers in a prescribed, responsible fashion without fear of being extorted by frivolous suits and professional debtors. We should also be able to pass on the cost of using credit cards/ACH transactions to the consumers/debtors who are the ones benefiting by not having to type a check and mail it in." – John D. Bradshaw P.C. (-0003)

Additional Notes

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

Allied Progress

Americans for Financial Reform

Arkansans Against Abusive Payday Lending

Atlanta Legal Aid Society, Inc.

Brooklyn Coop Federal Credit Union

Center for NYC Neighborhoods

Consumer Action

Consumer Federation of America

East Bay Community Law Center

Florida Alliance for Consumer Protection

Georgia Watch

Heartland Alliance for Human Needs & Human Rights

Interfaith Center on Corporate Responsibility

Jacksonville Area Legal Aid, Inc.

Kentucky Equal Justice Center

Maryland Consumer Rights Coalition

NAACP

National Association of Consumer Advocates

National Center for Law and Economic Justice

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

The One Less Foundation

People's Action Institute

Public Justice Center

Tennessee Citizen Action

Texas Appleseed

Tzedek DC

U.S. PIRG

UnidosUS

Virginia Poverty Law Center

West Virginia Center on Budget and Policy

Woodstock Institute

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

Allied Progress

Americans for Financial Reform

Arizona Community Action Association

Arkansans Against Abusive Payday Lending

Atlanta Legal Aid Society, Inc.

CASH Campaign of Maryland

Center for NYC Neighborhoods

Center for Responsible Lending

Consumer Action

Consumer Federation of America

Equal Justice Society

Florida Alliance for Consumer Protection

Heartland Alliance for Human Needs & Human Rights

Housing Options & Planning Enterprises, Inc.

Illinois People's Action

Main Street Alliance

Maryland Consumer Rights Coalition

Mississippi Center for Justice

National Association of Consumer Advocates

National Association of Social Workers

National Consumer Law Center (on behalf of its low income clients)

National Fair Housing Alliance
National Housing Law Project
Neighborhood Housing Services of Baltimore
New Jersey Citizen Action
People's Action Institute
Public Counsel
Public Justice Center
Public Law Center
Texas Appleseed
U.S. PIRG
West Virginia Center on Budget and Policy

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

Allied Progress
Americans for Financial Reform
Arkansans Against Abusive Payday Lending
Atlanta Legal Aid Society, Inc.
Brooklyn Coop Federal Credit Union
Center for Economic Integrity
Center for NYC Neighborhoods
Center for Responsible Lending
Connecticut Legal Services, Inc.
Consumer Action
Consumer Advocacy and Protection Society (CAPS)
Consumer Federation of America
Consumers Union
East Bay Community Law Center
Florida Alliance for Consumer Protection
Georgia Watch
Heartland Alliance for Human Needs & Human Rights
Interfaith Center on Corporate Responsibility
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition
Montana Organizing Project
NAACP
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Fair Housing Alliance
The One Less Foundation
People's Action Institute
Public Good Law Center
Public Justice Center
Public Law Center
Reinvestment Partners
Tennessee Citizen Action
Texas Appleseed
Tzedek DC
U.S. PIRG
Virginia Poverty Law Center
West Virginia Center on Budget and Policy
Woodstock Institute
World Privacy Forum

4. The following organizations were signatories to the comment letter submitted by Jos A on behalf of a group of 44 consumer, community, civil rights, and legal services groups, identified above as from "44 consumer advocacy groups" (-0091):

Allied Progress
Americans for Financial Reform
Arkansans Against Abusive Payday Lending
Arkansas Community Organizations
Atlanta Legal Aid Society, Inc.
Brooklyn Coop Federal Credit Union
California Reinvestment Coalition
Center for NYC Neighborhoods
Center for Responsible Lending
Consumer Action
Consumer Federation of America
East Bay Community Law Center
Empire Justice Center
Florida Alliance for Consumer Protection
Georgia Watch
Heartland Alliance for Human Needs & Human Rights
Interfaith Center on Corporate Responsibility
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
LAF Chicago
Legal Aid Society of the District of Columbia
Legal Services NYC
Maryland Consumer Rights Coalition
Mississippi Center for Justice
Mobilization for Justice Inc.
NAACP
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Community Reinvestment Coalition
National Fair Housing Alliance
New Yorkers for Responsible Lending
North Carolina Justice Center
People's Action Institute
Public Justice Center
Tennessee Citizen Action
Texas Appleseed
THE ONE LESS FOUNDATION
Tzedek DC
U.S. PIRG
UnidosUS (formerly NCLR)
Virginia Poverty Law Center
West Virginia Center on Budget and Policy
Woodstock Institute
World Privacy Forum

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

Allied Progress
Americans for Financial Reform
Arizona Community Action Association
Arkansans Against Abusive Payday Lending
Arkansas Community Organizations
Atlanta Legal Aid Society, Inc.
Brooklyn Coop Federal Credit Union
Center for Justice & Democracy
Center for NYC Neighborhoods
Center for Responsible Lending
Connecticut Veterans Legal Center
Consumer Action
Consumer Advocacy and Protection Society (CAPS)
Consumer Federation of America

Consumers Union

East Bay Community Law Center

Florida Alliance for Consumer Protection

Georgia Watch

Heartland Alliance for Human Needs & Human Rights

Interfaith Center on Corporate Responsibility

Jacksonville Area Legal Aid, Inc.

Kentucky Equal Justice Center

Legal Aid Foundation of Chicago

Maryland Consumer Rights Coalition

Mobilization for Justice

Mountain State Justice

NAACP

National Association of Consumer Advocates

National Association of Consumer Bankruptcy Attorneys (NACBA)

National Center for Law and Economic Justice

National Consumer Law Center (on behalf of its low income clients)

National Fair Housing Alliance

North Carolina Justice Center

People's Action Institute

Public Good Law Center

Public Justice Center

Public Law Center

Tennessee Citizen Action

Texas Appleseed

The One Less Foundation

Tzedek DC

U.S. PIRG

Virginia Poverty Law Center

West Virginia Center on Budget and Policy

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3. Inherited Regulations and Inherited Rulemaking Authorities

Background

As discussed in part 2 of this report regarding the Adopted RFI, in March 2018, the Bureau published two RFIs related to the regulations administered by the Bureau and its rulemaking authorities. The first RFI focused on the rulemakings adopted by the Bureau and the new rulemaking authorities given to the Bureau by the Dodd-Frank Act (Adopted RFI). The second RFI focused on the regulations and rulemaking authorities that were in place before the Bureau existed for which the Dodd-Frank Act transferred rulemaking authority from other agencies to the Bureau (Inherited RFI).[37] Except as explained below, this part of this report discusses comments received in response to the Inherited RFI.

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

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

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

Methodology Specifically for Inherited Regulations and Inherited Rulemaking Authorities

Note on Overlap Between Adopted and Inherited RFIs: Because some of the new rulemakings adopted by the Bureau, at least in part, amended inherited regulations or relied on inherited rulemaking

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

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

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

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

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

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

Representative Sentiments: The Bureau received comments relating to 15 inherited rulemakings or inherited rulemaking authorities.[38] Below, this report provides representative sentiments for comments relating to the five adopted rulemakings for which we received the greatest number of comments.[39]

The Bureau also received comments related to 10 "cross cutting" topics that may relate to more than one adopted or inherited rule.[40] Below, this report provides representative sentiments for comments related to two cross-cutting issues, namely electronic disclosure and innovation, for which we received the greatest number of comments. These cross-cutting topics are discussed separately in this part. These issues also are discussed in this part on the inherited topics where relevant comments were among the most numerous on a particular topic. The "innovation" topic discussed in this part only includes comments that specifically used the keywords "innovation" or "innovate." Other comments that relate to innovation were included in the inherited topics, even if they did not specifically use the term "innovation" or "innovate," if these comments were among the most numerous on a particular topic Finally, several comments received on the Inherited RFI discussed no-action letters or fintech issues. The comments related to no-action letters are discussed in part 4 in relation to the Guidance RFI. The comment on fintech issues is discussed in the "innovation" topic in this part.

The representative sentiments included below are meant to provide a flavor of the most numerous substantive comments that the Bureau received on these topics.[41] We have tried to select the most succinct articulations of each issue found among the comment letters, even though that resulted in some commenters being quoted more frequently than others.

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

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

[39] To improve the clarity of representative sentiments, where appropriate, we have made non-substantive formatting changes and have omitted non-substantive footnotes.

[40] The 10 "cross cutting" topics include: (1) electronic disclosure; (2) innovation; (3) priorities for Bureau action; (4) manufactured housing; (5) general comments; (6) threshold amounts for the Bureau's rules; (7) identity theft; (8) exception for small creditors from the Bureau's rules; (9) limited English proficiency; and (10) regulatory sandboxes.

[41] The representative sentiments are not intended to reflect all the issues that were raised by commenters on a particular topic.

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

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

In selecting representative sentiments, we have focused on actionable comments (that is, specific suggestions for the Bureau to undertake specific rulemaking activity, or expressing support for current practices). We have not included comments that simply recite historical background, even where such recitation may imply a complaint about Bureau practices, or that make generalized statements without specific suggestions. However, the latter two types of comments were included in the relevant counts concerning substantive comments. The representative sentiments provided below are grouped by (1) trade groups, (2) consumer advocacy groups, (3) other industry, [42] and (4) others.[43] We have not indicated below where multiple commenters addressed an issue using substantially similar language due to space constraints.

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

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

[43] The "other" category includes individual consumers, Federal, state or local governments, academics/researchers and other entities that submitted anonymously.

Comment Summary (Inherited Rules)

Total comments: 82[44]

Substantive comments responsive to this RFI submitted on this docket[45]: 73[46]

Substantive comments referred from other RFIs: 2[47]

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

Substantive and responsive comments received from:[48]						
	Individual Entities					
Individual Consumers	Depository Institutions and Credit Unions	Non-Depository Institutions	Industry Trade Groups	Consumer Advocacy Groups	Government (i.e., other Federal agencies, state and local governments, US Senators)	Other (e.g., academia, non-consumer advocacy groups, etc.)
4[49]	1	19	23 (+1)	17	2	7 (+1)

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

45 80 comments were submitted to this docket and are posted on Regulations.gov under CFPB-2018-0012. Regulations.gov indicates the count for the docket is 86, but only 80 items are actually posted; 2 items had been posted but one letter was removed because it was a duplicate of another posted item and one item was removed because it was posted to the incorrect docket. Also, seven comment letters submitted and posted on this docket were not counted as relevant for this docket. Two comments were duplicates of letters filed by the same commenters on the Adopted RFI docket and we counted those letters as relevant for the Adopted RFI docket. Three comments were only relevant to another RFI docket. One comment was neither relevant to this docket nor relevant to any other RFI docket. One comment was replaced by a subsequent comment filed by the same commenter on this docket.

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

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

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

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

RFI Topic Areas (Inherited Rules)

	Topic	Description	Total Number of Comment Letters[50]
1	Regulation B	Regulation B implements the Equal Credit Opportunity Act (ECOA), which generally addresses discrimination in consumer lending on specific prohibited bases, as well as notifications to consumers of credit decisions.	25 8 trade groups 8 consumer advocacy groups 6 other industry 3 other
2	Regulation Z, General	Regulation Z implements the Truth in Lending Act (TILA), which mandates consumer disclosures and sets forth a variety of requirements relating to both open- and closed-end consumer credit.[51]	22 13 trade groups 5 consumer advocacy groups 4 other industry 0 other
3	Regulation E, General	Regulation E implements the Electronic Fund Transfer Act (EFTA), which has the general purpose of providing a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. Its stated primary purpose is the provision of individual consumer rights.[52]	19 7 trade groups 5 consumer advocacy groups 6 other industry 1 other
4	Regulation X	Regulation X implements the Real Estate Settlement Procedures Act (RESPA). In relevant part, RESPA regulates certain elements of the mortgage origination process, including the use of referrals, kickbacks, and affiliated business arrangements.[53]	18 13 trade groups 2 consumer advocacy groups 3 other industry 0 other

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

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

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

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

	Topic	Description	Total Number of Comment Letters[50]
5	Regulation Z, Open-end credit	Subpart B of Regulation Z implements TILA's provisions relating to open-end credit. These provisions include, among other protections, consumer disclosures, periodic statements, and billing error resolution. Subpart G of Regulation Z generally implements the CARD Act provisions and generally relates to credit card accounts under an open-end (not home-secured) consumer credit plan.	17 5 trade groups 6 consumer advocacy groups 2 other industry 4 other

Representative Sentiments (Inherited Rules)

1. Regulation B (implementing ECOA)[54]

Commenter Type	Representative Sentiments
Trade groups	**<u>Disparate impact</u>:** "[T]he Bureau should amend the existing Official Staff Commentary to state that disparate impact is not available under ECOA. If the Bureau decides not to clarify the unavailability of disparate impact under ECOA, it should ensure the official interpretation of ECOA reflects the disparate impact standard under the Fair Housing Act articulated in the Supreme Court's *Inclusive Communities* decision." – MBA (-0048)[55] **<u>Adverse action</u>:** "Rules surrounding adverse action decisions require clarity so decisions may be of more use to consumers. … [C]o-applicants should be permitted to view the credit scores of other coapplicants across an application as consumers become more engaged in the credit process. Additionally, the Bureau should clarify for institutions that providing more than four reasons for an adverse action or denial of an application is not a regulatory violation. … Regulation B should also be revised to explicitly exclude loss mitigation applications from adverse action and valuation requirements, as they impose additional burdens on financial institutions that are unnecessary in light of the loss servicing rules present in Regulation X. … The Bureau should also issue guidance on what circumstances qualify as an 'application' under Regulation B. While Regulation B provides discretion for financial institutions to define an application, the Regulation's Commentary also includes language stripping financial institutions of the discretion, and leaving a broad definition of any written or oral request or inquiry pertaining to credit. … Further, the Bureau should eliminate Comment 1 to §1002.2(C)(2)(v), which states that if a financial institution does not offer credit terms requested by an applicant, this constitutes a denial of the application. … Section 1002.2(C)(2)(iv) should also include examples of 'applicable laws' and include cases of fraud and identity theft in the exceptions to adverse actions section." – CBA (-0054)
Consumer advocacy groups	**<u>Disparate impact</u>:** "[D]isparate impact is a hallmark of American civil rights jurisprudence. The Supreme Court, in deciding *Griggs v. Duke Power Co.* in 1971, unanimously allowed disparate impact claims under Title VII of the Civil Rights Act of 1964 to move forward. All nine Circuit Courts had extended disparate impact liability to the Fair Housing Act twenty years after it had been passed. Then in 2015, the Supreme Court reaffirmed that disparate impact liability applies under the Fair Housing Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, holding that it is instrumental to achieving the mission of the act. Since 1980, federal courts have consistently recognized that disparate impact claims are cognizable under the Equal Credit Opportunity Act. The federal appellate courts which have addressed the question—the Fifth, Sixth, and Ninth Circuits—have all held that disparate impact claims are cognizable under ECOA. In addition, federal district courts in the First, Second, Third, Fourth, Seventh, Eighth, and Eleventh Circuits have uniformly held that

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

55 Comments quoted in this part 3 were submitted on the Inherited RFI docket (CFPB-2018-0012) unless otherwise noted.

	disparate impact claims are cognizable under ECOA. The result is that nationwide jurisprudence regarding ECOA and disparate impact is in unanimous agreement: the Equal Credit Opportunity Act allows for disparate impact claims in lending and credit access." – The Fair Housing Center (-0055)
Other industry	**Disparate impact:** "Because ECOA does not contain the requisite language which appears in Title VII or the ADEA, CFPB should propose an amendment to Regulation B that removes authority for asserting disparate impact consumer credit discrimination claims under ECOA by agencies or plaintiffs. *Cf., Garcia v. Johanns*, 444 F.3d 625, 633 n.9 (D.C. Cir. 2006). Second, if the Bureau continues to assert the existence of disparate impact claims under ECOA and Regulation B, it should incorporate the interpretive precedent of *Inclusive Communities Project v. Texas Dept. of Housing*, 135 S.Ct. 2507 (2015) as a natural extension of the analysis that was the basis for the Federal Reserve's position on including disparate impact under ECOA in Regulation B. Although the Supreme Court's decision in Inclusive Communities is focused on interpreting the Fair Housing Act, its reasoning has considerable import for enforcement of ECOA, since the majority opinion draws heavily on the *Griggs* line of authority." – SMAART Consulting (Adopted -0074) "We are concerned that if the disparate impact regime were not maintained, industry would face regulatory instability. Polices to address widespread concerns about discrimination may come and go with each administration change, which would stymy innovation and create uncertainty for business. Innovators require a consistent regulatory environment to invest in these new technologies. Of greater concern, if disparate impact is removed future policymakers might apply other policy approaches that lack the pro-innovation flexibility that disparate impact provides. For example, alternative policies might permit some types of modeling techniques and prohibit others, or establish proscriptive requirements that fit the tools of today, but not the tools of the future. For these reasons, we believe the Bureau should maintain the disparate impact policy for financial services. The Bureau could also support innovation in credit analysis by publishing principles clarifying what business purposes are sufficient for consideration in disparate impact analysis." – LendingClub (-0075) **Demographic information collection:** "Some policies should also be aligned, so that the Government Monitoring Information (GMI) or demographic information are consistently collected (e.g., all 1-4 family residential dwellings v. owner occupied, principal, residential dwellings). In addition, Sections 1002.5 and 1002.13 of Regulation B create unnecessary compliance and litigation risks by requiring collection of GMI for a limited set of transactions, while making collection of GMI either permissive or prohibited for all other transactions." – Wolters Kluwer (-0033) **Electronic disclosures:** "The Bureau can effectively achieve its consumer-protection objectives and reduce unwarranted regulatory burdens under the E-Sign Act by exempting certain disclosures from its electronic-document consent requirement. For example, consumers who apply for an online mortgage product cannot receive the required written disclosures electronically unless they consent to receive disclosures by electronic delivery. This consent requirement is no longer necessary and has become confusing for consumers who are already engaged via an electronic channel and reasonably expect that relevant disclosures will be provided in that electronic channel. We therefore recommend that the Bureau use its authority to exempt disclosures from the E-Sign Act's consent requirements when a consumer uses electronic means to engage in on line and mobile banking services, such as Regulation E disclosures under 12 C.F.R. 1005.7, adverse action notices under Regulation B, and Regulation Z credit card disclosures after the account is open. For these disclosures, the Bureau could implement a more streamlined notice requirement that is more relevant and more likely to be understood by consumers." – Discover Financial Services (Discover) (-0069)

Others	**Disparate impact**: "The importance of the CFPB's role in maintaining a financial services marketplace that is fair and free from discrimination cannot be overemphasized. Credit transactions are typically highly individualized and very personal. Borrowers normally do not have the opportunity to compare their experiences with those of other borrowers. This makes it very difficult for any particular protected borrower to know whether he or she has been treated fairly, or has been denied credit or offered credit on less favorable terms than other, similarly situated borrowers with different personal characteristics. In addition, borrowers are unlikely to know about a lender's policies and practices that may work to deny them access to credit, or provide credit on less favorable terms than those offered to other, similarly situated borrowers. Even if a borrower does become aware of what appear to be discriminatory policies or practices, he or she may not know how to address the problem or have the resources to take effective action." – Tim Iglesias (-0031) "When Acting Director Mulvaney took over the reins of the Bureau, he promised to 'faithfully enforce the consumer protection laws as written, but not attempt to regulate beyond that mandate.' Yet, as outlined in the briefing paper, both the text of the law and Supreme Court precedent suggest that the BCFP is not enforcing ECOA as written. Instead, it has been stretched beyond what Congress intended. The Bureau should seek to correct ECOA enforcement. It should rescind any guidance documents that recognize the theory of disparate impact, or seek to bring the rule in line with the underlying statute through a new rulemaking." – CEI (-0050)

2. Regulation Z (implementing TILA), General[56]

Commenter Type	Representative Sentiments
Trade groups	**Closed-end rescission disclosure forms**: "Currently, the consumer's right of rescission, as prescribed by 12 C.F.R. § 1026.23 differentiates between fully and partially rescindable loans based on whether the creditor on the new loan already has a purchase money lien interest on the borrower's primary residence. To properly describe each situation, the regulation presently provides two sample forms—H-8, for fully-rescindable loans, and H-9, for partially-rescindable loans. Although this differentiation is technically correct, a partial rescission is virtually impossible to achieve in reality. A partial rescission would require the reinstatement of the original loan and the original property lien. As a result, a partial rescission very rarely occurs, if at all. The rescission rules and the attendant notices should be revised to reflect these realities. Accordingly, the Bureau should consider revising the regulation to provide for a more reasonable and unified approach to rescission, which would also eliminate the need for two rescission forms. The provision of a single, unified approach would also limit consumer confusion." – HPC (-0060)

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

	Definition of application: "Under Regulation B, the term 'application' is defined one way, while Regulation C and the new TRID requirements define 'application' in two different ways. The Bureau should examine and review the term, and determine if there is a way to harmonize the definition across the regulations." – CBA (-0054) **Electronic disclosures:** "Regulations X, Z, and DD all have standards establishing the prominence and proximity for various disclosures, including where certain disclosures must be displayed, how they must be displayed, and what disclosures they should be grouped together with. These regulations should be amended and harmonized to indicate that the prominence and proximity standards they include meet the 'clear and conspicuous' standards for all applicable electronic advertisements and disclosures set forth in the Regulations. Regulations B, E, X, V, Z, and DD should be amended to better clarify that required language, including required disclosures and language related to advertisements, may be provided to consumers via a hyperlink, when included in an electronic document. This will greatly increase the accessibility of the required language for consumers." – CBA (-0054)
Consumer advocacy groups	**PACE loans:** "Addressing the problems with PACE loans and closing the misinterpreted loophole in Regulation Z is our top priority rulemaking for the CFPB. It is also a priority of Congress: a provision directing the CFPB to adopt ability-to-repay rules for PACE loans is included in the bipartisan banking bill package recently passed by Congress in Public Law 115-174 and signed by President Trump. We note there also is widespread agreement among creditors of the importance of promulgating TILA PACE regulations. While the CFPB should preserve existing TILA regulations, we urge the CFPB to swiftly enact the rules mandated by Congress and to ensure that PACE providers comply with the other mortgage protections required by Regulation Z, with appropriate modifications as necessary to address the unique structure of PACE loans." – 41 consumer advocacy groups (-0068)[57] **Closed-end provisions generally:** "While every regulation can be improved, and we have our own suggestions if the CFPB chooses to revisit Regulation Z's closed-end provisions, they are working well overall and are a lower priority for revisions than other work before the CFPB. We especially oppose any effort to weaken Regulation Z, add exemptions, or otherwise undercut the protections that it offers." – 32 consumer advocacy groups (-0064)[58] **Closed-end rescission:** "The TILA rescission provisions reflect Congress's desire to keep homeowners from placing their homes in jeopardy without a clear understanding of the risks and benefits of the transaction. The rescission right is statutory and cannot be taken away by regulation. Moreover, the lending industry has functioned in this environment for decades. There is no need for the CFPB to reopen the rescission provisions of Regulation Z." – 32 consumer advocacy groups (-0064)

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

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

Other industry	**Closed-end rescission:** "1026.19(f)(1)(ii)(A) requires consumers to receive the Closing Disclosure at least three business days before closing. Additionally, for loans subject to the 1026.23 rescission period, consumers receive an additional three business day waiting period to consider their new loan following consummation. When coupled together, these two periods mean that a consumer whose loan is subject to rescission has approximately one week to review the loan's terms. This period is unnecessary, particularly given the seven business day period required between giving the loan estimate and closing required by 1026.19(e)(1)(iii)(B). Indeed, this long wait period has the perverse effect of causing consumer harm when borrowers are refinancing from a higher interest rate loan to a lower rate loan as they will be paying on their higher rate loan longer. Given the review periods of 1026.19(e)(1)(iii)(B) and 1026.19(f)(1(ii)(A) [sic], the rescission period of 1026.23 is unnecessary and should be eliminated." – Brian Holst (-0007) **Closed-end advertising rules:** "1026.24(d)(1)(ii) includes various advertising verbiage that triggers additional disclosures. 'The number of payments or period of repayment' is a trigger for the additional terms in 1026.24(d)(2) requiring disclosure in an advertisement. Consumers are frequently curious about the length of the loan available. Making this information available, such as 'We have 30 year fixed rate FHA loans' in an advertisement without the 1026.24(d)(2) disclosures would not result in any consumer harm, and indeed would benefit consumers by giving them more information." – Brian Holst (-0007) **Private student loan disclosures:** "Another Regulation Z section ripe for reform is reconciling the three mandatory yet redundant disclosures required for student loans. Regulation Z currently requires creditors to provide consumers with three separate TILA disclosures before a private education loan can be disbursed. The application and solicitation disclosure must be provided with every application or solicitation; the approval disclosure is sent within three days of loan approval; and the final disclosure is sent after the consumer accepts the terms of the loan. The approval disclosure alerts consumers that they have 30 days to accept the terms and the final disclosure provides a right to cancel period. The approval disclosure and final disclosure are nearly identical and essentially redundant. Consumers would be better served by a) eliminating or shortening the final disclosure and b) receiving one disclosure at loan approval so they understand the cost of borrowing before accepting the terms of the loan. There is no need for consumers to receive a second copy of the loan information within the approval disclosure again before disbursement of the loan. The consumer's right to cancel the student loan could be provided appropriately when final loan documents are given to them before disbursement." – Discover (-0069)

3. REGULATION E (IMPLEMENTING EFTA)[59]

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

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

	those risks. Today, telemarketing scammers may have to convince a consumer to visit a store in order to pay through an unusual payment method, such as a prepaid reload pack, gift card or wire transfer. This can impede fraud and raise red flags. But with faster payments, an imposter or other criminal can simply tell the consumer to pay quickly through a method that that consumer already uses from the convenience of her home." – 30 consumer advocacy groups (-0061)[60] "Consumers Union urges the Bureau to ensure that the Electronic Funds Transfer Act (EFTA), as implemented by Regulation E, includes protections that reflect the reality of today's faster, often mobile-enabled payments reality. To accomplish this, we urge the CFPB to extend protections against unauthorized transfers to include those 'authorizations' secured by fraud and to enforce error resolution rights in the event of misdirected payments." – Consumers Union (-0039) **<u>Overdraft credit/limits</u>:** "Limit overdraft fees to one fee per month, and six per year, and prohibit predatory posting practices. Once an account has gone negative and the customer has incurred an overdraft fee, the customer should have sufficient time to bring the account back to positive before being charged additional fees. Again, the CARD Act limited over-the-limit fees to one per month, and the Federal Reserve determined in the credit card context that requiring 'reasonable and proportional fees' meant that no more than any kind of penalty fee could be charged per single event or transaction." – Center for Responsible Lending (-0081)
Other industry	**<u>Amend ambiguous and dated preauthorized electronic fund transfer (EFT) provisions</u>:** "As a result of the outdated requirements in Regulation E, the process for setting up preauthorized EFTs is unnecessarily complex to the point that it may discourage consumers from setting up recurring transactions. While consumers may choose not to use preauthorized EFTs for a number of reasons, ease and efficiency of access should not be one of them, especially where such services could help a consumer to responsibly manage debt and avoid delinquency by making automatic payments. By using its authority to clarify the regulation by (a) defining 'similarly authenticated' to include authorizations by e-mail, text, chat, or other electronic means and (b) permitting financial institutions to provide the summary of the authorization electronically, the Bureau can modernize this outdated and unduly burdensome regulation while achieving its goals of protecting consumers and enabling efficient access to financial products and services." – Discover (-0069) **<u>Overdraft model forms/testing</u>:** "Yet another recurring challenge faced by financial institutions relates to making Regulation E disclosures when there is a new type of electronic fund transfer or when there is a payment systems issue that impacts a financial institution's customers but is not directly the result of anything done by the financial institution. For example, consider the issue of temporary debit authorization holds and the impact the practice has on consumer overdrafts. … Not only has the issue resulted in litigation, but it has become a common topic in bank examinations and audits. The subject is a perfect issue to be addressed within Regulation E. Despite that, Appendix A of Regulation E does not provide any examples or safe harbor language institutions can use to help make consumers aware of this issue." – Wolters Kluwer (-0033)
Others	**<u>Dispute resolution</u>:** "The dispute resolution provisions in Regulation E and Regulation Z should be revised for consistency and to reduce unfair burden on the financial institution/creditor by requiring

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

	cooperation by the consumer. … The consumer should be required to file a police report with local law enforcement if requested by the financial institution/creditor. … The consumer should be required to dispute the transaction with the vendor. … The consumer should be required to provide prompt notice to the financial institution/creditor based on when the consumer is first notified of the discrepancy." – Anonymous (-0066)

4. REGULATION X (IMPLEMENTING RESPA)[61]

Commenter Type	Representative Sentiments
Trade groups	**<u>Section 8(c)(2), need for additional rules or guidance generally</u>:** "The industry needs clear rules of the road so that participants can compete on a level playing field. In its enforcement actions, the Bureau consistently disregarded RESPA's express statement that Section 8 does not prohibit 'the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.' … The court [in *PHH*] stated that '[t]he CFPB's interpretation flouts that statutory goal and upends the entire system of unpaid referrals that has been part of the market for real estate settlement services.' … Consistent with the D.C. Circuit's decision, the Bureau should amend Regulation X and its official interpretations to provide clear guidance on the permissibility of the following common industry business arrangements. … While the Bureau cannot address every factual scenario, guidance on the most prevalent will significantly reduce uncertainty. The majority of industry participants will seek to operate within the safe harbors created by the Bureau's guidance. This additional clarity will protect consumers and create a more level playing field for industry. 1. Marketing Services Agreements … 2. Joint Advertising Agreements … 3. Desk Rentals … 4. Lead Generators." [Note: Each of these four enumerated items included a short descriptive paragraph.] – MBA (-0048) (emphasis omitted) **<u>Update Section 8 generally, including for new practices and technology advances</u>:** "The Real Estate Settlement Procedures Act, passed in 1974, and its implementing regulation, Regulation X, have played an important role in informing and protecting consumers in mortgage transactions for decades. However, RESPA is showing its age in many respects. Numerous changes have been made over the years to add or amend elements of its coverage as new and additional concerns came to light. In some cases, these changes were not fully integrated to address all impacted sections of the Act, Regulation, and interpretive materials. In other cases, the rules have not kept up with changes in the market as products, practices and technological innovations have developed and evolved. In order for RESPA to efficiently achieve its goals, many existing shortcomings in the Regulation and its interpretive materials must be addressed. … Currently, the rules regarding the applicability of RESPA Section 8 to numerous common activities are confusing and imprecise. … In order to limit fear of liability and quell lenders' concerns about adequate compliance, the industry needs a clear test for Section 8 compliance. Particular areas in need of clarity include the need for further guidance on relationships with marketers, builders, and other service

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

	providers such as relocation vendors; and further clarification as to how to evidence the market value of services rendered." – HPC (-0060) **<u>Referrals and marketing services agreements</u>:** "ABA recommends that the Bureau devote resources to review Section 8's anti-kick-back provisions, including the existing rule, recent orders (including private consent orders), and guidelines and update the regulation as appropriate. … Coupled with the Bureau's history of questionable RESPA interpretations, applying Section 8 to new modes of business and communication in an electronic world significantly increases compliance challenges and legal risks. Considering the importance of Section 8 to the regulation of settlement services and the fact that violators are subject not only to significant potential fines, but imprisonment, it is critical that the Bureau modernize these sections of the regulation to ensure requirements are clear and that they do not inappropriately impede innovation and progress in the developing digital world. … Every new bank mortgage product, every step to enhance mortgage-related digital capability, and every relationship with third-party market partners is entangled in the vague and uncertain requirements of Section 8. These legal uncertainties include: Hyperlinks and 'Click-Throughs' … Leads vs. Referrals … Endorsements … Website Operators … Facility … Marketing Agreements--The Bureau should provide direction on how to analyze the legality of compensation paid to real estate professionals for *bona fide* marketing and advertising service given the growth and variety of such agreements. … Consumer Discounts." [Note: Similar to "Marketing Agreements," each of the other items in this list included a short description of the item.] – ABA (-0028) (emphasis omitted) **<u>Affiliated business arrangements</u>:** "Similarly, the *Borders* decision and the prior decision in *Carter vs. Welles Bowen* (6th Circuit) has sown some confusion as well. The core rule for an affiliated business arrangement (AfBA) is of course section 8(c)4 [sic] that requires prompt disclosure, limits profit to a reasonable and commensurate return on investment, and prohibits required use of the AfBA. Adding some additional color to these provisions via guidance to prevent the creation of sham entities that provide no real services would benefit consumers and compliant AfBAs." – The Real Estate Services Providers Council, Inc. (-0015)
Consumer advocacy groups	**<u>Opposes weakening Regulation X generally and Section 8 specifically</u>:** "RESPA and Regulation X are intended to ensure that consumers in real estate transactions receive timely information about the nature and cost of the settlement process and to protect consumers from unnecessarily high settlement charges caused by certain abusive practices. This is accomplished through a combination of disclosure and restrictions on kickbacks and referral fees. After more than 40 years, the mortgage industry has long been accustomed to Regulation X compliance and the rule continues to meet the needs of mortgage borrowers. We support Regulation X and oppose any effort to weaken its protections. In particular, the regulations implementing the ban on kickbacks and referral fees are effective and should not be weakened. This rule is vital to RESPA's original purpose by preventing consumers from being steered into high-cost settlement services by hidden incentives." – 42 consumer advocacy groups (-0063)[62] **<u>Affiliated business arrangements</u>:** "While we do not recommend opening Regulation X for amendments, if the CFPB does so, it should consider [the following change]. … [T]he affiliated business rule is a gaping loophole in RESPA's otherwise strong ban on referral fees and kickbacks. The statute clearly allows affiliated business arrangements, but Regulation X should more strictly regulate them. Service providers know that consumers have difficulty shopping for settlement services and

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

	must accept whatever the provider offers. As a result, merely disclosing the arrangement is not enough. The CFPB should ensure that the arrangement is legitimate and not merely a cover for illegal conduct." – 32 consumer advocacy groups (-0064)
Other industry	**Harms to competition/Level playing field:** "In addition there are many Joint Ventures, AFBA's, Marketing agreements, that are just legal form of kick backs to realtors, lenders, loan officers, builders etc. especially here in Ohio. This is not good for the consumer and also causes unfair business practices that are hard to compete against when you operate within the rules and laws and with ethics, integrity and professionalism. Realtors and lenders who direct business to title companies constantly have their hands out for kick backs, gifts, and exorbitant entertainment to send their business to title companies. it needs to be cleaned up with real enforcement and crack downs." – TransCounty Title Agency (-0027) **Homeownership counseling disclosures:** "Reg. X: 1024.20 requires creditors to provide a list of homeownership counseling organizations. The requirement to provide a list of homeownership counselors is an unnecessary burden on creditors. The information within the list could be provided to borrowers in a more efficient alternative manner than today's requirement. … As an alternative to today's separate disclosure, the availability of homeownership counseling can be disclosed on the third page of the Loan Estimate with verbiage such as: 'You can access a list of nationwide HUD-approved housing counselors at http://portal.hud.gov/hudportal/HUD?src=/ohc_nint. You may also request a list from your loan originator.' If requested, the creditor should supply the list within three business days. A similar process has worked well for the mortgage servicing transfer information which now resides on the loan estimate's third page after previously being a required separate document." – Brian Holst (-0007)

5. Regulation Z (implementing TILA), Open-end Credit[63]

Commenter Type	Representative Sentiments
Trade groups	**Account upgrades/consolidations:** "To illustrate, Regulation Z's prohibition on increasing fees in an account's first year[29] in certain circumstances prevents customers from 'trading up' benefits (such as richer rewards) but is subject to a higher annual fee or APR. … The advance change in term notice requirement poses similar inconvenience and potential costs when customers want to trade up (regardless of how long the account has been open). Where a material term is changing, customers may have to wait 45 days to trade up, potentially incurring an additional annual fee and losing opportunities for preferred rewards or other desired features." – ABA (-0028)

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

	Balance transfers: "While Regulation Z permits changes to a credit product without enduring the CIT waiting period for paper access checks, this exemption should be modernized to cover other notice and payment technologies that provide effective disclosure, and permit informed affirmative consent. … There is no reason to believe that consumers are more likely to understand disclosures on paper checks than they are to understand the same disclosures on channels they more frequently use, including digital channels." – CBA (-0054)
Consumer advocacy groups	**Overdraft credit:** "Regulate overdrafts as credit under Regulation Z, subject to an ability-to-repay assessment and repayment through installments. Overdraft fees have long enjoyed a regulatory pass in many respects because banks have posited that overdraft is not being used as credit but instead is merely an occasional courtesy. However, data showing that many consumers are charged many fees annually belies this argument." – 30 consumer advocacy groups (-0061) (emphasis omitted) **Deferred interest plans:** "Deferred interest promotions are one of the biggest credit card abuses that remains after the enactment of the Credit CARD Act. We urge the CFPB, as we have many times before, to ban this deceptive and costly practice." – 32 consumer advocacy groups (-0064)
Other industry	**Advertising rules – trigger terms:** "Amending Regulation Z to eliminate the trigger-term disclosure requirement would not create any additional risk of consumer harm, because all of the disclosures are provided to consumers in other ways. Further, eliminating this duplicative disclosure requirement would promote the Bureau's statutory objectives by helping to eliminate unnecessary burdens and ensure that consumers receive clear, simple, and understandable information to help them make financial decisions." – Discover (-0069) **Electronic disclosures:** "We therefore recommend that the Bureau use its authority to exempt disclosures from the E-Sign Act's consent requirements when a consumer uses electronic means to engage in online and mobile banking services, such as Regulation E disclosures under 12 C.F.R. 1005.7, adverse action notices under Regulation B, and Regulation Z credit card disclosures after the account is open. For these disclosures, the Bureau could implement a more streamlined notice requirement that is more relevant and more likely to be understood by consumers." – Discover (-0069)
Others	**Foreign transaction fees as finance charges:** "For example, the staff commentary to Reg Z, 12 CFR 1026.4(a)-4(ii) provides that a finance charge includes any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States … regardless of whether a charge is imposed on debit cardholders for such transactions. … For federal credit unions, however, the commentary might be interpreted to impact a federal credit unions ability to assess foreign transaction fees because of the interest cap on federal credit union lending under 12 CFR 701.21. … Instead of the commentary that was drafted, the CFPB (or FRB if this is an inherited provision) could have required the foreign transaction fee to be included in the solicitation and account-opening disclosure tables, without changing the commentary to provide that the foreign transaction fee is a finance charge and without changing the basic notion that a fee imposed on both a cash transaction and a credit transaction is not a finance charge. The CFPB could have achieved its result (disclosure) without adversely impacting federal credit unions." – Anonymous (-0082)

Dispute resolution:

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

RFI Topic Areas (Cross-Cutting Issues)

	Topic	Description	Total Number of Comment Letters[64]
1	Electronic Disclosure	This topic includes comment letters that related to the use of electronic disclosures.	28 14 trade groups 9 consumer advocacy groups 4 other industry 1 other
2	Innovation	This topic includes comment letters that specifically used the keywords “innovation” or “innovate.”[65]	27 17 trade groups 0 consumer advocacy groups 6 other industry 4 other

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

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

Representative Sentiments (Cross-Cutting Issues)

1. ELECTRONIC DISCLOSURES[66]

Commenter Type	Representative Sentiments
Trade groups	**E-Sign coverage/potential exemptions:** "Rules should generally reflect that electronic disclosures can be delivered without E-Sign consent, and should foster flexibility in how electronic disclosures are provided." – CCMC (Adopted -0093)[67] **E-Sign reasonable demonstration requirement:** "[T]he Bureau should provide guidance on what consumer conduct constitutes 'reasonable demonstration of access' to electronically receive and access information, especially when consumers consent to a bank's E-SIGN disclosure using bank technology (for example at a branch on a bank-provided device)." – AFSA (-0047) **Hyperlinks:** "[I]nteractive technologies offer a means of delivering information that is more consumer-friendly than paper-based disclosures. By presenting key terms of information in summary form and including links to additional information, consumers can access information more quickly and efficiently in an interactive electronic format than they can with paper disclosures." – ABA (-0028) **Clear and conspicuous, screen size/machine readability, retainability:** "[C]urrent requirements for written disclosures, including the formatting and presentation requirements, impede the advancement of efficient electronic disclosures. … [W]e recommend that the Bureau undertake a ground up review of formatting and related presentation requirements that may not be suited for emerging communications technologies, and … develop alternative standards that can be used for different modes of communications." – ABA (-0028)
Consumer advocacy groups	**E-Sign coverage/potential exemptions:** "[W]e oppose giving providers more latitude to deliver disclosures, statements, records or other information electronically for consumers who prefer a paper format using postal mail. … Financial institutions can substitute electronic delivery for paper statements, but only in compliance with … [E-Sign]." – 29 consumer advocacy groups (-0062)[68]

[66] Subtopics for electronic disclosure comments include: (1) E-Sign Act's coverage and potential exemptions; (2) E-Sign Act's reasonable demonstration requirement; (3) use of hyperlinks; (4) applicability of clear and conspicuous standards, screen size, machine readability, and retainability standards to electronic disclosures; (5) right/access to free paper statements; (6) E-Sign Act's consumer-consent requirements; and (7) timing rules for delivery of electronic disclosures.

[67] Comments quoted in this part were submitted on the Inherited RFI docket (CFPB-2018-0012) unless otherwise noted.

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

	<u>Right/access to free paper statements</u>: "Paper disclosures and statements must be available for free for consumers who want them, and consumers should not be coerced into electronic versions or steered into them by default if paper is the consumer's first choice. Paper is a more reliable way of ensuring that the consumer actually sees the information, can digest it as time permits, and can retain important records. Millions of Americans -- particularly those who are lower-income, less educated, older, and households of color -- are on the other side of the 'digital divide,' lacking home broadband Internet access." – 29 consumer advocacy groups (-0062) **<u>Hyperlinks</u>:** "[F]ee disclosures forms should be provided on websites in a location that is clear and easily accessible for all accounts that may be opened online or that contain pricing information. The fee schedules should be prominent and easy to access before beginning the sign-up process or any personal information is collected from the consumer." – 30 consumer advocacy groups (-0061) **<u>Clear and conspicuous, screen size/machine readability, retainability</u>:** "[S]ome products are too complex to be adequately disclosed on a mobile device, and not all electronic information can be saved and retained by the consumer. … Consumers must have the right to receive critical information in the manner that works for them." – 29 consumer advocacy groups (-0062)
Other industry	**<u>E-Sign coverage/potential exemptions</u>:** "The Bureau can effectively achieve its consumer-protection objectives and reduce unwarranted regulatory burdens under the E-Sign Act by exempting certain disclosures from its electronic-document consent requirement. … This consent requirement is no longer necessary and has become confusing for consumers who are already engaged via an electronic channel and reasonably expect that relevant disclosures will be provided in that electronic channel." – Discover (-0069) **<u>E-Sign reasonable demonstration requirement</u>:** "[T]here is no bright line test for determining what it means to 'reasonably demonstrate' that the consumer can access the information in the electronic form in which it is provided, and many financial institutions have determined that it is unworkable to offer electronic disclosures, particularly in face-to-face account openings. … Visa believes that the Bureau has the authority to address the impediments of the E-SIGN 'reasonable demonstration' requirement in most, if not all, of the consumer financial services laws for which it has rule writing authority to allow information that must be provided 'in writing' to be provided electronically on a screen." – Visa (Adopted -0104) **<u>Clear and conspicuous, screen size/machine readability, retainability</u>:** "Although nothing in the Bureau's regulations precludes a financial institution from providing disclosures on a mobile device, certain specific requirements (e.g., font size requirements) make it challenging for financial institutions to provide clear and conspicuous disclosure via newer and emerging mechanisms." – Visa (Adopted -0104)

Other	**Right/access to free paper statements**: "Any proposal to shift mandatory disclosures to electronic delivery alone … raises serious questions about the effectiveness of that form of delivery. … Empirical research has shown that virtually no consumers actually read … electronic disclosures." – Financial Regulation and Consumer Protection Scholars (Adopted -0039)[69]

2. Innovation[70]

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

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

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

	"We believe the Bureau should maintain the disparate impact regime as it (a) can address a widely held policy concern while flexibly accommodating innovation in data, machine learning, and AI, (b) has not been onerous to comply with in our experience, and (c) provides the regulatory stability that supports innovation and investment." – LendingClub (Adopted -0075)
Other	**Regulatory sandboxes:** "Federal regulation poses an impediment to state efforts to enhance consumer welfare through FinTech investment and innovation. To help fulfill the promise of FinTech for consumers and entrepreneurs alike, the CFPB should partner with states to facilitate regulatory sandbox environments." – Attorney General of Arizona (-0038) **General innovation:** "Even beyond our very recent and catastrophic experiences with deregulation, the very suggestion of innovation implies that existing laws need to be interpreted in order to apply them to new financial products. It is unreasonable to expect the slow legislative process to adjust to every single new product with new laws. The best analogy is the creation of new drugs. Some may be medicinal, some will have no benefit except to foster addiction and the creation of a new market. We cannot wait until someone invents some new opioid or methamphetamine or cancer treatment to regulate it-- we leave that to rule-making authorities." – Andrew Sedrel (-0005)

Additional Notes

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

Allied Progress
Americans for Financial Reform
Arizona Community Action Association
Arkansans Against Abusive Payday Lending
Atlanta Legal Aid Society, Inc.
Bet Tzedek Legal Services (CA)
CASH Campaign of Maryland
Center for NYC Neighborhoods
Consumer Action
Consumer Federation of America
Consumers Union
Florida Alliance for Consumer Protection
Georgia Watch
Heartland Alliance for Human Needs & Human Rights
Housing and Economic Rights Advocates (CA)
Housing Options & Planning Enterprises, Inc. (MD)
Illinois People's Action
Jacksonville Area Legal Aid, Inc.
Legal Aid Society of San Diego, Inc.
Low-Income Energy Affordability Network (MA)
Main Street Alliance
Maryland Consumer Rights Coalition
Mississippi Center for Justice
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
National Housing Law Project
Neighborhood Housing Services of Baltimore
New Jersey Citizen Action
Pennsylvania Utility Law Project
People's Action Institute
Public Citizen
Public Counsel (CA)
Public Justice Center (MD)
Public Law Center (CA)
Public Utility Law Project of New York
Texas Appleseed
The Utility Reform Network (CA)
U.S. PIRG
West Virginia Center on Budget and Policy
Woodstock Institute

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

Allied Progress
Americans for Financial Reform
Arizona Community Action Association
Arkansans Against Abusive Payday Lending
Atlanta Legal Aid Society, Inc.
CASH Campaign of Maryland
Center for NYC Neighborhoods
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Equal Justice Society
Florida Alliance for Consumer Protection

Heartland Alliance for Human Needs & Human Rights

Housing Options & Planning Enterprises, Inc.

Illinois People's Action

Main Street Alliance

Maryland Consumer Rights Coalition

Mississippi Center for Justice

National Association of Consumer Advocates

National Association of Social Workers

National Consumer Law Center (on behalf of its low income clients)

National Fair Housing Alliance

National Housing Law Project

Neighborhood Housing Services of Baltimore

New Jersey Citizen Action

People's Action Institute

Public Counsel

Public Justice Center

Public Law Center

Texas Appleseed

U.S. PIRG

West Virginia Center on Budget and Policy

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

Allied Progress

Americans for Financial Reform

Arizona Community Action Association

Arkansans Against Abusive Payday Lending

Atlanta Legal Aid Society, Inc.

CASH Campaign of Maryland

Center for NYC Neighborhoods

Consumer Action

Consumer Federation of America

Consumers Union

Equal Justice Society

Heartland Alliance for Human Needs & Human Rights

Housing Options & Planning Enterprises, Inc.

Illinois People's Action

Main Street Alliance

Maryland Consumer Rights Coalition

Mississippi Center for Justice

National Association of Consumer Advocates

National Association of Social Workers

National Consumer Law Center (on behalf of its low income clients)

National Fair Housing Alliance

New Jersey Citizen Action

People's Action Institute

Public Counsel

Public Justice Center (Baltimore, MD)

Public Law Center (Santa Ana, CA)

Texas Appleseed

U.S. PIRG

West Virginia Center on Budget and Policy

Woodstock Institute

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

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

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

Allied Progress
Americans for Financial Reform
Arizona Community Action Association
Arkansans Against Abusive Payday Lending
Atlanta Legal Aid Society, Inc.
CASH Campaign of Maryland
Center for NYC Neighborhoods
Consumer Action
Consumer Federation of America
Equal Justice Society
Georgia Watch
Heartland Alliance for Human Needs & Human Rights
Housing Options & Planning Enterprises, Inc.

Illinois People's Action

Main Street Alliance

Maryland Consumer Rights Coalition

Mississippi Center for Justice

National Association of Consumer Advocates

National Association of Social Workers

National Consumer Law Center (on behalf of its low income clients)

National Fair Housing Alliance

New Jersey Citizen Action

People's Action Institute

Public Counsel

Public Justice Center

Texas Appleseed

U.S. PIRG

West Virginia Center on Budget and Policy

Woodstock Institute

6. The following individuals were signatories to the letter submitted by Patricia McCoy on behalf of a group of scholars and former regulators, identified above as from "Financial Regulation and Consumer Protection Scholars" (Adopted-0039):[71]

Patricia A. McCoy
Professor of Law, Boston College Law School
Former Assistant Director, Mortgage Markets, Consumer Financial Protection Bureau

Richard Alderman
Professor Emeritus and Director, Center for Consumer Law
University of Houston Law Center

William Black
Associate Professor of Economics and Law
University of Missouri-Kansas City

Susan Block-Lieb
Cooper Family Professor of Urban Legal Issues
Fordham Law School

Lauren Dreshman
Associate Professor/Paralegal and Law Program Director
Sinclair College

Kate Elengold
Clinical Associate Professor of Law; Director, Consumer Financial Transactions Clinic
University of North Carolina School of Law; Former Trial Attorney, United States Department of Justice

Kathleen Engel
Research Professor
Suffolk University Law School

Robert Fellmeth
Price Professor of Public Interest Law
University of San Diego School of Law

Linda Fisher
Professor of Law
Seton Hall University School of Law

Anne Fleming
Associate Professor of Law
Georgetown University Law Center

Pamela Foohey
Associate Professor of Law
Indiana University Maurer School of Law

Judith Fox
Clinical Professor
Notre Dame Law School

Jeffrey Gentes
Visiting Clinical Lecturer
Yale Law School

Michael Greenfield
George Alexander Madill Professor of Contracts and Commercial Law
Washington University in St. Louis

Dalié Jiménez
Professor of Law
University of California, Irvine School of Law

Kathleen Keest
Formerly Iowa Attorney General's Office, Consumer Protection Division

Daniela Kraiem
Associate Director, Women and the Law Program
American University, Washington College of Law

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

Angela Littwin
Robert D. Krist Professor of Law
University of Texas

Cathy Mansfield
Professor of Law
Drake University Law School

Nathalie Martin
Frederick M. Hart Chair in Consumer and Clinical Law
University of New Mexico School of Law

Christopher Odinet
Horatio C. Thompson Assistant Professor of Law
Southern University Law Center

Gary Pieples
Teaching Professor and Clinic Director
Syracuse University

David Reiss
Professor of Law
Brooklyn Law School

Jacob Rugh
Assistant Professor of Sociology
Brigham Young University

Jacob Russell
Assistant Professor of Law
Rutgers Law School

Ann Shalleck
Professor of Law and Carrington Shields Scholar
American University, Washington College of Law

Lea Krivinskas Shepard
Professor of Law
Loyola University Chicago School of Law

Alexandra Sickler
Associate Professor of Law
University of North Dakota School of Law

Neil Sobol
Professor
Texas A&M University School of Law

Gregory Squires
Professor of Sociology and Public Policy and Public Administration
George Washington University

Mark E. Steiner
Professor of Law
South Texas College of Law Houston

Mark Totten
Associate Professor
Michigan State University College of Law

Rebecca Tushnet
Frank Stanton Professor of First Amendment Law
Harvard University

William Vukowich
Professor of Law
Georgetown Law School

Alan White
Professor of Law
CUNY School of Law

Amy Widman
Associate Professor
Northern Illinois University College of Law

Arthur Wilmarth
Professor of Law
George Washington University Law School

4. Guidance and Implementation Support

APPENDIX A: INDEX OF COMMENTER ACRONYMS

Acronym	Definition
ABA	American Bankers Association https://www.aba.com
AFR	Americans for Financial Reform http://ourfinancialsecurity.org/
AFSA	American Financial Services Association https://www.afsaonline.org/
CBA	Consumer Bankers Association http://www.consumerbankers.com/
CCMC	U.S. Chamber of Commerce's Center for Capital Markets Competitiveness https://www.uschamber.com/center-capital-market-competitiveness
CEI	Competitive Enterprise Institute https://cei.org
CMC	Consumer Mortgage Coalition http://www.consumermortgagecoalition.org/
CRC	California Reinvestment Coalition http://calreinvest.org/
CRL	Center for Responsible Lending https://www.responsiblelending.org/
CUNA	Credit Union National Association https://www.cuna.org/
Discover	Discover Financial Services https://www.discover.com/
ETA	Electronic Transactions Association https://www.electran.org/
HPC	Housing Policy Council of the Financial Services Roundtable[72]
ICBA	Independent Community Bankers of America https://www.icba.org/
MBA	Mortgage Bankers Association https://www.mba.org/
MSBA	Money Services Business Association https://www.msbassociation.org/
NAFCU	National Association of Federally-Insured Credit Unions https://www.nafcu.org/
NBPCA	Network Branded Prepaid Card Association https://www.nbpca.org/
NCLC	National Consumer Law Center https://www.nclc.org/

[72] With the dissolution of the Financial Services Roundtable, the Housing Policy Council no longer has an active webpage.

Acronym	Definition
SBA Office of Advocacy	U.S. Small Business Administration Office of Advocacy https://www.sba.gov/advocacy

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR CH. X

Semiannual Regulatory Agenda

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing this agenda as part of the Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from October 1, 2019, to September 30, 2020. The next agenda will be published in spring 2020 and will update this agenda through spring 2021. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DATES: This information is current as of July 25, 2019.

ADDRESS: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: A staff contact is included for each regulatory item listed herein. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is publishing its Fall 2019 Agenda as part of the Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from October 1, 2019, to September 30, 2020, as described further below.[1] The Bureau's participation in the Unified Agenda is

[1] The listing does not include certain routine, frequent, or administrative matters. Further, the fields "Unfunded Mandates," "EO 13771 Designation," and "Federalism Implications" are not required for independent regulatory agencies, including the Bureau, and, accordingly, the Bureau has indicated responses of "no" or "Independent Agency" for such fields.

voluntary. The complete Unified Agenda is available to the public at the following website: http://www.reginfo.gov.

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act), the Bureau has rulemaking, supervisory, enforcement, consumer education, and other authorities relating to consumer financial products and services. These authorities include the authority to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the Bureau from seven Federal agencies on July 21, 2011. The Bureau's general purpose, as specified in section 1021(a) of the Dodd-Frank Act, is to implement and enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

Section 1021 of the Dodd-Frank Act specifies the objectives of the Bureau, including ensuring that, with respect to consumer financial products and services, consumers are provided with timely and understandable information to make responsible decisions about financial transactions; consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; that Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

As a general matter, the Bureau believes that it can best achieve these statutory purposes by using its various tools to focus on the prevention of consumer harm. With specific regard to rulemaking, the Bureau seeks to articulate clear rules of the road for regulated entities that promote competition, increase transparency, and preserve fair markets for financial products and services. If Congress directs the Bureau to promulgate rules or address specific issues through rulemaking, the Bureau will comply with the law. If the Bureau has discretion, the Bureau will focus on preventing consumer harm by maximizing informed consumer choice, and by reducing unwarranted regulatory burden which can adversely affect competition and consumers' access to financial products and services. The Bureau is working on various initiatives to achieve these objectives as described below.

A new permanent director of the Bureau took office in December 2018. The Director embarked on a listening tour to engage with Bureau stakeholders, employees, and outside experts, building on feedback submitted through more than 88,000 public comments in response to the Bureau's 2018 "Call for Evidence" initiative. This Unified Agenda represents the first one the Bureau has prepared following the Director's listening tour. It seeks to provide the public with visibility into the rulemaking activities in which the Bureau is likely to be engaged over the next 12 months and those that are contemplated in the ensuing year. To enhance transparency, the Bureau has updated this Unified Agenda to identify current priorities and to delete outdated items.

Implementing Statutory Directives

The Bureau is engaged in a number of rulemakings to implement directives mandated in the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), Public Law 115-174, 132 Stat. 1297, the Dodd-Frank Act, and other statutes. As part of these rulemakings, the Bureau is working to maximize consumer welfare and achieve other statutory objectives through protecting consumers from harm and minimizing regulatory burden, including facilitating industry compliance with rules.

For example, in March 2019, the Bureau published an Advance Notice of Proposed Rulemaking (ANPRM) to seek public comment relating to implementation of section 307 of the EGRRCPA, which amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. As defined by EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The regulations must "account for the unique nature" of PACE financing. The Bureau is reviewing the comments it received in response to the ANPRM, as it considers next steps to facilitate the development of a Notice of Proposed Rulemaking (NPRM).

The Bureau has also been engaged in a range of other activities to support its rulemaking to implement the EGRRCPA. For example, the Bureau updated its small entity compliance guides and other compliance aids to reflect the EGRRCPA's statutory changes. The Bureau also issued written guidance as encouraged by section 109 of the Act, which states that the Bureau "should endeavor to provide clearer, authoritative guidance" on certain mortgage regulations.[2] Finally, the Bureau anticipates engaging in guidance activity, as needed, to facilitate compliance, regarding the EGRRCPA provisions that do not require rulemaking to take effect.

In anticipation of rulemaking activity, the Bureau has also conducted a preliminary analysis of the number of lenders potentially impacted by implementation of section 108 of the EGRRCPA, which relates to escrow requirements for loans made by certain creditors. The Bureau released the analysis late this summer, which shows that a limited number of additional lenders would be exempt under section 108 of the EGRRCPA once implemented by rule.

Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau is hosting a symposium on small business data collection in November 2019 in order to facilitate a robust discussion with outside experts on the issues implicated by creating such a data collection and reporting regime. After the symposium, the Bureau anticipates that its next step will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act, in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, to consult with representatives of small businesses that may be affected by the rulemaking.

Promoting Competition, Increasing Transparency and Preserving Fair Markets

1. *Continuation of Other Rulemakings*

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[2] *See, e.g.,* "TILA-RESPA Integrated Disclosure FAQs"- available at *https://www.consumerfinance.gov/policy-compliance/guidance/tila-respa-disclosure-rule/tila-respa-integrated-disclosure-faqs/*

The Bureau is continuing certain other rulemakings described in its Spring 2019 Agenda to articulate clear rules of the road for regulated entities that promote competition, increase transparency, and preserve fair markets for financial products and services.

For example, to consider concerns about possible unwarranted regulatory burden, the Bureau issued an NPRM in May 2019 to reconsider the thresholds for reporting data about closed-end mortgage loans and open-end lines of credit under the Bureau's 2015 Home Mortgage Disclosure Act (HMDA) rule. The NPRM also proposed to incorporate into Regulation C an interpretive and procedural rule that the Bureau issued in August 2018 to clarify partial HMDA exemptions created by the EGRRCPA. This summer, the Bureau reopened the comment period of certain aspects of the proposed rule until mid-October. Thus, the Bureau plans to issue two separate final rules to address different aspects of the proposed rule at different times--the first one in the fall of 2019 would address the proposed 2-year extension of the temporary threshold for collecting and reporting data on open-end lines of credit and the EGRRCPA partial exemption provisions, and the second one in the spring of 2020 would address the proposed changes to the permanent thresholds for collecting and reporting data on open-end lines of credit and closed-end mortgage loans. Likewise, to consider concerns about possible unwarranted regulatory burden, the Bureau also issued an ANPRM in May 2019 concerning certain data points that are reported under the 2015 HMDA rule and coverage of certain business or commercial purpose loans. In June 2019, the Bureau extended the comment period on the ANPRM to mid-October. In summer 2020, the Bureau expects to issue an NPRM to follow up on the ANPRM. The Bureau also expects to issue an NPRM addressing the public disclosure of HMDA data in light of consumer privacy interests, so that collection and reporting of data points and public disclosure of those data points can be considered concurrently.[3]

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[3] The 2010 Dodd-Frank Act amendments to HMDA direct the Bureau to develop regulations that modify or require modification of the public HMDA data for the purpose of protecting consumer privacy interests. The Bureau's 2015 HMDA rule adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purpose. The Bureau in 2018 issued final policy guidance applying the test to current data points and announced its intention to conduct a notice-and-comment rulemaking to seek further input on the public release going forward. Commencing a notice-and-comment rulemaking will also enable the Bureau to adopt a more definitive approach to disclosing HMDA data to the public in future years after considering new information concerning the privacy risks and benefits of disclosure of the HMDA data. Until the Bureau promulgates a final rule on the public disclosure of HMDA data, it anticipates that it will continue to disclose HMDA data in the manner detailed in the final policy guidance.

In addition, in February 2019, the Bureau issued an NPRM relating to reconsideration of the mandatory underwriting requirements of a 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. In the NPRM, the Bureau initially determined that the evidence underlying the identification of the unfair and abusive practice in the mandatory underwriting provisions of the 2017 rule was not sufficiently robust and reliable to support that determination, in light of the impact those provisions will have on the market for covered short-term and longer-term balloon-payment loans, and the ability of consumers to obtain such loans, among other things. The Bureau also initially determined that its approach for its unfairness and abusiveness determinations was sufficiently problematic to necessitate reconsideration. Based on its reconsideration of those issues, the Bureau proposed to rescind the mandatory underwriting provisions in their entirety. The comment period for the NPRM closed in May 2019 and the Bureau is carefully reviewing the approximately 190,000 comments it received. The Bureau expects to take final action with respect to this proposal in April 2020.

Finally, the Bureau issued an NPRM in May 2019, which would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the Fair Debt Collection Practices Act. The Bureau's proposal would, among other things, address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The proposal builds on the Bureau's research and pre-rulemaking activities regarding the debt collection market, which remains a top source of complaints to the Bureau. The Bureau also is engaged in testing of consumer disclosures related to time-barred debt disclosures that were not the focus of the May 2019 proposal. After testing, the Bureau will assess whether to issue a supplemental NPRM seeking comments on any disclosure proposal related to the collection of time-barred debt. The Bureau expects to take final action with regard to the May 2019 NPRM in 2020.

In addition to these three rulemakings in which the Bureau already has issued proposals, the Bureau also is continuing work related to a potential rulemaking to amend the Bureau's Remittance Rule. After completing an assessment in October 2018 of its rules to implement Dodd-Frank Act requirements for remittance transfers,[4] the Bureau issued in April 2019 a Request for Information to gather information related to the scope of the Remittance Rule's coverage and the expiration of a statutorily-established exception in the Remittance Rule that permits insured banks and insured credit unions to estimate certain required disclosures and other potential remittance transfer issues. In its consideration of appropriate next steps, including potentially rulemaking, the Bureau is considering stakeholder feedback during the assessment process and comments received in response to the Request for Information.

2. *New Projects and Further Planning*

In January 2019, the Bureau completed an assessment of rules implementing Dodd-Frank Act provisions that require mortgage lenders to determine consumers' ability to repay loans and define certain "qualified mortgages" that are presumed to comply with the statutory requirements.[5] The Bureau is now focusing its attention on a regulatory provision that extends qualified mortgage status to loans that are eligible to be purchased or guaranteed by either Fannie Mae or Freddie Mac (which are often called the Government Sponsored Enterprises or GSEs) while they operate under Federal conservatorship or receivership. The "GSE patch" provision is set to expire in January 2021, meaning that loans originated after that date would not be eligible for qualified mortgage status under its criteria. In July 2019, the Bureau issued an ANPRM to solicit information about possible amendments to the qualified mortgage provisions of Regulation Z, specifically information about issues related to the scheduled expiration of the GSE patch. The Bureau currently plans to allow the GSE patch to expire and is considering whether to revise Regulation Z's general qualified mortgage definition in light of this planned expiration. The Bureau is further considering a limited extension of the expiration date only as necessary to allow for a smooth and orderly transition away from the GSE Patch.

In light of feedback received in response to the Bureau's 2018 Call for Evidence and various other outreach to stakeholders, the Bureau has decided to add two new entries to its long-term regulatory agenda. This portion of the agenda focuses on potential regulatory actions that an agency may engage in

[4] "Remittance rule assessment report"- available at *https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/*

[5] "2013 Ability-to-Repay and Qualified Mortgage Assessment Report"- available at *https://www.consumerfinance.gov/data-research/research-reports/2013-ability-repay-and-qualified-mortgage-assessment-report/*

beyond the current fiscal year, and currently includes issues such as potential rulemaking or other activity regarding the Dodd-Frank Act's prohibition on abusive acts or practices. The Bureau is now adding entries to address issues of concern in connection with loan originator compensation and to facilitate the use of electronic channels of communication in the origination and servicing of credit card accounts.

As to loan originator compensation, the Bureau has received feedback that aspects of Regulation Z's loan originator compensation requirements are unnecessarily restrictive. The Bureau is considering a rulemaking to address certain of these concerns. In particular, the Bureau plans to examine whether to permit adjustments to a loan originator's compensation in connection with originating State housing finance authority loans in order to facilitate the origination of such loans. The Bureau also plans to examine whether to permit creditors to decrease a loan originator's compensation due to the loan originator's error in order to provide clearer rules of the road for regulated entities. The Bureau has no current plans to consider other significant potential changes.

As to electronic communications, the Bureau has received feedback that the intersection of certain requirements of Regulation Z and the Electronic Signatures in Global and National Commerce Act (E-SIGN) are too restrictive for consumers applying for credit card accounts via electronic channels and for consumers willing, or preferring, to receive account information electronically only. To decrease regulatory burdens that may be inhibiting the use of electronic communication, the Bureau is considering a rulemaking to address a range of issues at the intersection of E-SIGN and Regulation Z with regard to credit cards. The Bureau also notes that similar concerns about the effect of E-SIGN have been raised with respect to other types of consumer financial products and services including checking accounts. The Bureau anticipates that what it learns in considering these issues in the credit card context may assist the Bureau in assessing whether there are similar concerns with other financial products and services that may be appropriate to address in future rulemakings.

The Bureau is engaged in other rulemakings consistent with its general interest in modernizing disclosure rules in light of new and emerging technology. For example, the Bureau issued an NPRM in May that, among other things, proposed regulations that would modernize content and delivery requirements for certain disclosures in the debt collection context. The Bureau is interested in exploring ways to adapt disclosure regulations so that they more effectively inform the increasing number of consumers who use digital media for financial products and services, including, but not limited to, financial products, such as credit cards.

The Bureau is also actively reviewing existing regulations. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law and publish a report of each assessment not later than 5 years after the effective date of the subject matter or order. The Bureau will be conducting an assessment of its regulations to consolidate various mortgage origination disclosures under the Truth in Lending Act and Real Estate Settlement Procedures Act. The Regulatory Flexibility Act (RFA) requires the Bureau to consider the effect on small entities of certain rules it promulgates. The Bureau published in May 2019 its plan for conducting reviews, consistent with section 610 of the RFA, of certain regulations which are believed to have a significant impact on a substantial number of small entities. Congress specified that the purpose of such reviews shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of the applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The Bureau is reviewing comments received in response to its request for comment on the first such review, concerning the impact on small banks and credit unions of a 2009 Regulation E amendment concerning overdraft. In 2020, the Bureau expects to conduct additional reviews pursuant to section 610 of the RFA, including a review of the Regulation Z rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Finally, as required by the Dodd-Frank Act, the Bureau is also continuing to monitor markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets. As discussed in a recent report by the Government Accountability Office, the Bureau's Division of Research, Markets, and Regulations and specifically its Markets Offices continuously monitor market developments and risks to consumers. The Bureau also has created a number of cross-Bureau working groups focused around specific markets which advance the Bureau's market monitoring work. The Bureau's market monitoring work assists in identifying issues for potential future rulemaking work.

[THIS SIGNATURE PAGE PERTAINS TO THE PREAMBLE TO

THE FALL 2019 SEMIANNUAL REGULATORY AGENDA]

Dated: July 26, 2019.

NAME: Lisa J. Cole,

Acting Assistant Director for Regulations, Bureau of Consumer Financial Protection.

Consumer Financial Protection Bureau—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1	Business Lending Data (Regulation B)	3170–AA09
2	Higher-Priced Mortgage Loan Escrow Exemption	3170–AA83
3	Property Assessed Clean Energy Financing	3170–AA84
4	Home Mortgage Disclosure Act (Regulation C)	3170–AA97
5	Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z)	3170–AA98

Consumer Financial Protection Bureau—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
6	Debt Collection Rule	3170–AA41
7	Home Mortgage Disclosure Act (Regulation C)	3170–AA76
8	Public Release of Home Mortgage Disclosure Act Data	3170–AA85
9	Remittance Transfers	3170–AA96

Consumer Financial Protection Bureau—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
10	Payday, Vehicle Title, and Certain High-Cost Installment Loans	3170–AA80

Consumer Financial Protection Bureau—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
11	Amendments to FIRREA Concerning Appraisals (Automated Valuation Models)	3170–AA57
12	Disclosure of Records and Information	3170–AA63

13	Review of Inherited Regulations	3170–AA73
14	Consumer Access to Financial Records	3170–AA78
15	Conforming Rules for the Economic Growth, Regulatory Relief, and Consumer Protection Act	3170–AA86
16	Abusive Acts and Practices	3170–AA88
17	Loan Originator Compensation	3170–AA99
18	E-Sign Act Requirements	3170–AB00

Consumer Financial Protection Bureau—Completed Actions

Sequence Number	Title	Regulation Identifier Number
19	Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date	3170–AA95

Consumer Financial Protection Bureau (CFPB)	Prerule Stage

1. BUSINESS LENDING DATA (REGULATION B)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1691c–2

CFR Citation: 12 CFR 1002

Legal Deadline: None

Abstract: Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that certain data be collected, maintained, and reported, including the number of the application and date the application was received; the type and purpose of the loan or credit applied for; the amount of credit applied for and approved; the type of action taken with regard to each application and the date of such action; the census tract of the principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of this section. The Bureau may adopt exceptions to any requirement of section 1071 and may exempt any financial institution from its requirements, as the Bureau deems necessary and appropriate to carry out section 1071's purposes. The Bureau issued a Request for Information in 2017 seeking public comment on, among other things, the types of credit products offered and the types of data currently collected by lenders in this market, and the potential complexity, cost of, and privacy issues related to, small business data collection. The Bureau is hosting a symposium on small business data collection later this year. The information received in response to the Request for Information and the symposium will help the Bureau as it determines how to implement the rule efficiently while minimizing burdens on lenders. After the symposium, the Bureau anticipates that its next step will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act, in conjunction with representatives of small businesses that may be affected by the rulemaking.

Timetable:

Action	Date	FR Cite
Request for Information	05/15/17	82 FR 22318
Request for Information Comment Period End	09/14/17	
Pre-rule Activity	11/00/19	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Elena Grigera Babinecz, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA09

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2. HIGHER–PRICED MORTGAGE LOAN ESCROW EXEMPTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1601 et seq.

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Federal Reserve Board issued a rule requiring the establishment of escrow accounts for payment of property taxes and insurance payments for certain "higher-priced mortgage loans," a category which the Board defined to capture what it deemed to be subprime loans. Pursuant to the Dodd-Frank Act, the Bureau in 2013 issued a rule creating an exemption from the escrow requirement for creditors with under $2 billion in assets and meeting other criteria. Section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), codified at 15 U.S.C. 1639d, directs the Bureau to conduct a rulemaking to exempt from the escrow requirement loans made by certain creditors with assets of $10 billion or less and meeting other criteria. In anticipation of future rulemaking activity, the Bureau has also conducted a preliminary analysis of the number of lenders potentially impacted by implementation of section 108 of EGRRCPA, which relates to escrow requirements for loans made by certain creditors. The Bureau released the analysis which showed that a limited number of additional lenders would be exempt under section 108 of EGRRCPA once implemented by rule, in late summer 2019.

Timetable:

Action	Date	FR Cite
Pre-Rule Activity	12/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Joseph Devlin, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA83

3. PROPERTY ASSESSED CLEAN ENERGY FINANCING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1639c(b)(3)(C)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. As defined in EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing. In March 2019, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) on PACE financing to facilitate the Bureau's rulemaking process. The Bureau is reviewing comments it received in response to the ANPR as it considers next steps to facilitate the development of a Notice of Proposed Rulemaking.

Timetable:

Action	Date	FR Cite

ANPRM	03/08/19	84 FR 8479
ANPRM Comment Period End	05/07/19	
Pre-Rule Activity	12/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Joel Singerman, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA84

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4. HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 2801 to 2810

CFR Citation: 12 CFR 1003

Legal Deadline: None

Abstract: The Bureau announced in December 2017 that it intended to open a rulemaking to reconsider various aspects of a 2015 final rule that amended regulations implementing the Home Mortgage Disclosure Act (HMDA). The Bureau issued an Advance Notice of Proposed Rulemaking

(ANPR) in May 2019 soliciting comment on certain data points in the 2015 final rule that were added to Regulation C or revised to require additional information, and on coverage of certain business or commercial purpose loans. In June 2019, the Bureau extended the comment period for the ANPR from July 8, 2019 to October 15, 2019. The extension gives interested parties an opportunity to review the Bureau's annual overview of residential mortgage lending based on the HMDA data financial institutions collected in 2018, as requested by a variety of stakeholders. The Bureau expects to issue a Notice of Proposed Rulemaking in summer 2020 to follow up on the ANPR. This timing corresponds with the Bureau's expected timing for issuing a proposed rule addressing the public disclosure of HMDA data in light of consumer privacy interests, so that collection and reporting of data points and public disclosure of those data points can be considered concurrently.

Timetable:

Action	**Date**	**FR Cite**
Prerule Activity	05/08/19	84 FR 20049
ANPRM—Comment Period Extended	07/03/19	84 FR 31746
ANPRM Comment Period End	07/08/19	
ANPRM—Comment Period Extended End	10/15/19	
NPRM	07/00/20	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: David Hixson, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA97

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5. • QUALIFIED MORTGAGE DEFINITION UNDER THE TRUTH IN LENDING ACT (REGULATION Z)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 1639c(b)(3)(A), (B)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In July 2019, the Bureau of Consumer Financial Protection (Bureau) issued an Advance Notice of Proposed Rulemaking (ANPR) to solicit information about possible amendments to the qualified mortgage provisions of Regulation Z. With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for "qualified mortgages" obtain certain protections from liability. One category of qualified mortgages (QMs) is loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Under Regulation Z, this category of QMs (Temporary GSE QM loans) is scheduled to expire no later than January 10, 2021. The Bureau currently plans to allow the Temporary GSE QM loan category to expire and is considering whether to revise Regulation Z's general qualified mortgage definition in light of this planned expiration. The Bureau is further considering a limited

extension of the expiration date only as necessary to provide for a smooth and orderly transition away from the Temporary GSE QM loan category. In July 2019, the Bureau issued the ANPR to request information about issues related to the scheduled expiration of the Temporary GSE QM loan category.

Timetable:

Action	Date	FR Cite
ANPRM	07/31/19	84 FR 37155
ANPRM Comment Period End	09/16/19	
Other	12/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA98

Consumer Financial Protection Bureau (CFPB)	Proposed Rule Stage

6. DEBT COLLECTION RULE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1692l(d)

CFR Citation: 12 CFR 1006

Legal Deadline: None

Abstract: The Bureau issued a Notice of Proposed Rulemaking in May 2019, which would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the Fair Debt Collection Practices Act. The Bureau's proposal would, among other things, address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The proposal builds on the Bureau's research and pre-rulemaking activities regarding the debt collection market, which remains a top source of complaints to the Bureau. The Bureau also is engaged in testing of consumer disclosures related to time-barred debt disclosures that were not addressed in the May 2019 proposal. After testing, the Bureau will assess whether to publish a supplemental Notice of Proposed Rulemaking related to time-barred debt disclosures.

Timetable:

Action	Date	FR Cite
ANPRM	11/12/13	78 FR 67847

ANPRM Comment Period Extended	01/14/14	79 FR 2384
ANPRM Comment Period End	02/10/14	
ANPRM Comment Period Extended End	02/28/14	
Pre-Rule Activity	07/28/16	
NPRM	05/21/19	84 FR 23274
NPRM Comment Period Extended	08/02/2019	84 FR 37806
NPRM Comment Period Extended End	09/18/19	
Other	01/00/20	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

URL For More Information:

https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/

Agency Contact: Kristin McPartland, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA41

7. HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 2801 to 2810

CFR Citation: 12 CFR 1003

Legal Deadline: None

Abstract: The Bureau announced in December 2017 that it intended to open a rulemaking to reconsider various aspects of a 2015 final rule that amended regulations implementing the Home Mortgage Disclosure Act (HDMA). The Bureau issued a Notice of Proposed Rulemaking in May 2019 to seek comment on thresholds for collecting and reporting data with respect to open-end lines of credit as well as on thresholds for collecting and reporting data with respect to closed-end mortgage loans. The NPRM also proposed to incorporate an interpretive and procedural rule that the Bureau issued in August 2018 to clarify partial HMDA exemptions created by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.

This summer, the Bureau reopened the comment period of certain aspects of the proposed rule. The reopened comment period gives interested parties an opportunity to review the Bureau's annual overview of residential mortgage lending based on the HMDA data financial institutions collected in 2018, as requested by a variety of stakeholders. Thus, the Bureau plans to issue two separate final rules to address different aspects of the proposed rule at different times. The first rule would address the proposed two-year extension of the temporary threshold for collecting and reporting data on open-end lines of credit and the EGRRCPA partial exemption provisions and the second rule would address the proposed changes to the permanent thresholds for collecting and reporting data on open-end lines of credit and closed-end mortgage loans.

Timetable:

Action	Date	FR Cite
NPRM	04/02/17	82 FR 19142
NPRM Comment Period End	05/25/17	
Final Rule	09/13/17	82 FR 43088
Final Rule Effective	01/01/18	
NPRM	05/13/19	84 FR 20972
NPRM Comment Period End	06/12/19	
NPRM Comment Period Reopened	08/02/19	84 FR 37804
NPRM Comment Period Reopened End	10/15/19	
Final Rule	10/00/19	
Final Rule	03/00/20	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

URL For More Information:

https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/

Agency Contact: Alexandra Reimelt, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA64, Related to 3170–AA97

RIN: 3170–AA76

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8. PUBLIC RELEASE OF HOME MORTGAGE DISCLOSURE ACT DATA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 2801 to 2810

CFR Citation: 12 CFR 1003

Legal Deadline: None

Abstract: This rule will facilitate further implementation of a statutory directive in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that the Bureau modify or require modification of the public Home Mortgage Disclosure Act (HMDA) data for the purpose of protecting consumer privacy interests. In its 2015 final rule to implement the Dodd-Frank Act amendments to HMDA, the Bureau adopted a balancing test to use to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes. The Bureau sought comment in 2017 on its proposed application of the balancing test to the 2018 data to be collected and reported by lenders, and issued final policy guidance in late 2018. After consideration of stakeholder comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau decided to commence a new notice-and-comment rulemaking to govern HMDA data disclosure. Commencing a notice-and-comment rulemaking will enable the Bureau to adopt a more definitive approach to disclosing HMDA data to the public in future years after considering new information concerning the privacy risks and benefits of disclosure of the HMDA data. The Bureau expects to issue a Notice of Proposed Rulemaking in summer 2020. This timing corresponds with the Bureau's expected timing for issuing a proposed rule addressing HMDA data points, so that collection and reporting of data points and public disclosure of those data points can be considered concurrently.

Timetable:

Action	Date	FR Cite
Final Policy Guidance	01/31/19	
NPRM	07/00/20	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: David Jacobs, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA85

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9. REMITTANCE TRANSFERS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1693 et seq.

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains an exception to disclosure requirements for remittance transfers. The exception permits insured depository institutions and insured credit unions in certain circumstances to estimate certain required disclosures. As mandated by statute, this exception will expire on July 21, 2020. After completing an assessment in October 2018 of rules to implement Dodd-Frank Act requirements for international remittance transfers, the Bureau issued in April 2019 a Request for Information to gather information related to the expiration of the temporary exception and information related to the scope of the Remittance Rule's coverage. In its consideration of appropriate next steps, including potentially rulemaking, the Bureau is taking account stakeholder feedback during the assessment process and comments received in response to the Request for Information.

Timetable:

Action	Date	FR Cite
Pre-Rule Activity—Request for Information	04/29/19	84 FR 17971
NPRM	12/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jane Raso, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA96

Consumer Financial Protection Bureau (CFPB)	Final Rule Stage

10. PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH–COST INSTALLMENT LOANS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5512; 12 U.S.C. 5531 and 5532

CFR Citation: 12 CFR 1041

Legal Deadline: None

Abstract: The Bureau announced in 2018 that it intended to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The Bureau issued a Notice of Proposed Rulemaking (NPRM) in February 2019 that proposed to rescind provisions of the rule concerning the mandatory underwriting of covered short-term and longer-term balloon payment loans, including payday and vehicle title loans, and related reporting and recordkeeping requirements. In the NPRM, the Bureau initially determined that the evidence underlying the identification of the unfair and abusive practice in the mandatory underwriting provisions of the 2017 rule was not sufficiently robust and reliable to support that determination, in light of the impact those provisions will have on the market for covered short-term and longer-term balloon-payment loans, and the ability of consumers to obtain such loans, among other things. The Bureau also initially determined that its approach for unfairness and abusiveness determinations was sufficiently problematic to necessitate reconsideration. Based on its

reconsideration of those issues, the Bureau proposed to rescind the mandatory underwriting provisions in their entirety. Further information on the procedural history of this rule is available under related RIN 3170-AA40, which pertains to the final rule the Bureau issued in November 2017.

Timetable:

Action	Date	FR Cite
NPRM	02/14/19	84 FR 4252
NPRM Comment Period End	05/15/19	
Final Rule	04/00/20	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

URL For More Information:

https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/

Agency Contact: Lawrence Lee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202–435–7700

Related RIN: Related to 3170–AA40

RIN: 3170–AA80

Consumer Financial Protection Bureau (CFPB)	Long-Term Actions

11. AMENDMENTS TO FIRREA CONCERNING APPRAISALS (AUTOMATED VALUATION MODELS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 3354

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Bureau is participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning appraisals. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs) designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies' work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA will continue.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Brent Lattin, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Split from 3170–AA44, Related to 7100–AE71, Related to 1557–AD87, Related to 3064–AE68, Related to 3133–AE23, Related to 2590–AA62

RIN: 3170–AA57

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12. DISCLOSURE OF RECORDS AND INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5481 et seq.; 5 U.S.C. 552 and 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 31; 44 U.S.C. ch. 35; 12 U.S.C. 3401 et seq.

CFR Citation: 12 CFR 1070; 12 CFR 1091

Legal Deadline: None

Abstract: The Bureau first issued its regulation on Disclosure of Records and Information as an interim final rule in 2011 and as a final rule in 2013. The Bureau proposed amendments to this regulation in August 2016, in order to clarify, correct, and amend certain provisions based on its experience over the last several years. After receiving comments on the proposed amendments, in September 2018 the Bureau issued a final rule regarding procedures used by the public to obtain information from the Bureau under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings. The Bureau expects to address at a later date the protection and disclosure of confidential information that the Bureau obtains in connection with the exercise of its authorities under Federal consumer financial law.

Timetable:

Action	Date	FR Cite
NPRM	08/24/16	81 FR 58309

NPRM Comment Period End	10/24/16	
Final Rule (Subparts A, B, C, and E)	09/12/18	83 FR 46075
Final Rule Effective	10/12/18	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Snyder, Legal Division, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA63

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13. REVIEW OF INHERITED REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Bureau has launched an initiative to review inherited regulations for the purpose of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens, as well as to fulfill other purposes and objectives of the underlying statutes and the Bureau pursuant to the Dodd-Frank Wall Street Reform and

Consumer Protection Act. The Bureau expects to focus on subparts B and G of Regulation Z, which implement the Truth in Lending Act with respect to open-end credit generally and credit cards in particular. The Bureau expects to identify opportunities to clarify ambiguities, address developments in the marketplace, and modernize or streamline the open-end credit provisions. For instance, the Bureau expects to consider rules to modernize the procedures for submitting credit card agreements to the database of credit card agreements that it is required to maintain under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) to reduce burden on issuers that submit credit card agreements to the Bureau and make the database more useful for consumers and the general public. The Bureau has issued two Requests for Information seeking feedback on other potential revisions to both rules that the Bureau inherited from other federal regulators and rules that the Bureau has issued over time, and it may launch additional projects after reviewing the responses.

Timetable:

Action	Date	FR Cite
Request for Information	03/14/18	83 FR 12881
Request for Information	03/21/18	83 FR 12286
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA70

RIN: 3170–AA73

14. CONSUMER ACCESS TO FINANCIAL RECORDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In recent years, the availability of consumer financial account data in electronic form, often in real time or near real time, has helped consumers understand and control their financial lives in a variety of ways. At the same time, the means by which data is accessed, transmitted, stored, and used can implicate significant privacy, security, and other consumer protection concerns. Section 1033 of the Dodd-Frank Act provides that subject to rules prescribed by the Bureau, covered persons shall make available to consumers upon request transaction data and other information concerning a consumer financial product or service that the consumer obtains from a covered person. Section 1033 also states that the Bureau shall prescribe by rules standards to promote the development and use of standardized formats for information made available to consumers. In November 2016, the Bureau issued a Request for Information seeking comment from the public to better understand the consumer benefits and risks associated with market developments that rely on access to consumer financial account and account-related information. In October 2017, the Bureau issued Consumer Protection Principles for Consumer-Authorized Financial Data Sharing and Aggregation to express the Bureau's vision for the data aggregation market. As the Bureau continues to monitor market developments, the Bureau will evaluate possible policy responses to issues identified, including potential rulemaking. Possible topics for consideration might include specific acts or practices and consumer disclosures. In addition, the Bureau will consider whether clarifications or adjustments are necessary with respect to existing regulatory

structures that may be implicated by current and potential developments in this area. The Bureau expects to host a symposium on consumer authorized financial data sharing in the next year.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Jane Raso, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA78

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15. CONFORMING RULES FOR THE ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was enacted in May 2018 to amend certain Federal consumer financial laws that the Bureau implements and administers, including by adjusting various mortgage requirements and creating new consumer protections in areas such as student lending and consumer reporting. While certain provisions of EGRRCPA do not require Bureau rulemaking to take effect, the Bureau has been engaged in a range of activities to support implementation of EGRRCPA. For example, the Bureau has issued written guidance as encouraged by section 109 of the Act to facilitate compliance with certain regulations governing mortgage disclosures. As needed to facilitate compliance, the Bureau anticipates engaging in guidance activity regarding provisions that do not require rulemaking to take effect.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA86

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16. ABUSIVE ACTS AND PRACTICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and other provisions of the Dodd-Frank Act authorize the Bureau to take enforcement, supervision, and rulemaking actions concerning unfair, deceptive, or abusive acts and practices. While statutory language, regulations, policy statements, and case law have provided important clarifications as to the meaning of unfairness and deception under federal consumer protection law over several decades, the Dodd-Frank Act was the first federal law to define and prohibit abusive acts and practices with respect to consumer financial products and services generally. The Bureau is considering whether rulemaking or other activities such as a policy statement may be helpful to further clarify the meaning of abusive acts or practices under section 1031 of the Dodd-Frank Act. The Bureau held a symposium on this question in June 2019, in which a panel of experts with a variety of viewpoints engaged in a dialogue which will inform the Bureau's next steps.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Lisa Cole, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA88

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17. • LOAN ORIGINATOR COMPENSATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5581; 12 U.S.C. 1604(a)

CFR Citation: 12 CFR 1026

Legal Deadline: None

Abstract: Section 129B of the Truth in Lending Act (TILA) prohibits loan originator compensation that varies based on the terms of the loan, other than the amount of principal. The Bureau's Regulation Z, 12 CFR Part 1026, implements that prohibition. The Bureau has received feedback that aspects of Regulation Z's loan originator compensation requirements are unnecessarily restrictive. The Bureau is considering a rulemaking to address these concerns. Possible topics for consideration may include whether creditors may lower loan originator compensation for originating state housing finance authority loans and whether creditors may decrease a loan originator's compensation due to the loan originator's error.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Terry J. Randall, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA99

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18. • E–SIGN ACT REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Bureau is considering the application of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.) in the context of certain of the Bureau's consumer financial services regulations, particularly the credit card provisions in Regulation Z. Aspects of its application were raised in responses to the Bureau's 2018 Calls for Evidence and in other outreach the Bureau has conducted since then. As the Bureau continues to monitor market developments in this area, the Bureau will evaluate possible policy responses to issues identified, including potential rulemaking. In addition, the Bureau will consider whether guidance or other action might be appropriate.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Marta Tanenhaus, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC

Phone: 202 435–7700

RIN: 3170–AB00

Consumer Financial Protection Bureau (CFPB)	Completed Actions

19. PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH–COST INSTALLMENT LOANS; DELAY OF COMPLIANCE DATE

Priority: Other Significant. Major under 5 USC 801.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5512; 12 U.S.C. 5531 and 5532

CFR Citation: 12 CFR 1041

Legal Deadline: None

Abstract: The Bureau announced in 2018 that it intended to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The 2017 rule initially had a compliance date in August 2019. The Bureau has since issued a final rule to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the regulation by 15 months, to November 19, 2020. The Bureau also made certain corrections to address clerical and non-substantive errors in other aspects of the 2017 rule.

Timetable:

Action	Date	FR Cite
NPRM	02/14/19	84 FR 4298
NPRM Comment Period End	03/18/19	
Final Rule	06/17/19	84 FR 27907

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristine Andreassen, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA80, Related to 3170–AA40

RIN: 3170–AA95

[FR Doc. Filed 01–01–01; 0:00 AM]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR CH. X

Semiannual Regulatory Agenda

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing this agenda as part of the Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from May 1, 2019 to April 30, 2020. The next agenda will be published in fall 2019 and will update this agenda through fall 2020. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DATES: This information is current as of March 6, 2019.

ADDRESS: Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: A staff contact is included for each regulatory item listed herein. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is publishing its Spring 2019 Agenda as part of the Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from May 1, 2019 to April 30, 2020, as described further below.[1] The Bureau's participation in the Unified Agenda is voluntary. The complete Unified Agenda is available to the public at the following Web site: *http://www.reginfo.gov*.

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act), the Bureau has rulemaking, supervisory, enforcement, and other authorities relating to consumer financial products and services. These authorities include the authority to issue regulations under more than a dozen Federal consumer financial laws, which transferred to the Bureau from seven Federal agencies on July 21, 2011. The Bureau's general purpose, as specified in section 1021 of the Dodd-Frank Act, is to implement and enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

The Bureau is working on various initiatives to address issues in markets for consumer financial products and services that are not reflected in this notice because the Unified Agenda is limited to rulemaking activities. Section 1021 of the Dodd-Frank Act specifies the objectives of the Bureau, including ensuring that, with respect to consumer financial products and services, consumers are provided with timely and understandable information to make responsible decisions about financial transactions; consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; that Federal consumer financial law is enforced consistently, without regard

[1] The listing does not include certain routine, frequent, or administrative matters. Further, certain of the information fields for the listing are not applicable to independent regulatory agencies, including the Bureau, and, accordingly, the Bureau has indicated responses of "no" for such fields.

to the status of a person as a depository institution, in order to promote fair competition; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

A new permanent director of the Bureau took office in December 2018. The Director has embarked on a listening tour to engage with Bureau stakeholders, employees, and outside experts, building on feedback submitted through more than 88,000 public comments in response to the Bureau's 2018 "Call for Evidence" initiative. The Bureau expects to communicate further information about future planning and priorities after the conclusion of the listening tour. In the meantime, this Spring 2019 Agenda reflects ongoing rulemaking activities, including initiatives to implement statutory requirements and to address the potential sunset of statutory and regulatory provisions.

Implementing Statutory Directives

The Bureau is engaged in a number of rulemakings to implement directives mandated in the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), Public Law 115-174, 132 Stat. 1297, the Dodd-Frank Act, and other statutes. As part of these rulemakings, the Bureau is working to achieve the consumer protection objectives of the statutes while minimizing regulatory burden on financial services providers, including facilitating industry compliance with rules.

For example, the Bureau has recently published an Advance Notice of Proposed Rulemaking to seek public comment relating to implementation of section 307 of EGRRCPA, which amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. As defined by EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The regulations must "account for the unique nature" of PACE financing.

Later in the spring, the Bureau is preparing to issue a Notice of Proposed Rulemaking to follow up on an interpretive and procedural rule that it issued in August 2018 to provide clarification regarding EGRRCPA amendments to the Home Mortgage Disclosure Act (HMDA), which requires financial institutions to report certain mortgage information to Federal financial regulators and the public. The scope of HMDA reporting was expanded by the Dodd-Frank Act and by the Bureau via rule in 2015. The EGRRCPA creates partial exemptions that allow certain insured depository institutions and insured credit unions not to report certain data points for certain transactions. Among other things, the August 2018 interpretive and procedural rule provided clarification as to which loans and lines of credit count toward the EGRRCPA partial exemption thresholds and which data points are covered by the partial exemptions. The new proposal will seek to incorporate the August interpretations and procedures into Regulation C and to implement further the EGRRCPA amendments to HMDA, as well as to advance the Bureau's reconsideration of the 2015 HMDA rule as discussed further below.

The Bureau has been engaged in a range of other activities to support implementation of EGRRCPA. For example, the Bureau updated its small entity compliance guides and other compliance aids to reflect EGRRCPA's statutory changes. The Bureau also has issued written guidance as encouraged by section 109 of the Act to facilitate compliance with certain regulations governing mortgage disclosures.[2] In addition, the Bureau anticipates engaging in rulemaking to align superseded regulations with EGRRCPA provisions that do not require rulemaking to take effect and as needed to facilitate compliance.

Consistent with undertaking rulemaking to implement the EGRRCPA, the Bureau intends to recommence work later this year to develop rules to implement section 1071 of the Dodd-Frank Act. Section 1071 amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau delayed rulemaking to implement this provision pending implementation of the Dodd-Frank Act amendments to HMDA and started work on the project after the HMDA rules were issued in 2015. The Bureau decided to pause work on section 1071 in 2018 in light of resource constraints and the priority accorded to various HMDA initiatives. The Bureau expects that it will be able to resume pre-rulemaking activities on the section 1071 project within this next year.

Continuation of Other Rulemakings

The Bureau is continuing certain other rulemakings described in its Fall 2018 Agenda to ensure that markets for consumer financial products and services operate transparently and efficiently and to address potential unwarranted regulatory burdens.

For example, the Bureau issued two proposals in February 2019 relating to reconsideration of a 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The main proposal would rescind portions of the 2017 rule that mandated underwriting requirements for certain short-term and balloon-payment loans. The second proposal would

[2] *See, e.g.*, "TILA-RESPA Integrated Disclosure FAQs", available at *https://www.consumerfinance.gov/policy-compliance/guidance/tila-respa-disclosure-rule/tila-respa-integrated-disclosure-faqs/*

postpone the compliance date for those same provisions for fifteen months to allow the Bureau adequate opportunity to review comments on its main rulemaking and to make any changes to those provisions before affected entities bear additional costs and experience related market effects associated with implementing and complying with those provisions. The proposed postponement would also account for potential implementation challenges that had not been anticipated at the time of the 2017 rule. The Bureau expects to issue a final rule concerning the compliance date in summer 2019 and a final determination on reconsideration thereafter.

In addition, prior to the enactment of the EGRRCPA, the Bureau in August 2017 had temporarily increased the threshold for collecting and reporting HMDA data with respect to open-end lines of credit from 100 loans to 500 loans so that the Bureau could assess whether to make a permanent adjustment to the 100 open-end line of credit threshold. In December 2017, the Bureau announced that it intended to open a rulemaking to reconsider its 2015 HMDA rule more generally. The Bureau plans to issue a Notice of Proposed Rulemaking in spring 2019 to address both the open-end threshold and the 2015 HMDA rule's 25-loan threshold for closed-end loans, as well as implementation of the EGRRCPA's changes to HMDA as described above. The Bureau also plans to issue in 2019 an Advance Notice of Proposed Rulemaking concerning certain data points that are reported under the 2015 HMDA rule. The Bureau expects at a later date to issue a Notice of Proposed Rulemaking concerning the public disclosure of HMDA data in light of consumer privacy interests.[3]

[3] The 2010 Dodd-Frank Act amendments to HMDA direct the Bureau to develop regulations that modify or require modification of the public HMDA data for the purpose of protecting consumer privacy interests. The Bureau's 2015 HMDA rule adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purpose. The Bureau in 2018 issued final policy guidance applying the test to current data fields and announced its intention to conduct a notice-and-comment rulemaking to seek further input on the public release going forward. Commencing a notice-and-comment rulemaking will also enable the Bureau to adopt a more definitive approach to disclosing HMDA data to the public in future years after considering new information concerning the privacy risks and benefits of disclosure of the HMDA data. Given that the Bureau plans to issue an

Finally, the Bureau expects to issue a Notice of Proposed Rulemaking by spring 2019 addressing such issues as communication practices and consumer disclosures in the debt collection market. This proposal builds on research and pre-rulemaking activities regarding the debt collection market, which remains a top source of complaints to the Bureau. The Bureau has also received encouragement from industry and consumer groups to engage in rulemaking to address how to apply the 40-year old Fair Debt Collection Practices Act (FDCPA) to modern collection practices. The Bureau released an outline of proposals under consideration in July 2016 concerning practices by companies that are debt collectors under the FDCPA. This outline was released in advance of convening a panel in August 2016 under the Small Business Regulatory Enforcement Fairness Act in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy to consult with representatives of small businesses that might be affected by the rulemaking.

New Projects and Further Planning

After completing an assessment in October 2018 of its rules to implement Dodd-Frank Act requirements for international remittance transfers,[4] the Bureau is now considering appropriate steps, which may include rulemaking, to gather information related to the expiration of a statutorily-established exception in the Remittance Rule that permits insured banks and insured credit unions to estimate certain required disclosures and other potential remittance transfer issues. In its consideration of appropriate next steps, the Bureau is also taking account

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Advance Notice of Proposed Rulemaking on data points, the Bureau recognizes any potential modification of the data points may require the Bureau to update its application of the balancing test to the affected data. Thus, the Bureau has decided to engage in rulemaking activity so that data field coverage and privacy issues can be considered and resolved in coordination.

[4] "Remittance rule assessment report", available at *https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/*

of stakeholder feedback that it received both during and after the assessment process, particularly with respect to the application of the rule to smaller providers.

The Bureau also recently completed an assessment of rules implementing Dodd-Frank Act provisions that require mortgage lenders to determine consumers' ability to repay loans and define certain "qualified mortgages" that are presumed to comply with the statutory requirements.[5] The Bureau is now focusing its attention on a regulatory provision that extends qualified mortgage status to loans that are eligible to be purchased or guaranteed by either Fannie Mae or Freddie Mac (which are often called the government sponsored entities or GSEs) while they operate under Federal conservatorship or receivership. The "GSE patch" provision is set to expire in January 2021, meaning that loans originated after that date would not be eligible for qualified mortgage status under its criteria. After further policy analysis on this issue, the Bureau will determine whether rulemaking or follow up activity is appropriate concerning the patch or other aspects of the ATR/QM rules.

As noted above, Bureau leadership is considering further prioritization and planning of the Bureau's rulemaking activities, both with regard to substantive projects and modifications to the processes that the Bureau uses to develop and review regulations. The Bureau is drawing on a wide range of sources in this process, including evaluation of projects and process improvements that have been listed or described in previous Bureau agendas, ideas gathered by an internal task force on burden reduction, suggestions submitted during the 2018 Call for Evidence initiative, and feedback the Bureau has received during its current listening tour.

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[5] "2013 Ability-to-Repay and Qualified Mortgage Assessment Report", available at *https://www.consumerfinance.gov/data-research/research-reports/2013-ability-repay-and-qualified-mortgage-assessment-report/*

While this evaluation is underway, the Bureau has decided not to revise its current list of long-term projects other than the changes described above.

The Bureau is also actively reviewing existing regulations. For example, the Bureau will be conducting an assessment pursuant to section 1022(d) of the Dodd-Frank Act of its regulations to consolidate various mortgage origination disclosures under the Truth in Lending Act and Real Estate Settlement Procedures Act. The Bureau also expects to undertake reviews consistent with section 610 of the Regulatory Flexibility Act, of certain regulations which are believed to have a significant impact on a substantial number of small entities. The Bureau expects to publish its plan for conducting such review in the coming months.

Finally, as required by the Dodd-Frank Act, the Bureau is also continuing to monitor markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets. As discussed in a recent report by the Government Accountability Office, the Bureau's Division of Research, Markets, and Regulations and specifically its Markets Offices continuously monitor market developments and risks to consumers. The Bureau also has created a number of cross-Bureau working groups focused around specific markets which advance the Bureau's market monitoring work. Bureau leadership's listening tour also is seeking stakeholder feedback on these issues.

The Bureau expects by no later than the Fall 2019 Agenda to issue a more comprehensive statement of priorities to reflect this market monitoring and the Bureau's other activities discussed above.

[THIS SIGNATURE PAGE PERTAINS TO THE PREAMBLE TO

THE SPRING 2019 SEMIANNUAL REGULATORY AGENDA]

Diane Thompson,

Acting Assistant Director for Regulations, Bureau of Consumer Financial Protection.

Spring 2019 Unified Agenda Individual Entries

Instructions for Reviewers: This document is used by the Office of Regulations to complete data-entry of Unified Agenda individual entries. The document itself is internal.

The base date for the Spring 2019 Unified Agenda is **05/00/2019.** Long-term must be **04/00/2020** or greater.

- *Any dates prior to 05/2019 with a specific day must include the FR cite.*
- *Any projected next action dates without a specific day must list 5/00/19 or later.*

The document owner is Laura Barriere.

Consumer Financial Protection Bureau—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1	Remittance Transfers	
2	Higher-Priced Mortgage Loan Escrow Exemption	3170–AA83
3	Property Assessed Clean Energy Financing	3170–AA84
4	Business Lending Data (Regulation B)	3170–AA09
5	Home Mortgage Disclosure Act (Regulation C)	TBD

Consumer Financial Protection Bureau—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
6	Public Release of Home Mortgage Disclosure Act Data	3170–AA85
7	Debt Collection Rule	3170–AA41
8	Home Mortgage Disclosure Act (Regulation C)	3170–AA76
9	Payday, Vehicle Title, and Certain High-Cost Installment Loans	3170–AA80

Consumer Financial Protection Bureau—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
10	Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date	3170-AA95
11	The Expedited Funds Availability Act (Regulation CC)	3170–AA31

Consumer Financial Protection Bureau—Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
12	Consumer Reporting	3170–AA54
13	Amendments to FIRREA Concerning Appraisals (Automated Valuation Models)	3170–AA57
14	Review of Inherited Regulations	3170–AA73
15	Consumer Access to Financial Records	3170–AA78
16	Regulation E Modernization	3170–AA79
17	Rules Implementing the Economic Growth, Regulatory Relief, and Consumer Protection Act	3170–AA86

18	Abusive Acts and Practices	3170–AA88
19	Disclosure of Records and Information	3170–AA63

Consumer Financial Protection Bureau—Completed Actions

Sequence Number	Title	Regulation Identifier Number
20	Summaries of Rights under the Fair Credit Reporting Act (Regulation V)	3170–AA82
21	Technical Specifications for Submissions to the Prepaid Account Agreements Database	3170–AA87
22	Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C)	3170–AA81
23	Civil Penalty Inflation Adjustment Rule	3170–AA62
24	Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold	3170-AA93
25	Fair Credit Reporting Act Disclosure Fee Threshold	3170-AA94
26	Dollar Threshold Adjustment for Exempt Consumer Leases (Regulation M)	3170-AA89
27	Dollar Threshold Adjustment for Exempt Consumer Credit Transactions under the Truth in Lending Act (Regulation Z)	3170-AA90

28	Appraisals for Higher-Priced Mortgage Loans Exemption Threshold	3170-AA91
29	Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold	3170-AA92

Consumer Financial Protection Bureau (CFPB)	**Prerule Stage**

1. • REMITTANCE TRANSFERS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1693 et seq.

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains an exception to disclosure requirements for international remittance transfers that permits insured depository institutions and insured credit unions in certain circumstances to estimate certain pricing information. As mandated by statute, this exception will expire on July 21, 2020. The Bureau is now considering appropriate steps, which may include rulemaking to gather information related to the expiration of the exception and other potential remittance transfer issues. In its consideration of

next steps, the Bureau is also taking account of stakeholder feedback that it received both during and after the assessment process.

Timetable:

Action	Date	FR Cite
Request for Information	03/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Jane Raso, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–XXXX

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2. HIGHER-PRICED MORTGAGE LOAN ESCROW EXEMPTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1601 et seq.

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Federal Reserve Board issued a rule requiring the establishment of escrow accounts for payment of property taxes and insurance payments for certain "higher-priced mortgage loans," a category which the Board defined to capture what it deemed to be subprime loans. Pursuant to the Dodd-Frank Act, the Bureau in 2013 issued a rule creating an exemption from the escrow requirement for creditors with under $2 billion in assets and meeting other criteria. The Economic Growth, Regulatory Relief, and Consumer Protection Act directs the Bureau to conduct a rulemaking to exempt from the escrow requirement loans made by certain creditors with assets of $10 billion or less and meeting other criteria.

Timetable:

Action	Date	FR Cite
Prerule Activity	11/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Daniel Brown, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA83

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3. • PROPERTY ASSESSED CLEAN ENERGY FINANCING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. § 1639c(b)(3)(C)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. As defined in EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing. In March 2019, the Bureau issued an advance notice of proposed rulemaking on PACE financing to facilitate the Bureau's rulemaking process.

Timetable:

Action	Date	FR Cite
ANPR	03/00/19	
Comment Period Closes	05/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Joel Singerman, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA84

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4. BUSINESS LENDING DATA (REGULATION B)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1691c–2

CFR Citation: 12 CFR 1002

Legal Deadline: None

Abstract: Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that certain data be collected, maintained, and reported, including the number of the application and date the application was received; the type and purpose of the loan or credit applied for; the amount of credit applied for and approved; the type of action taken with regard to each application and the date of such action; the census tract of the principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of this section. The Bureau issued a Request for Information in 2017 seeking public comment on, among other things, the types of credit products offered and the types of data currently collected by lenders in this market, and the potential complexity, cost of, and privacy issues related to, small business data collection. The information received will help the Bureau determine how to implement the rule efficiently while minimizing burdens on lenders. The Bureau had moved this rulemaking to long-term action status in light of other responsibilities but is now in the process of reactivating it.

Timetable:

Action	Date	FR Cite
Request for Information	05/15/17	82 FR 22318
Request for Information Comment Period End	09/14/17	
Pre-rule activities	01/00/20	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Elena Grigera Babinecz, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA09

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5. • HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 2801 to 2810

CFR Citation: 12 CFR 1003

Legal Deadline: None

Abstract: The Bureau announced in December 2017 that it intends to open a rulemaking to reconsider various aspects of a 2015 final rule that amended regulations implementing the Home Mortgage Disclosure Act. The Bureau expects to issue in 2019 an Advance Notice of Proposed Rulemaking to consider adjustments to certain data points reported under HMDA that were added or revised by the 2015 final rule. The Bureau's goal in gathering this information is to ensure that the data collection and reporting requirements established in the 2015 HMDA Rule appropriately balance the benefits and burdens associated with data collection and reporting. The information received will help the Bureau determine whether to formulate a proposed rule relating any of the data points from the 2015 final rule.

Timetable:

Action	Date	FR Cite
Prerule activity	05/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Alexandra Reimelt, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–XXXX

Consumer Financial Protection Bureau (CFPB)	Proposed Rule Stage

6. • PUBLIC RELEASE OF HOME MORTGAGE DISCLOSURE ACT DATA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule will facilitate further implementation of a statutory directive in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that the Bureau modify or require modification of the public Home Mortgage Disclosure Act (HMDA) data for the purpose of protecting consumer privacy interests. In its 2015 final rule to implement the Dodd-Frank Act amendments to HMDA, the Bureau adopted a balancing test to use to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes. The Bureau sought comment in 2017 on its proposed application of the balancing test to the 2018 data to be collected and reported by lenders, and issued final policy guidance in late 2018. After consideration of stakeholder comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau has decided to add the new notice-and-comment rulemaking to govern HMDA data disclosure going forward. Commencing a notice-and-comment rulemaking will enable the Bureau to adopt a more definitive approach to disclosing HMDA data to the public in future years after considering new information concerning the privacy risks and benefits of disclosure of the HMDA data.

Timetable:

Action	Date	FR Cite
Prerule Activity	12/00/18	
NPRM	12/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Jacobs, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA85

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7. DEBT COLLECTION RULE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1692l(d)

CFR Citation: 12 C.F.R. 1006

Legal Deadline: None

Abstract: The Bureau has been engaged in research and pre-rulemaking activities regarding debt-collection practices. Debt collection continues to be a top source of complaints to the Bureau. The Bureau has also received encouragement from industry and consumer groups to engage in rulemaking to address how to apply the 40-year old Fair Debt Collection Practices Act (FDCPA) to modern collection practices. The Bureau released an outline of proposals under consideration in July 2016, concerning practices by companies that are debt collectors under the FDCPA, in advance of convening a panel in August 2016, under the Small Business Regulatory Enforcement Fairness Act in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy to consult with representatives of small businesses that might be affected by the rulemaking. The Bureau expects to issue a Notice of Proposed Rulemaking addressing such issues as communication practices and consumer disclosures by spring 2019.

Timetable:

Action	Date	FR Cite
ANPRM	11/12/13	78 FR 67847
ANPRM Comment Period Extended	01/14/14	79 FR 2384
ANPRM Comment Period End	02/10/14	
ANPRM Comment Period Extended End	02/28/14	
NPRM	05/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Kristin McPartland, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA41

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8. HOME MORTGAGE DISCLOSURE ACT (REGULATION C)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 2801 to 2810

CFR Citation: 12 CFR 1003

Legal Deadline: None

Abstract: The Bureau announced in December 2017 that it intends to open a rulemaking to reconsider various aspects of a 2015 final rule that amended regulations implementing the Home Mortgage Disclosure Act. The Bureau expects to issue a Notice of Proposed Rulemaking in spring 2019 to follow up on a previous temporary adjustment to the thresholds for collecting and reporting data with respect to open-end lines of credit and to seek comment on adjustments to these thresholds as well as to the thresholds for collecting and reporting data with respect to closed-end mortgage loans, and to incorporate an interpretive and procedural rule that it issued in August 2018 to clarify partial HMDA exemptions created by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.

Timetable:

Action	Date	FR Cite
NPRM	04/02/17	82 FR 19142
NPRM Comment Period End	05/25/17	
Final Rule	09/13/17	82 FR 43088

Final Rule Effective	01/01/18	
NPRM	05/00/19	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Alexandra Reimelt, Attorney–Advisor, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA64

RIN: 3170–AA76

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9. PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH–COST INSTALLMENT LOANS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5512; 12 U.S.C. 5531 and 5532

CFR Citation: 12 CFR 1041

Legal Deadline: None

Abstract: The Bureau announced in 2018 that it intended to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The rule has a compliance date in August 2019. The Bureau issued a Notice of Proposed Rulemaking in February 2019 that proposed to rescind provisions of the rule concerning the underwriting of covered short-term and longer-term balloon payment loans, including payday and vehicle title loans, and related reporting and recordkeeping requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/14/19	84 FR 4252
Comment Period Closes	05/15/19	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: N/A

Government Levels Affected: Undetermined

Agency Contact: Lawrence Lee, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA40

RIN: 3170–AA80

Consumer Financial Protection Bureau (CFPB)	Final Rule Stage

10. PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH–COST INSTALLMENT LOANS; DELAY OF COMPLIANCE DATE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5512; 12 U.S.C. 5531 and 5532

CFR Citation:

Legal Deadline: None

Abstract: The Bureau announced in 2018 that it intended to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The rule has a compliance date in August 2019. The Bureau issued a Notice of Proposed Rulemaking in February 2019 that proposed to delay the compliance date for provisions of the rule concerning the underwriting of covered short-term and longer-term balloon payment loans for fifteen months to allow the Bureau adequate opportunity to review comments on its main rulemaking and to make any changes to those provisions before affected entities bear additional costs and experience related market effects associated with implementing and complying with them. The postponement would also account for potential implementation challenges that had not been anticipated at the time of the 2017 rule.

Timetable:

Action	Date	FR Cite
NPRM	02/14/19	84 FR 4298
Comment period closes	03/18/19	
Final rule	06/00/19	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: N/A

Government Levels Affected: Undetermined

Agency Contact: Kristine Andreassen, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA40

RIN: 3170–AA95

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11. THE EXPEDITED FUNDS AVAILABILITY ACT (REGULATION CC)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 4001 et seq.

CFR Citation: 12 CFR 229

Legal Deadline: None

Abstract: The Expedited Funds Availability Act (EFA Act), implemented by Regulation CC, governs availability of funds after a check deposit and check collection and return processes. Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFA Act to provide the Bureau with joint rulemaking authority with the Board of Governors of the Federal Reserve System (Board) over certain consumer-related EFA Act provisions. Section 1086 also states that the dollar amounts under the EFA Act shall be adjusted for inflation every five years after December 31, 2011. The first adjustment for inflation has not yet been made. The Board proposed amendments to Regulation CC in March 2011 to facilitate the banking industry's ongoing transition to fully electronic interbank check collection and return. The Board's proposal includes some provisions that are subject to the Bureau's joint rulemaking authority, including the period for funds availability and revising model form disclosures. In addition, in June 2017, the Board finalized amendments to certain Regulation CC provisions that are not subject to the Bureau's authority. The Bureau worked with the Board to issue jointly a proposal for

implementing the statutory requirement to adjust for inflation the dollar amounts in the EFA Act and to reflect certain amendments to the statute by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA). The agencies also sought new or updated comments concerning the issues raised in the Board's March 2011 proposal that are subject to the Bureau's joint rulemaking authority; the Bureau will review this information before considering whether and how to proceed concerning these issues. In addition, the Bureau will work with the Board to issue jointly a final rule by June 2019 to implement the statutory requirement to adjust for inflation the dollar amounts in the EFA Act and to reflect certain amendments to the statute by the EGRRCPA.

Timetable:

Action	Date	FR Cite
NPRM	03/25/11	76 FR 16862
NPRM Comment Period End	06/03/11	
NPRM	12/10/18	83 FR 63431
Comment Period Closed	02/08/19	
Final Rule (Inflation Adjustments and EGRRCPA)	06/00/2019	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Baressi, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 7100–AD68

RIN: 3170–AA31

Consumer Financial Protection Bureau (CFPB)	Long-Term Actions

12. CONSUMER REPORTING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Credit reports play a key role in the financial lives of American consumers. Information contained in credit reports can be critical to decisions on a consumer's eligibility for credit and pricing, access to checking accounts, employment, access to rental housing, and more. The Fair Credit Reporting Act (FCRA) and its implementing regulations impose legal duties both on consumer reporting agencies and on data furnishers relating to the accuracy of credit report information. The Bureau continues to monitor the credit reporting market through its supervisory, enforcement, and research efforts, and to consider prior research, including a white paper the Bureau published on the largest consumer reporting agencies in December 2012, and reports on credit report accuracy produced by the Federal Trade Commission pursuant to the Fair and Accurate Credit Transactions Act. As this work continues, the Bureau will evaluate possible policy responses to issues identified, including potential additional rules or amendments to existing rules governing consumer reporting. Potential topics for consideration might

include the accuracy of credit reports, including the processes for resolving consumer disputes, identity theft, or other issues.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Pavneet Singh, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA54

Related RIN: 3170-AA82

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13. AMENDMENTS TO FIRREA CONCERNING APPRAISALS (AUTOMATED VALUATION MODELS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 3354

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Bureau is participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Housing Finance Agency (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning appraisals. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs) designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies' work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA will continue.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Daniel Brown, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Split from 3170–AA44

RIN: 3170–AA57

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14. REVIEW OF INHERITED REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Bureau is launching initiatives to review inherited regulations for the purpose of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens, as well as to fulfill other purposes and objectives of the underlying statutes and the Bureau pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Bureau expects to focus on subparts B and G of Regulation Z, which implement the Truth in Lending Act with respect to open-end credit generally and credit cards in particular. For instance, the Bureau expects to consider rules to modernize the procedures for submitting credit card agreements to the database of credit card agreements that it is required to maintain under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) to reduce burden on issuers that submit credit card agreements to the Bureau and make the database more useful for consumers and the general public. The Bureau expects to identify other opportunities to clarify ambiguities, address developments in the marketplace, and modernize or streamline the open-end credit provisions. The Bureau has issued two Requests for Information seeking feedback on other potential revisions to both rules that the Bureau inherited from other federal regulators and rules that the Bureau has issued over time, and it may launch additional projects after reviewing the responses.

Timetable:

Action	**Date**	**FR Cite**
Request for Information	03/14/18	
Request for Information	03/21/18	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA70

RIN: 3170–AA73

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15. CONSUMER ACCESS TO FINANCIAL RECORDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In recent years, the availability of consumer financial account data in electronic form, often in real time or near real time, has helped consumers understand and control their financial lives in a variety of ways. At the same time, the means by which data is accessed, transmitted, stored, and used can implicate significant privacy, security, and other consumer protection concerns. Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides that subject to rules prescribed by the Bureau, covered persons shall make available to consumers upon request transaction data and other information concerning a consumer financial product or service that the consumer obtains from a covered person. Section 1033 also states that the Bureau shall prescribe by rules standards to promote the development and use of standardized formats for information made available to consumers. In November 2016, the Bureau issued a Request for Information seeking comment from the public to better understand the consumer benefits and risks associated with market developments that rely on access to consumer financial account and account-related information. In October 2017, the Bureau issued Consumer Protection Principles for Consumer-Authorized Financial Data Sharing and Aggregation to express the Bureau's vision for the data aggregation market. As the Bureau continues to monitor market

developments, the Bureau will evaluate possible policy responses to issues identified, including potential rulemaking. Possible topics for consideration might include specific acts or practices and consumer disclosures. In addition, the Bureau will consider whether clarifications or adjustments are necessary with respect to existing regulatory structures that may be implicated by current and potential developments in this area.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Jane Raso, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA78

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16. REGULATION E MODERNIZATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Regulation E implements the Electronic Fund Transfer Act (EFTA), which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services. EFTA and Regulation E protect individual consumers engaging in electronic fund transfers and remittance transfers. New payment systems are emerging, and many existing electronic fund transfer systems have undergone substantial changes since the initial implementation of EFTA. Technologies and business practices have evolved, creating new questions about adapting consumer protections to new channels and circumstances, potential relief from outdated provisions, and other issues. Through its market monitoring, supervision, and enforcement work, the Bureau continues to evaluate the application of Regulation E to financial institutions and other entities as well as the impact of regulatory requirements on those entities and consumers. The Bureau has also engaged in Regulation E rulemaking focused specifically on remittances and prepaid accounts and sought input through requests for information and other channels regarding mobile payments and other emerging issues. As the Bureau's work on Regulation E continues, the Bureau will evaluate possible updates to the regulation, including but not limited to how providers of new and innovative products and services comply with regulatory requirements. Potential topics for consideration might include disclosure provisions, error resolution provisions, or other issues.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Steve Wrone, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA79

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17. • RULES IMPLEMENTING THE ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Economic Growth, Regulatory Relief, and Consumer Protection Act was enacted in May 2018 to amend certain Federal consumer financial laws that the Bureau implements and administers, including by adjusting various mortgage requirements and creating new consumer protections in areas such as student lending and consumer reporting. The Bureau expects to engage in rulemaking to align outdated regulations with provisions of the statute that do not require rulemaking to take effect and as needed to facilitate compliance.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Daniel Brown, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA86

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18. • ABUSIVE ACTS AND PRACTICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and other provisions of the Dodd-Frank Act authorize the Bureau to take enforcement, supervision, and rulemaking actions concerning unfair, deceptive, or abusive acts and practices. While statutory language, regulations, policy statements, and case law have provided important clarifications as to the meaning of unfairness and deception under federal consumer protection law over several decades, the Dodd-Frank Act was the first federal law to define and prohibit abusive acts and practices with respect to consumer financial products and services generally. The Bureau is considering whether rulemaking or other activities may be helpful to further clarify the meaning of abusive acts or practices under section 1031 of the Dodd-Frank Act.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Lisa Cole, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA88

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19. • DISCLOSURE OF RECORDS AND INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5481 et seq.; 5 U.S.C. 552 and 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 31; 44 U.S.C. ch. 35; 12 U.S.C. 3401 et seq.

CFR Citation: 12 CFR 1070; 12 CFR 1091

Legal Deadline: None

Abstract: The Bureau first issued its regulation on Disclosure of Records and Information as an interim final rule in 2011 and as a final rule in 2013. The Bureau proposed amendments to this regulation in August 2016, in order to clarify, correct, and amend certain provisions based on its experience over the last several years. After receiving comments on the proposed amendments, in September 2018 the Bureau issued a final rule regarding procedures used by the public to obtain information from the Bureau under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings. The Bureau expects to address at a later date the protection and disclosure of confidential information that the Bureau obtains in connection with the exercise of its authorities under Federal consumer financial law.

Timetable:

Action	Date	FR Cite
NPRM	08/24/16	81 FR 58309
NPRM Comment Period End	10/24/16	

Final Rule (Subparts A, B, C, and E)	09/12/18	83 FR 46075
Final Rule Effective	10/12/18	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Snyder, Legal Division, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA63

Consumer Financial Protection Bureau (CFPB)	Completed Actions

20. • SUMMARIES OF RIGHTS UNDER THE FAIR CREDIT REPORTING ACT (REGULATION V)

Priority: Other Significant. Not major.

Unfunded Mandates: Undetermined

EO 13771 Designation: Independent agency

Legal Authority: 15 U.S.C. 1681g(c), (d); 15 U.S.C. 1681s(e)

CFR Citation: 12 CFR 1022

Legal Deadline: None

Abstract: The Bureau issued an interim final rule that adjusted certain model forms under the Fair Credit Reporting Act in light of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amendments to strengthen consumers' ability to protect themselves from identity theft. To reduce compliance costs and disruption in light of the September 21, 2018 effective date of this amendment, the rule provides various options for amending the affected disclosures to inform consumers that the EGRRCPA created a right to obtain a free "security freeze" from nationwide consumer reporting agencies and extended the length of initial "fraud alerts" that consumers may place on their files with nationwide consumer reporting agencies from 90 days to one year. The interim final rule took effect on September 21, 2018, and the Bureau sought comment on the changes and underlying disclosures.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/18/18	83 FR 47027
Interim Final Rule Comment Period End	11/19/18	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: No

Agency Contact: Amanda Quester, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA82

Merged RIN: 3170–AA54

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21. • TECHNICAL SPECIFICATIONS FOR SUBMISSIONS TO THE PREPAID ACCOUNT AGREEMENTS DATABASE

Priority: Informational/ Administrative/ Other

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 5512(b)(1); 15 U.S.C. 1693b

CFR Citation: 12 CFR 1005.19

Legal Deadline: None

Abstract: The Bureau's prepaid accounts rule, which becomes effective April 1, 2019, requires prepaid account issuers to provide to the Bureau currently effective prepaid account agreements, to provide any amendments or withdrawals to the Bureau within 30 days of the change, and certain other related information. The Bureau will publish in the Federal Register technical specifications prescribing the form and manner in which issuers are to submit prepaid agreements, any amendments or withdrawals thereof, and related information to the Bureau pursuant to the requirements in the prepaid accounts rule.

Timetable:

Action	Date	FR Cite
Final Rule	02/00/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristine Andreassen, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Related to 3170–AA22, Related to 3170–AA69, Related to 3170–AA72

RIN: 3170–AA87

22. PARTIAL EXEMPTIONS FROM THE REQUIREMENTS OF THE HOME MORTGAGE DISCLOSURE ACT UNDER THE ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT (REGULATION C)

Priority: Other Significant. Not major.

EO 13771 Designation: Independent agency

Legal Authority: 12 U.S.C. 2801 to 2810

CFR Citation: None

Legal Deadline: None

Abstract: The Bureau issued an interpretive and procedural rule to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which amended certain provisions of the Home Mortgage Disclosure Act (HMDA). The rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption under EGRRCPA have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies EGRRCPA's exception to the partial exemptions for negative Community Reinvestment Act examination history. The Bureau is engaging in notice-and-comment rulemaking to incorporate the EGRRCPA interpretative and procedural rule and to further implement EGRRCPA.

Timetable:

Action	Date	FR Cite

Interpretive and Procedural Rule	09/07/18	83 FR 45325

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alexandra Reimelt, Attorney–Advisor, Consumer Financial Protection Bureau

Phone: 202 435–7700

Related RIN: Merged with 3170–AA76

RIN: 3170–AA81

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23. CIVIL PENALTY INFLATION ADJUSTMENT RULE

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority: 28 U.S.C. 2461 note

CFR Citation: 12 CFR 1083

Legal Deadline: Other, Statutory, July 1, 2016, Interim Final Rule.

Abstract: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Under the Act, each Federal agency was required to publish by interim final rule, a catch-up inflation adjustment, which was required to take effect by August 1, 2016. The Bureau issued an interim final rule in June 2016. This rule adjusts the civil penalty amounts within the Bureau's jurisdiction in accordance with that statutory requirement. The Bureau finalized the interim final rule and adjusted for inflation the maximum amount of each civil penalty within the Bureau's jurisdiction on January 15, 2019, effective January 31, 2019.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/14/16	81 FR 38569
Interim Final Rule Comment Period End	07/14/16	
Interim Final Rule Effective	07/14/16	
NPRM	10/12/2018	83 FR 51653
Final Rule	01/15/2019	84 FR 517
Effective Date	01/31/2019	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA62

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24. TRUTH IN LENDING ACT (REGULATION Z) ADJUSTMENT TO ASSET-SIZE EXEMPTION THRESHOLD

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority:

CFR Citation: 12 CFR 1026

Legal Deadline: None

Abstract: The Bureau announced the asset-size exemption thresholds for certain creditors under the escrow requirements and small creditor portfolio and balloon-payment qualified mortgage requirements, and the small creditor exemption from the prohibition against balloon-payment high-cost mortgages under Regulation Z.

Timetable:

Action	Date	FR Cite
Final Rule	02/04/2019	84 FR 1356
Final Rule Effective	02/04/2019	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA93

Website:

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25. FAIR CREDIT REPORTING ACT DISCLOSURE FEE THRESHOLD

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority:

CFR Citation: 12 CFR 1022

Legal Deadline: None

Abstract: The Bureau of Consumer Financial Protection (Bureau) amended Regulation V, which implements the Fair Credit Reporting Act (FCRA), to add a section establishing a maximum allowable charge for disclosures by a consumer reporting agency to a consumer pursuant to FCRA section 609. The Bureau also amended Regulation V to add an appendix setting forth the statutory requirements for determining the maximum allowable charge; announcing the maximum charge for 2019; and preserving a list of historical maximum allowable charges. Historically, the Bureau published the FCRA annual adjustments as a notice. On January 1, 2019 Bureau codified those notices and adding a provision to Regulation V to track the FCRA's provisions concerning the annual maximum allowable charge.

Timetable:

Action	Date	FR Cite
Final Rule	1/1/19	84 FR 515
Final Rule Effective	1/31/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA94

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26. DOLLAR THRESHOLD ADJUSTMENT FOR EXEMPT CONSUMER LEASES (REGULATION M)

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority:

CFR Citation: 12 CFR 1013

Legal Deadline: None

Abstract: The Board and the Bureau finalize amendments annually to the official interpretations and commentary for the agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

Timetable:

Action	Date	FR Cite
Final Rule	11/23/19	83 FR 59274
Final Rule Effective	1/1/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA89

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27. DOLLAR THRESHOLD ADJUSTMENT FOR EXEMPT CONSUMER CREDIT TRANSACTIONS UNDER THE TRUTH IN LENDING ACT (REGULATION Z)

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority:

CFR Citation: 12 CFR 226; 12 CFR 1026

Legal Deadline: None

Abstract: The Board and the Bureau publish final rules annually amending the official interpretations and commentary for the agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

Timetable:

Action	Date	FR Cite
Final Rule	11/23/18	83 FR 59276
Final Rule Effective	1/1/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA90

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28. APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS EXEMPTION THRESHOLD

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority:

CFR Citation: 12 CFR 1026

Legal Deadline: None

Abstract: The OCC, the Board, and the Bureau finalize amendments annually to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for "higher-risk mortgages," termed "higher-priced mortgage loans" or "HPMLs" in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) issued joint final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

Timetable:

Action	Date	FR Cite

Final Rule	11/23/18	83 FR 59272
Final Rule Effective	1/1/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA91

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29. HOME MORTGAGE DISCLOSURE (REGULATION C) ADJUSTMENT TO ASSET-SIZE EXEMPTION THRESHOLD

Priority: Info./Admin./Other

EO 13771 Designation: Independent agency

Legal Authority:

CFR Citation: 12 CFR 1003

Legal Deadline: None

Abstract: The Bureau of Consumer Financial Protection (Bureau) issues a final rule annually amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

Timetable:

Action	Date	FR Cite
Final Rule	1/31/29	84 FR 513
Final Rule Effective	1/31/19	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristen Phinnessee, Office of Regulations, Consumer Financial Protection Bureau

Phone: 202 435–7700

RIN: 3170–AA92

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

Consumer Financial Protection Bureau

July 9, 2019

Briefing memorandum for the Director

Unified Agenda

DATE	July 11, 2019
TIME	2pm – 3pm
LOCATION	4146
PARTICIPANTS	Brian Johnson, Kirsten Sutton, Tom Pahl, David Silberman, Dan Sokolov, Mary McLeod, Lisa Cole, Susan Singer, Paul Rothstein
STAFF CONTACT	Lisa Cole, Acting Assistant Director – Regulations, x Redacted
ASSOCIATE DIRECTOR APPROVAL	David Silberman

Objective

RMR seeks your views of our planned approach to drafting the fall Unified Agenda.

Timing Considerations

The Unified Agenda must be submitted to OMB by July 26.

OMB will accept only very limited changes to the Unified Agenda after July 26. When OMB passes it back to us, probably in September, we can change certain "Timetable" fields that indicate the Bureau's next planned action and the anticipated date of the next action. Such changes can have the effect of moving an item from pre-rule to long-term actions or vice versa if the date change affects whether any action is anticipated within twelve months. We will not, however, be able to add or subtract items or make material wording changes to narrative fields.

Based on experience, we expect OMB to publish the Unified Agenda in November.

Discussion Points

RMR seeks your approval as to: (1) which rulemaking entries to add to the Unified Agenda, (2) which rulemaking activities to move to inactive status or withdraw from the Unified Agenda, (3) the timelines to announce in the Unified Agenda for active rulemakings, and (4) for those that have gone past the pre-rule stage, the next step to announce.

RMR's recommendations on these decisions are included in Tab 1. After this meeting, RMR will draft Unified Agenda submission documents that reflect your views. RMR will send you a recommendation memo the week of July 22 to seek your approval on final documents to submit to OMB.

Key Decisions and Proposed Changes from the Previous Unified Agenda

RMR has proposed adding up to three new rulemaking activities as "Long-Term" entries: payday payments, loan originator compensation, and credit card e-disclosures. These recommendations follow from interest you expressed in these rulemakings, following a meeting on "Rulemaking Prioritization" held with your senior staff on May 13. RMR has developed memoranda describing options for the potential scope for each rulemaking, attached as Tab 2. RMR would begin work on "Long-Term" agenda items upon completion of "Active" rulemakings unless a subsequent decision is made to deprioritize or delay any of the rulemakings in the pre-rule stage.

RMR has proposed moving certain rulemaking activities from "Long-Term" status to an "Inactive" status, reflecting that RMR does not expect to advance these projects in the next two years, consistent with our understanding of your rulemaking priorities. **RMR has proposed "Inactive" status for rulemaking activities including: Consumer Reporting, Regulation E Modernization, and certain discretionary rulemaking related to EGRRCPA.**

RMR has proposed moving a rulemaking entry titled "Higher-Priced Mortgage Loan Escrow Exemption (EGRRCPA Section 108 rulemaking)" to "Long-Term"

status. This is a rulemaking mandated by EGRRCPA but one that will affect a small number of loans at a small number of institutions. Therefore, we do not recommend making it a rulemaking priority in the next twelve months.

SEFL has proposed moving an entry or entries pertaining to "larger participant" rulemaking from "Inactive" status to either "Active" or "Long-Term" status. We are attaching SEFL's recent recommendation memorandum to RMR (Tab 3) and also, at your request, a briefing memorandum that was presented to the Policy Committee in February 2017 regarding a potential larger participant rulemaking to establish supervisory authority of larger participants in what was then described as the "personal loan" market (Tab 3). This latter memorandum reflects the work RMR had done as of that time on this issue. We note that SEFL's current suggestion would be somewhat narrower than the scope of the briefing memorandum, as SEFL suggests defining the market as unsecured installment loans and delineating larger participants in that market. SEFL has also proposed that the Bureau consider rulemaking to establish supervisory authority over larger participants in the prepaid market. Both of the larger participant rulemakings would involve trade-offs with resources and time for other future rulemakings.

RMR has considered other rulemaking activities that could be added to the Unified Agenda, given the Call for Evidence and other external input and feedback. RMR addressed some of these proposals in an earlier memorandum to you on the Bureau's rulemaking program.

RMR has considered other rulemaking activities that could be added to the Unified Agenda, given the Call for Evidence and other external input and feedback. RMR addressed some of these proposals in an earlier memorandum to you on the Bureau's rulemaking program. RMR has also considered rulemaking activities recommended by GAO in the course of its reviews of various policy issues. In particular, in 2017, the GAO recommended that CFPB issue guidance to address potential undue burden faced by credit unions, in connection with mandated Bureau disclosures and what constitutes "clear and conspicuous" disclosure and signage at drive-through windows. At this time, RMR is not aware of any consumer complaints about these disclosures or industry requests for greater clarity. RMR therefore recommends that the Bureau not add this item to our rulemaking program, but instead continue to monitor for potential concerns relating to these disclosures.

OMB Guidance and Instructions on Stages of Rulemaking

In Tab 1, RMR has included a chart that indicates a "Recommendation for Fall 2019 Agenda", using certain terminology that is defined in OMB guidance. To provide context to understand Tab 1, we offer a summary of OMB guidance and instructions pertaining to "Stages of Rulemaking."

For the Fall 2019 Unified Agenda, OMB will consider rulemaking entries with activity planned throughout October 2019 – September 2020 as "Active" entries:

- *Pre-rule Stage* – actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to an agency publishing an NPRM and may include an Advance Notice of Proposed Rulemaking or a review of existing regulations. Historically, the Bureau often has used this status for projects that are expected to go through the small business review ("SBREFA") panel process prior to publication of an NPRM.
- *Proposed Rule Stage* – actions for which agencies plan to publish an NPRM as the next step in their rulemaking process or for which some means of gathering public input will take place before the agency issues a final rule.
- *Final Rule Stage* – actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

OMB separately publishes three additional lists for rulemaking activity an agency has reported to OMB but which is not in an "Active" stage of rulemaking. For the Fall 2019 Unified Agenda, under OMB guidance the Bureau should include entries in a "Long-Term Actions" category where the Bureau anticipates taking action to initiate a rulemaking process from October 2020 – September 2021.

- *Long-Term Actions* – items under development but for which agencies do not expect to have a regulatory action within the 12 months after publication of this update of the Agenda. In other words, these are items for which the Bureau intends to take action but after September 2020.
- *Inactive Actions* - OMB has suggested that actions with no planned publication for over 24 months should be classified as "Inactive" or be withdrawn.

- *Completed/ Withdrawn Actions* – actions or reviews that agencies have completed or withdrawn since publishing its last Agenda.

Attachment(s)

Tab 1: Recommendations for Fall 2019 Unified Agenda (table)

Tab 2: Scoping Memos

- Loan Originator Compensation Rule
- Credit Card E-Disclosure
- Payday Payments

Tab 3: Larger Participant briefing materials

- "Personal Loan Larger Participant Rule", Presentation to Policy Committee (March 9, 2017)
- "Background Memorandum in Preparation for March 9 Policy Committee Meeting"
- "Briefing Bullets: Personal Loan Larger Participant Rulemaking Proposal"
- "Briefing Bullets: Prepaid Larger Participant Rulemaking"

Tab 4: Utilization of RMR resources, reflecting Unified Agenda projects and other projects

Tab 1: Recommendations for Fall 2019 Unified Agenda (table)

Recommendations for Fall 2019 Unified Agenda

I. Active Rulemakings

Rulemaking	Date for "Next Action" in Spring 2019	Recommendation for Fall 2019 Agenda	Rationale
Home Mortgage Disclosure Act (Regulation C) [threshold rule and EGRRCPA exemptions]	NPRM 05/2019	• Final rule 10/2019 (re: temporary open-end threshold and EGRRCPA) • Final rule 4/2020 (re: permanent closed and open-end thresholds)	This summer, the Bureau will announce that it is reopening the comment period through October 15, 2019 for certain aspects of the 5/2019 NPRM. The Bureau will issue two separate final rules, addressing different aspects of the proposal at different times. One rule will address the temporary open-end threshold and EGRRCPA and the other will address permanent closed and open-end thresholds.
Home Mortgage Disclosure Act (Regulation C) [Data points rulemaking]	Pre-rule activity 05/00/2019	NPRM 07/2020	Bureau extended comment period on ANPR from July 2019 to October 2019. To allow time for consideration of ANPR comments, briefing the Director, and drafting and clearing the NPRM, the data points NPRM is expected by July 2020.
Public Release of Home Mortgage Disclosure Act Data	NPRM 12/2019	NPRM 7/2020	Date assumes NPRM would be released concurrently with data points NPRM.
Payday, Vehicle Title, and Certain High-Cost Installment Loans [reconsideration rulemaking]	NPRM Comment Period End 05/15/2019	Final rule 5/2020	Must finalize so that the rule can take effect before the delay date (11/2020).

Debt Collection Rule	NPRM 05/2019	Other 1/2020	Bureau intends to issue a report on time-barred debt and validation notice disclosure testing and disclosure proposals related to the collection of time-barred debt, if any, by January 2020. Final rule expected in fall 2020. Listing "final rule" rather than "other" as the next step without acknowledging ongoing time-barred debt testing could signal a decision not to pursue a time-barred debt-related NPRM.

II. Rulemakings in pre-rule stage

Rulemaking	**Date for "Next Action" in Spring 2019 Agenda**	**Recommendation for Fall 2019 Agenda**	**Rationale**
ATR/QM	N/A – item was not listed in Spring 2019 UA	ANPR Comment Period End 10/2019	While the comment period for the forthcoming ANPR could end in September (assuming a 45-day comment period), an October comment period end date will be reflected to conform to Agenda base date rules. That is, no next action can be listed to occur before 10/2019.
Remittance Transfers	Pre-rule activity – Request for Information 05/2019	Pre-rule activity 10/2019	Date and action likely will be updated prior to finalizing the Unified Agenda submission, as RMR plans to brief the Director this summer on whether to move forward with NPRM addressing the temporary exception (and possibly coverage). If the Director decides to do so, RMR would plan to issue an NPRM before the end of the year. Note, however,

			while the Bureau will be able to edit the timetable (i.e., date and action) after July 26, it will not be able to make material changes to the individual entry abstract.
Business Lending Data (Regulation B) [1071 rulemaking]	Pre-rule activity 01/2020	Pre-rule activity 11/2019	The next anticipated public activity is the symposium, which is scheduled for 11/2019. Depending on the nature and timing of future activity following the symposium in FY 19, hiring and/or tradeoffs with other rulemaking projects may be required.
Property Assessed Clean Energy Financing	Pre-rule activity – ANPRM Comment Period End 05/2019	Pre-rule activity 4/2020	Some amount of data collection is necessary to advance the project. Date estimate is very tentative and contingent on whether OR would need to devote resources to 1071 survey during the same period and tradeoffs with other potential data collections to support potential payday payments rulemaking or future assessments.
Higher-Priced Mortgage Loan Escrow Exemption [EGRRCPA Section 108 rulemaking]	Pre-rule activity 11/2019	Long-term; next action undetermined	Bureau's preliminary analysis suggests no more than a few hundred institutions affected, and only a small share of loans at those institutions. The project is not fully staffed, and no actions are planned in the 12 months beginning 10/2019. Note that spring 2019 Agenda blog post represented that the "Bureau anticipates updating [its] analysis in conjunction with its release of its HMDA data point article, which it intends to issue later this summer." The Bureau plans to release the article in late August.

III. Current and potential new long-term items

a. Current long-term items

Rulemaking	Recommended Status in Fall 2019 Agenda	Rationale
Abusive Acts and Practices	Long-term; next action undetermined	Symposium was conducted in June 2019, which pre-dates the base date for the Agenda. RMR will update the individual entry abstract to reference the symposium. Note that the Bureau could indicate it is considering a rulemaking, policy statement, or other options in the narrative accompanying the Unified Agenda.
Amendments to FIRREA Concerning Appraisals (Automated Valuation Models)	Long-term; next action undetermined	While RMR is not dedicating resources to this interagency project, we recommend retaining it as a long-term item to be consistent with how other agencies are describing the timing on this project. In the Spring 2019 UA, FRB, OCC, and FDIC listed this as long-term and next action undetermined. FHFA listed it as long-term with next action NPRM. NCUA listed it as NPRM 5/2020.
Review of Inherited Regulations	Long-term; next action undetermined	This abstract references regulation reviews, particularly subparts B and G of Regulation Z. This rulemaking would advance Bureau priorities of clarifying and reducing burden. Given resource constraints, any rulemaking would likely be of limited scope and would begin upon completion of higher-priority rules.
Consumer Access to Financial Records	Long-term; next action undetermined	While RMR is not currently anticipating a rulemaking in the next 24 months, the Bureau is

		planning to conduct a symposium on this topic in FY 20. RMR will update the individual entry abstract to reference the symposium.
Consumer Reporting	Move to inactive	RMR is not contemplating rulemaking activity in the next 24 months, but note that moving to inactive may create risk of the misimpression that the Bureau does not intend to be active on credit reporting accuracy issues. However, the Bureau can counter that impression through other actual work, such as a possible FTC-CFPB workshop more generally on credit reporting accuracy.
Regulation E Modernization	Move to inactive	RMR has paused this project and is unlikely to have resources to commit to it in the next 24 months.
Rules Interpreting the Economic Growth, Regulatory Relief, and Consumer Protection Act	Move to inactive	Aside from the mandated rulemakings (PACE, escrow), RMR is not anticipating rulemakings on these provisions in the next 24 months. The rest of EGRRCPA has taken effect and, in most cases, industry stakeholders have not strongly pushed the Bureau to engage in permissive rulemaking.
Disclosure of Records and Information	Long-term; next action undetermined	Legal Division has requested that this item remain in the long-term section of the Agenda.

b. Potential new long-term items

RMR recommends including Loan Originator Compensation, Payday Payments, and Credit Card E-Disclosure as new long-term items, to the extent that the Director is interested in pursuing at least one of the options reflected in the applicable scoping memo. Pre-rulemaking work would begin in the next 24 months, upon completion of current higher-priority rules. Scope can be determined closer in time. RMR notes that at current staffing levels it could not support work on all three of these rulemakings – even if narrowly scoped – and also actively work on 1071, PACE, and an abusiveness rulemaking without requiring further tradeoffs at a later date. RMR also notes that SEFL has requested adding larger market participant rulemakings for installment loans and pre-paid cards as new long-term items (see attached SEFL memo). The inclusion of these items also implicates resource and time considerations.

IV. Inactive

RMR suggests retaining all as "inactive" because OMB guidance notes that that designation is intended to "assist agency tracking of past actions" and such items are *not* published in the Agenda. A list of inactive items is, however, published on reginfo.gov. The Bureau moved all of these actions to "inactive" status in the Spring 2018 Unified Agenda cycle.

Rulemaking *(as listed in Spring 2019 Unified Agenda)*	**Activate, Withdraw, or No Change?**
Alternative Mortgage Transaction Parity	No change
Supervision of Larger Participants in Markets for Personal Loans	No change (but consider issues flagged by SEFL)
Consumer Financial Civil Penalty Fund	No change
Overdraft Services	No change
Defining Larger Participants in Certain Consumer Financial Products and Services Markets	No change
Student Loan Servicing	No change

In the Bureau's preamble to the Spring 2018 Unified Agenda, the Bureau included the following explanation for moving these items to "inactive" status:

> *The Bureau's Acting Director has decided to reclassify as "inactive" certain other rulemakings that had been listed in previous editions of the Bureau's Unified Agenda in the expectation that final decisions on whether and when to proceed with such projects will be made by the Bureau's next permanent director. This change in designation is not intended to signal a substantive decision on the merits of the projects. For similar reasons, and also in light of general directions by the Office of Management and Budget with regard to agencies' inclusion or exclusion of longer-term items, the Bureau has designated as "inactive" several items that were listed as potential long-term projects in the fall 2017 Unified Agenda.*

Tab 2: Scoping Memos

LOAN ORIGINATOR COMPENSATION RULE

A loan originator (LO) compensation rulemaking could address one, two or all three of the following issues that have been raised by industry stakeholders. We estimate that a rulemaking on issues 1 or 2 below (state housing finance authority (HFA) and permitting concessions for errors) would each require 1.5 Regulations staff FTE and approximately 14 months. A rulemaking on both issues 1 and 2 would require a total of two Regulations staff FTEs and 14 months. We estimate a rulemaking on issue 3 below (permitting concessions to match) would require two Regulations staff FTEs and 28 months, which builds in calendar time (but not FTEs) for the Office of Research to undertake empirical work to support the policy development. All of these estimates assume that the Bureau would not undertake an ANPR or SBREFA.

1. **Permit creditors to reduce LO Compensation for Housing Finance Authority (HFA) loans**

   Summary of the Issue: The Dodd-Frank Act (DFA) -- like a Federal Reserve Board rule which was proposed before and finalized after the DFA was enacted -- prohibits a lender from paying an LO "directly or indirectly compensation that varies based on the terms of the loan (other than the amount of the principal)." The prohibition aims to eliminate financial incentives for a loan originator to steer a consumer to one set of loan terms over another. The Bureau has provided guidance that under this prohibition, as implemented by the Bureau in its LO Rule ("the Rule"), creditors cannot pay an individual LO less compensation for originating HFA loans, than for originating other loans that the LO may offer to the consumer.[1] The Rule does not prohibit paying an LO that specializes in HFA loans less than LOs that offer other loan products, but paying less for the former type of LO is a realistic solution only for larger lenders with a significant volume of HFA business and with LOs willing to work for lower commissions. Stakeholders argue that as a result of the Rule it may not be profitable for creditors to originate HFA loans, and decreased creditor interest in originating these loans may adversely affect their availability.[2]

   Stakeholders have not presented any data to the Bureau with respect to the number of HFA loans that are originated and whether there has been an adverse effect on that number since the Rule took effect in January 2014. They also have not presented any data with respect to the costs of originating HFA loans relative to other kinds of loans. RMR has not independently explored the availability of such data.

   Key questions for a rulemaking: To address this issue the Bureau would need to resolve at least the following questions:

[1] HFAs provide lending programs targeted to first time homebuyers, often coupled with homebuyer education; but lenders have claimed they are expensive to produce and these state sponsored programs often limit interest rate and the origination fees, which reduce the creditor's margins on these loans.

[2] In response to the Call for Evidence concerning the Bureau's regulations that the Bureau issued in the Spring of 2018, three trade associations (Housing Policy Council, Mortgage Bankers Association (MBA), and National Council of State Housing Finance Authorities) urged the Bureau to amend Regulation Z to permit differential compensation for HFA loans.

i. Does the prohibition of paying a reduced commission negatively affect the availability of HFA loans?

ii. Can the Act reasonably be interpreted to permit paying a reduced commission for HFA loans (which typically have different terms from other loans)? If not, can the Bureau use adjustment authority to permit such a variation?

iii. Would providing an exception allowing an LO to be paid a lower commission for originating HFA loans incentivize LOs to steer consumers away from those loans, to the extent that an exception would fail to make HFA loans more available to consumers or even make them less available to consumers?

2. Broaden the circumstances when an LO's compensation may be reduced where the LO commits an error

Summary of the Issue: The LO Comp Rule limits the circumstances when an LO's compensation may change as a result of an LO's error. The Rule prohibits decreasing an LO's compensation in the middle of a transaction if that reduction results from a change in the terms of the transaction (such as decreasing the LO's compensation to pay for a rate lock extension when the LO forgot to lock the rate on time). Yet the Rule does permit LO compensation to be reduced in an individual case "to defray the cost … of an unforeseen increase in an actual settlement cost over [certain] estimated cost[s]" (such as decreasing the LO's compensation to pay for a rate lock extension when closing was delayed due to an issue with the title). In addition, the Rule expressly permits varying an LO's compensation from time to time based upon "the quality of the loan originator's file (for example accuracy and completeness)." Creditors claim that the inability to reduce an LO's compensation due to the LO's errors lessens accountability and causes the lender to eat expenses attributable to errors.[3]

RMR does not have data with respect to the frequency with which LOs commit errors, the nature of such errors, or the extent to which such errors are adversely affecting creditors' revenue or reputation.

Key questions for a rulemaking: To address this issue, the Bureau would need to resolve at least the following questions:

i. Does the prohibition on reducing compensation when an LO's error causes a change in the terms of the transaction lead to: (1) more errors or (2) higher prices on average as a result of costs attributable to LO errors that lenders absorb?

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[3] In response to the Call for Evidence on the Bureau's regulations that the Bureau issued in the Spring of 2018, four trade associations (American Bankers Association, Consumer Bankers Association, Housing Policy Council, and MBA) urged the Bureau to amend Regulation Z to permit decreases in loan originator compensation due to the loan originator's errors.

ii. Can the DFA reasonably be interpreted to permit a reduction in LO compensation when the terms of a transaction change due to an LO's error? If not, can the Bureau use exception authority to permit such a reduction?

iii. If the Rule were to permit reductions in response to LO errors, to prevent evasion of the Rule (e.g., reductions in compensation not truly designed to address errors) should any limitations be placed on the type or frequency of errors that can trigger a reduction or the amount of the reduction?

3. **Permit creditors to reduce LO Compensation to fund a pricing concession to meet a competitive offer**

Summary of the Issue: The LO Comp Rule expressly prohibits a creditor from reducing an LO's compensation to match a better offer the consumer has obtained from another lender. Creditors claim that as a result, when a consumer returns with a competitive offer, the creditor only has two options: (1) do not match the offer and lose the business or (2) match the offer and forgo some profit or even lose money. When the Bureau promulgated the LO Comp Rule in 2013, it considered and rejected these arguments. It concluded that permitting an exception to meet a competitive offer may lead to higher prices and high LO compensation for non-shoppers. Creditors have advocated that the Bureau reconsider these conclusions, while representatives of brokers continue to support the Bureau's conclusion from 2013.[4]

RMR does not have any data with respect to the frequency with which consumers who have been working with lender A go to lender B, obtain a superior offer, and then return to lender A seeking a matching offer.

Key questions for a rulemaking: To address this issue the Bureau would need to resolve at least the following questions:

i. Can the DFA reasonably be interpreted to permit creditors to reduce LO compensation when the creditor makes a pricing concession to the consumer to meet competition? If not, can the Bureau use exception authority to permit such a reduction?

ii. Would the benefits to consumers (in terms of being able to obtain a matching offer from a preferred lender) outweigh the risks to consumers (such as the risk that prices for non-shopping consumers will go up)?

iii. If the Bureau determines it can and should permit reduction in LO compensation to meet a competitive offer, what limitations should be imposed? For example, what level of proof should be required that the reduction is in response to a bona fide competitive offer? What types of changes should be treated as meeting a competitive offer and what level of reduction should be permitted relative to the change? Should the permitted reduction be limited to cases in which the lender has been working with the consumer and, if so, how should that be defined? Should a reduction be conditional on the LO's agreement and, if so, how should that be

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[4] In response to the Call for Evidence concerning the Bureau's regulations that the Bureau issued in the Spring of 2018, three trade associations (Community Mortgage Lenders Association (CMLA), MBA, and National Reverse Mortgage Lenders Association (NMLA),), two individuals, and one anonymous commenter urged the Bureau to amend Regulation Z to permit decreases to loan originator compensation corresponding to a change in the terms of the loan. The letters sought concessions for different circumstances: MBA urged permitting concessions to match a competitive offer, NRMLA and the individuals and anonymous commenter urged permitting concessions to improve loan terms for the consumer, and CMLA urged permitting concessions for any reason.

documented? Should there be any limits on the frequency with which the lender reduces LO compensation to meet a competitive offer?

CREDIT CARD E-DISCLOSURE

An e-disclosure rulemaking in the credit card context could address one or both of two broad category of issues: (1) issues arising primarily under the E-Sign Act as to when electronic disclosures are permissible; and (2) issues arising under TILA and Reg. Z as to the form and format of e-disclosures. Note that issues virtually identical to those discussed below also may arise in originating and servicing deposit accounts and other credit products. Addressing these issues in the credit card context could serve as a model to address these issues in other contexts in future rulemakings.

A. Relax the restrictions under the E-Sign Act with respect to providing electronic disclosures

Background: The Regulation Z credit card provisions state that written disclosures required by the regulation may be provided electronically subject to compliance with the E-Sign Act's consumer-consent provisions. That Act in turn provides that where other law, such as Regulation Z, requires disclosures in writing, the disclosures may be provided electronically only with the consumer's affirmative consent ("E-Sign consent"). Before obtaining such consent, the entity seeking the consent must provide certain disclosures regarding the hardware and software requirements for accessing the disclosures that will be provided. Further, a consumer must "consent[] electronically, or confirm[] his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." Under the E-Sign Act, oral consent does not satisfy the "reasonable demonstration" requirement. The E-Sign Act permits regulatory agencies to create exceptions if deemed "necessary to eliminate a substantial burden on electronic commerce" and if the exception will not "increase the material risk of harm to consumers."[1] This raises a number of discrete issues.

(1) Eliminate or reduce the E-Sign Act's reasonable demonstration requirement.[2]

Summary of the issue: Because of the reasonable demonstration requirement, card issuers cannot obtain (and consumers cannot provide) E-Sign consent in certain ways that allow for a seamless consumer experience. For example, in point of sale (POS) account openings in retail stores and bank branches, a creditor might prefer to obtain a consumer's E-Sign consent on the creditor's own device (such as a tablet) or on a paper document that the creditor provides. For applications taken over the phone, a creditor might prefer to obtain consent orally over the phone.

(2) Eliminate the E-Sign Act's requirement to disclose hardware and software requirements prior to obtaining a consumer's E-Sign consent.[3]

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[1] The Bureau's debt collection NPRM uses this authority to create an exemption from the E-Sign Act's consumer consent requirements for electronic delivery of certain debt collection disclosures. *See* 1006.42(c). This authority has been used in other Bureau (and Board) rulemakings although, unlike in the debt collection NPRM, in conjunction with exemption authority in the underlying statute (the FDCPA lacks an exemption provision).
[2] Issues related to the E-Sign Act's reasonable demonstration requirement were raised by ABA and Visa in comments to Bureau's 2018 Call for Evidence as well as by ABA Card Policy Council, Capital One, CITI, and Synchrony in outreach conducted by RMR in spring of 2019.
[3] Issues related to the E-Sign Act requirement to disclose hardware and software requirements prior to obtaining consumer consent were raised by Chamber Center Capital Markets and Discover in comments to the Bureau's 2018

Summary of the issue: Credit card industry representatives believe that the required disclosure of hardware and software requirements is too technical for consumers, that virtually all consumers who would consent to electronic delivery now routinely have access to the required hardware and software, and that the disclosures overshadows other more important information, thus reducing consumers' understanding of that more important information and the seamlessness of the consumer experience. They recommend waiving this requirement as long as the required hardware and software is widely-used and generally available to consumers.

(3) Eliminate the E-Sign Act's affirmative consent requirement for digital-only products.[4]

Summary of the issue: A credit card trade group stated that some issuers would like to develop products which offer only electronic communications and to presume a consumer's E-Sign consent when it is explicit that the credit product a consumer is obtaining is solely electronic. They believe their ability to innovate is constrained by having to take the step of obtaining consumers' affirmative consent to electronic disclosures in this context. Further, they stated, if the consumer does not want an all-electronic product, then the consumer can obtain the product elsewhere or obtain a different product from the same issuer.

(4) For credit card accounts opened at POS, eliminate the requirements that account-opening disclosures be provided in a form a consumer can keep and that these disclosures be provided before the first transaction is made with the card.[5]

Summary of the issue: In addition to requiring that disclosures be provided in writing, Bureau credit card regulations require that account-opening disclosures be provided in retainable form before the first transaction is made with the card. In the POS context, creditors and retailers want a consumer to be able to make the first transaction with her new credit card immediately; *i.e.*, during the purchase/check-out process. In the online POS context, industry seeks to provide immediately usable digital cards to consumers. Industry seeks to establish processes under which, during account opening, non-retainable disclosures are electronically displayed on a screen and retainable disclosures are made available to a consumer at origination through an email to the address that the consumer provides during account opening.

Key questions for a rulemaking:

(i) Assuming the Bureau can meet the exception/exemption requirements under the E-Sign Act and/or the Truth in Lending Act and its implementing Regulation Z, what is the best legal basis for effecting the requested relief?
(ii) Would relaxation of the requirements regarding E-Sign consent facilitate consumers who prefer electronic communications in opting in or would such a relaxation result in consumers opting in to receive electronic communications when they lack the capability to receive them or their true preference is for paper statements?

Call for Evidence as well as by American Express and Capital One in outreach conducted by RMR in spring of 2019.
[4] Issues related to the E-Sign Act's affirmative consent requirement for digital only products were raised by ABA Card Policy Council in outreach conducted by RMR in spring of 2019.
[5] Issues related to requirements for credit cards account opened at POS were raised by ABA Card Policy Council and American Express in outreach conducted by RMR in spring of 2019.

(iii) Would relaxation of the requirements enhance or reduce competition with respect to the available means of communication offered to consumers?

Resources Required: An E-Sign credit card rulemaking would require approximately 1.5 FTE attorneys from the Office of Regulations as well as staff from the Offices of Research and Markets. RMR could produce a final rule in approximately 1.75 years.

B. Permit (or require) modifications in the form and format of required disclosures in the online environment[6]

Summary of the Issue: Rules applicable to credit cards require that information in mandatory disclosures be "clear and conspicuous." Regulation Z elaborates more specific requirements, and also provides model forms, to enable compliance with this general standard, both for credit card origination and for servicing. These requirements, however, were designed for paper-based disclosures; yet as of the end of 2018, around three quarters of all consumer credit card applications were submitted digitally, with mobile accounting for 40%. Ongoing Bureau research for this year's biennial credit card study indicates that more than half of all cardholders service their accounts in part online, with around three quarters of all cardholders enrolled in online servicing platforms for their cards. As a result, there is scope for the Bureau to modernize mandatory disclosure rules for credit cards (whether in terms of their required content, form, or format) so that they better enable effective communication of information to consumers who use digital media to originate and service credit cards.

More specifically, modernization of credit card disclosure rules could tackle one or both of two problems that arise with respect to origination and also servicing disclosures.

- First, modernization could help diminish regulatory uncertainty for credit card issuers that are using or contemplating the use of electronic disclosures. To be sure, uncertainty has not prevented at least larger issuers from moving to originate and service large numbers of cards via mobile platforms and from moving model forms into an on-line environment. There are some indications, however, that smaller issuers at least still want greater certainty in this area.[7]

- Second, modernization could allow (or even require) issuers using electronic means of communication to do so in ways that take into account the various on-line environments and the potential for electronic media to convey information more effectively than static paper disclosures can.[8] To take one example, Bureau research for the 2017 credit card

[6] Issues related to form and format requirements were raised by American Express and Discover in outreach conducted by RMR in spring of 2019 and by ABA, AFSA, Chamber Center Capital Markets in comments to the Bureau's 2018 Call for Evidence.
[7] *See, e.g.*, Ohio Credit Union League Letter (May 1, 2019) responding to Jan. 31, 2019 RFI on Consumer Credit Card Market ("Credit Card RFI"), at 1-2 (seeking clarification on electronic disclosure requirements generally, but specifically noting confusion over when electronic statements are considered delivered for purposes of timely notice requirements).

[8] The ABA has urged the Bureau to "advance electronic alternatives that are more useful, valuable, and informative to consumers and more efficient for card issuers by adapting disclosure requirements to the rapidly evolving developments in communications. We recommend that the Bureau undertake a ground-up review of all disclosure

study indicates that a very large share of cardholders who rely on electronic servicing do not open their electronically-delivered monthly statements – which suggests that current mandatory servicing disclosure rules offer this group of consumers little or no benefit. Relatedly, in outreach to the credit card industry, some institutions asked the Bureau to allow more flexibility with regard to the permitted form and format of electronically-delivered disclosures in order to create a more seamless consumer experience and to avoid excessive scrolling on small screens in account opening and other contexts. Their suggestions included permitting interactive disclosures such as being able to extricate and delegate certain information from the body of a disclosure and provide access to that information via links or drop-down menus.

Key questions for a rulemaking: To address these issues via regulation, the Bureau would need to resolve at least the following questions:

i. How do current practices with respect to the delivery of disclosures electronically affect consumers' engagement with and comprehension of those disclosures relative to paper delivery?
ii. What variations should be permitted for electronic disclosures to accommodate to electronic media or to enable issuers to most effectively take advantage of the potential of such media?
iii. Should the permissible variations depend on the particular electronic media (e.g. PC, tablet, mobile)?
iv. How would such variations affect the extent to which consumers engage with and understand the content of the disclosures relative to current practice?
v. Should any of the permissible variations be mandated when disclosures are delivered electronically?
vi. In modernizing card e-disclosure rules, how should the Bureau balance the need for greater compliance certainty with the need to provide rules that allow for adaptation over time to changing modes of digital communication and engagement?

Resources required: A credit card form and format rulemaking would be more complex than an E-Sign rulemaking, requiring the Bureau to conduct disclosure testing and to translate the principles undergirding disclosures into regulations governing electronic media. Such a rulemaking would require approximately 3 FTE Regulations' attorneys, Markets staff with expertise in credit cards, as well as significant Research resources (approximately 1.5 FTE) before, during and after the disclosure testing. The form and format rulemaking would take approximately 3 years to complete.

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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. These alternatives — which should be incorporated into the regulation and accorded safe harbor status — have the potential to streamline and improve the communication of critical information to consumers, including the potential to tailor the disclosure to an individual consumer." ABA Letter (May 1, 2019) responding to Credit Card RFI, at 14.

PAYDAY PAYMENTS

A rulemaking addressing the payment provisions of the 2017 Payday Rule could address one or more of the three coverage-related issues discussed below or, alternatively, could reconsider the basis for the payment provisions of the Rule. The issues listed here are in addition to questions that have arisen through guidance inquiries as industry has prepared to implement the payment provisions of the Rule; some of those guidance inquiries may best be dealt with either through interpretive rulemaking or potentially even a "clean-up" notice-and-comment rulemaking unless the Bureau elects to reconsider the payment provisions.[i]

1. **Adjust the 2017 Payday Rule exclusion(s) to cover some or all of the loans made in compliance with NCUA and other federal banking agency payday loan alternative products.**

Summary of the Issue: The 2017 Payday Rule includes an exemption for what it termed "alternative loans" with eligibility conditions for the exclusion that are identical to certain of the conditions for the NCUA's then-existing PAL program. This exemption is available to any financial institution that chooses to make such loans. In addition, as part of this exemption, the Rule creates an express safe harbor for PAL loans made by federally-chartered credit unions. The Bureau justified the exemption on the ground that loans that met the conditions established by NCUA for the PAL program did not "give rise to the kinds of risks and harms that are more evident with respect to covered short-term and balloon-payment loans," including the risks associated from the payment practices addressed in the Rule.

In 2018, the NCUA proposed the PAL II program which would eliminate the minimum ($200) requirement for PAL loans and allow for larger loans (up to $2,000 as compared to $1,000 under PAL I) and longer long terms (up to 12 months as contrasted with six months under PAL I). The proposed PAL II also would eliminate the (three-loan) limitation on the number of loans that can be made over the course of six months that was part of PAL I and built into the alternative loan exemption in the Payday Rule. Additionally, other prudential regulators have expressed an interest in encouraging banks to offer small dollar loan products and those prudential regulators could define template products which also do not give rise to the risks the Rule was designed to address.

Key questions for a rulemaking: To address this issue the Bureau would need to resolve at least the following questions:

i. Whether the justification for the exemption in the Rule extends to loans of up to $2,000 and up to 12 months.

ii. If so, whether to expand the exemption for loans made by federal credit unions under the PAL programs to cover loans made by any lender, including non-depositories and depositories that are not federal credit unions.

iii. Whether the justification for the exemption in the Rule extends to any other products that the prudential regulators elect to define as of the time the rulemaking commences?

Degree of complexity: Low

2. **Revise the 2017 Payday Rule's payment transfer definition provisions to exclude debit and/or prepaid cards.**

Summary of the Issue: In the 2017 Payday Rule the Bureau declined to create an exemption for withdrawal attempts made via debit cards and prepaid cards as requested by certain commenters. The Bureau found that while unsuccessful debit card transactions may not trigger NSF fees, they can trigger overdraft fees (if the consumer has opted-in to debit card overdraft pursuant to the overdraft rule) and lenders may still charge returned item fees for failed payments. In addition, the Bureau also found that some prepaid card providers also charge fees for returned or declined payments. The Bureau did not point to any evidence as to the frequency with which covered lenders make multiple presentments via debit cards or prepaid cards or the frequency with which such presentments result in overdraft fees or declined payment fees charged by banks or by lenders. On December 13, 2018, the Bureau received a petition for rulemaking from Advance Financial seeking an exemption for debit card and prepaid card payments, asserting that because debit card payments do not generally result in NSF or overdraft fees that the Bureau improperly included debit cards.

Key questions for a rulemaking: To address this issue the Bureau would need to resolve at least the following questions:

i. Does the evidence in the rulemaking record (including evidence as to the frequency with which multiple consecutive unsuccessful ACH presentments result in overdrafts and account closures) provide a sufficient basis for concluding that debit or prepaid card presentments lead to substantial injury or pose material risks to consumers?

ii. Does counting unsuccessful debit card and prepaid card payments towards the failed presentment cap and requiring lenders to provide unusual payment withdrawal notices before attempting such withdrawals via debit or prepaid cards impose incremental costs on lenders above and beyond the costs required to comply with the payment provisions governing other types of presentments?

iii. In light of the costs and benefits, does the Bureau have a reasoned basis for reconsidering the 2017 Rule's express decision to cover debit card and prepaid card withdrawals?

Degree of complexity: Medium

3. **Clarify or revise the 2017 Payday Rule's coverage provisions to exclude specific products offered by banks and certain non-banks.**

Summary of the issue: The mandatory underwriting provisions of the 2017 Payday Rule apply to all loans with a term of 45 days or less and all loans with a balloon-payment. In addition, the payment provisions apply to installment loans with terms longer than 45 days if the APR exceeds

36% and the lender obtains authorization to initiate a transfer of money from the consumer's checking or savings account to repay the loan. The Bureau's focus in establishing these coverage provisions was on payday loans, vehicle title loans, and what the Bureau referred to as "payday installment loans," i.e. high-cost loans for which payments are timed to coincide with the borrower's payday and are collected automatically from the consumer's checking account.

Some stakeholders have asserted that the scope of the 2017 Payday Rule is overbroad and sweeps in other products. Products that have been highlighted in recent stakeholder outreach conversations and comment letters include wealth management loans, demand lines of credit (unsecured or secured by non-real estate collateral, such as a securities account); credit lines (unsecured or secured by non-real estate collateral, primarily securities accounts); capital lines; and bridge term loans (secured by collateral other than real estate, or unsecured).

Key questions for a rulemaking:

i. Does the evidence in the rulemaking record (including evidence as to the frequency with which multiple consecutive unsuccessful ACH presentments on payday installment loans result in NSF fees, overdrafts and account closures) provide a sufficient basis for concluding that such presentments on other products lead to substantial injury or pose material risks to consumers?

ii. For each product that has been identified, does that product fall within the Rule's conditional exemption for loans made by a DI to its own customers and collected through the customers' deposit accounts?

iii. Does the evidence in the rulemaking record provide a sufficient basis for requiring unusual payment disclosures with respect to these other products?

iv. If the Bureau elects to redefine the scope of coverage for the payday payment provisions, what conditions or limitations should be placed on coverage?

Degree of complexity: Medium - High

4. Revoke one or both of the payments provisions generally.

Summary of the Issue: In adopting the payment withdrawal provisions -- that is, the cap on multiple, consecutive unsuccessful payment attempts -- the Bureau relied on DFA § 1031, determining that it is both unfair and abusive for a lender to attempt a third payment withdrawal after two unsuccessful attempts without obtaining new and specific authorization from the consumer to attempt further withdrawals. The payment withdrawal provisions are designed to help a small but not insignificant number of consumers with severely distressed bank accounts, as consumers whose accounts have been unsuccessfully debited twice in succession are unlikely to be able to prevent further unsuccessful debits. The payment disclosure provisions were adopted pursuant to DFA § 1032 -- which authorizes the Bureau to prescribe disclosures to ensure consumer understanding of costs, benefits and risks -- and are designed to help a larger number of consumers (relative to the payment withdrawal provisions) by providing information they may need to prepare for upcoming payments and to take proactive steps to manage any errors or disputes before funds are deducted from their accounts. Eliminating both sets of payment provisions may permit covered lenders higher recoveries at little additional cost. Covered lenders would also incur no federal regulatory compliance costs, and there would be no effect on state regulation of covered loans.

Key questions for a rulemaking:

i. Is the evidentiary basis for the factual findings the Bureau made in the 2017 Rule to support its unfairness and abusiveness findings sufficiently robust and reliable in light of the (relatively modest) impacts that the payment withdrawal provision would have on the ability of consumers to access credit?

ii. Does the Bureau have a different understanding of the meaning of the elements of unfairness and abusiveness than the understanding articulated in the 2017 Rule?

iii. Does the Bureau have a reasoned basis for concluding that the costs of providing the required disclosures prior to unusual payment withdrawal attempts exceed the benefits to consumers of receiving these disclosures?

Degree of complexity: High

Resource requirements: Would require fully staffed rulemaking team comprised of 2 FTE Regulations attorneys, 1 FTE Markets SMEs, 1-2 FTE Research economists, plus a manager.

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[i] For example, questions have been raised as to whether the Rule applies to payment withdrawal attempts made on loans originated prior to the compliance date for the Rule. US Bank has raised a more complicated question as to the applicability of the conditional exclusion from the Rule for loans made by a depository institution to its customers that are repaid by automatic deductions from the consumer's deposit account in situations in which the consumer elects to make a loan payment by writing a check on the account and the check bounces and generates an NSF fee.

Taskforce Member Orientation

TAB 5 – Law and Policy

Consumer Financial Protection Bureau

CFPB 101: Title X of the Dodd-Frank Act

Consumer Financial Protection Bureau

Statutory objectives and purposes

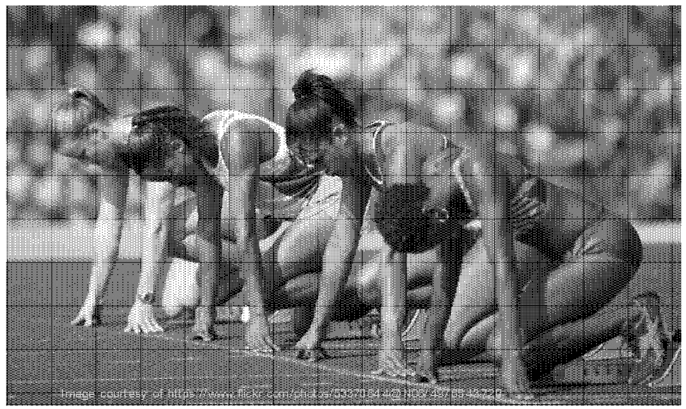
- Objectives. Bureau is authorized to use its authorities to ensure:
  1. Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
  2. Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
  3. Outdated, unnecessary, or unduly burdensome regulations are addressed in order to reduce unwarranted regulatory burdens;
  4. Federal consumer financial law is enforced consistently against both banks and non-banks in order to promote fair competition; and
  5. Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

Statutory objectives and purposes

- Purpose. The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that:

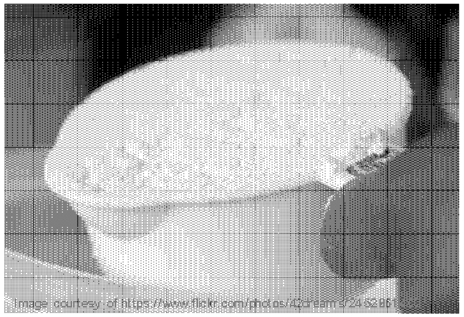
1. All consumers have access to markets for consumer financial products and services, and

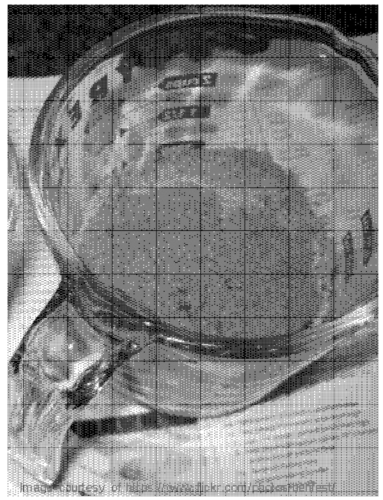
2. Markets for consumer financial products and services are fair, transparent, and competitive.

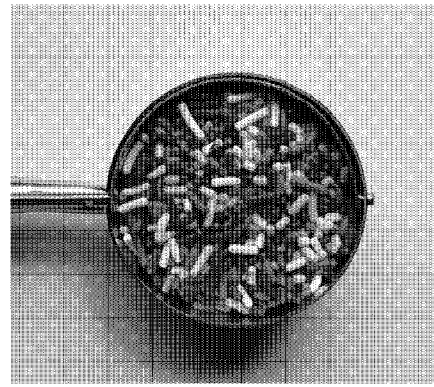


cfpb Consumer Financial Protection Bureau

Summary of Bureau authority







One part FTC

One part prudential regulator

One part new language in Title X

Notable specific statutory authorities

- Authority with respect to "Federal consumer financial laws"
  - Including functions transferred from other agencies
  - Prohibit/prevent unfair, deceptive, or abusive acts or practices

- Regulation
  - Issue rules to carry out Federal consumer financial laws
  - Require substantive disclosures to enhance consumer understanding

- Supervision
  - Banks, thrifts, and credit unions with over $10b in assets
  - Certain nonbanks, including larger participants

- Enforcement
  - Obtain remedies including restitution and civil penalties
  - Litigate in Federal court
  - Bring administrative enforcement actions

UDAAP

NEW!!

Unfair

- 1. Causes or is likely to cause substantial injury;
- 2. Injury is not reasonably avoidable; and
- 3. Injury is not outweighed by countervailing benefits to consumers or competition.

Deceptive*

- 1. Act or practice misleads or is likely to mislead the consumer;
- 2. Consumer's interpretation is reasonable under the circumstances; and
- 3. Act or practice is material.

Abusive

- Materially interferes with consumer's ability to understand term or condition of product or service; OR
- Takes unreasonable advantage of—
  - Consumer's lack of understanding of material risks, costs, or conditions of product or service;
  - Consumer's inability to protect own interests in selecting or using product or service; OR
  - Consumer's reasonable reliance on covered person's acting in the consumer's interests.

* Prongs are non-statutory

Other key functions

- Other primary functions in Title X
  - Conducting financial education
  - Collecting, investigating, and responding to consumer complaints
  - Conducting market research to identify risks to consumers and functioning of markets

- Director is a member of:
  - Federal Financial Institutions Examination Council
  - FDIC Board
  - Financial Stability Oversight Council

Specified functional units

- Research
- Community Affairs
- Consumer Response
- Office of Fair Lending and Equal Opportunity
- Financial Education
- Servicemember Affairs
- Older Americans
- Private Education Loan Ombudsman

Jurisdictional boundaries

- Auto dealers
- Various others, including:
  - Merchants of nonfinancial goods/services
  - Securities
  - Real estate brokerage activities
  - Practice of law
  - Accountants and tax preparers
  - Insurance
- Bureau may not set a usury cap

cfpb Consumer Financial Protection Bureau

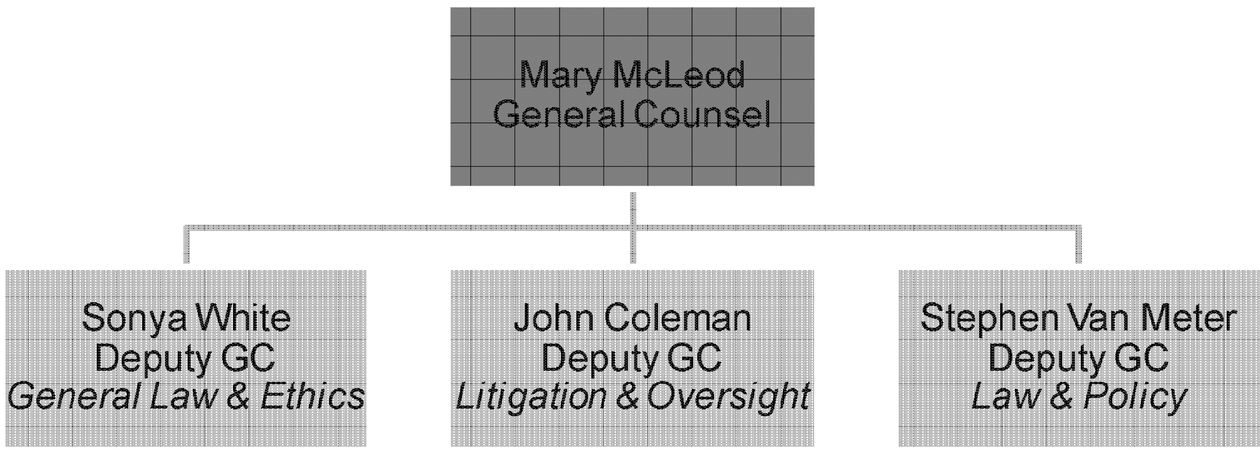
“Consumer financial products or services”

- Extending credit and servicing loans
- Extending or brokering some leases of personal or real property
- Providing real estate settlement services
- Taking deposits, transmitting or exchanging funds
- Providing stored value or payment instruments
- Providing check cashing, collection, or guarantee services

"Consumer financial products or services"

- Providing payments or other financial data processing
- Providing financial advisory services
- Collecting or providing consumer report or account information
- Collecting debt relating to any consumer financial product or service
- Other product or service the Bureau may define by regulation (if evasion or permissible for a bank or a financial holding company)

CFPB Legal Division/Office of Law & Policy



Advises on legal issues related to government ethics, Bureau funding and use of funds, procurement, labor relations, employment, information, facilities, intellectual property, physical and data security, advisory councils and groups, legal ethics for attorneys, and all other areas of general law.

Represents the Bureau in all defensive litigation and appellate litigation and advises on issues presenting litigation, mission-related, and reputational risks. In addition, the Office files friend-of-the-court briefs to help courts decide significant questions of federal consumer financial protection. The Oversight group advises on the agency's accountability obligations and helps to manage the Bureau's responses to oversight authorities.

Advises on Bureau's authorities and jurisdiction, the interpretation of Federal consumer financial statutes and regulations, and matters of administrative law. The Office helps ensure that the Bureau takes consistent and well supported legal positions across the range of agency functions, including rulemaking, supervision, enforcement, and consumer education.

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CFPB Legal Division/Office of Law & Policy

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Deputy GC
Law & Policy

Rebecca Deutsch
Assistant GC

Christine Ladd
Assistant GC

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Assistant GC

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- Paul Hannah
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- Daniel Kanter
- Deana Krumhansl
- Bradley Lipton
- Jeffrey Morrow
- Lea Mosena
- Shiva Nagaraj
- Nadia Nasser-Ghodsi
- Christopher Shelton
- Lauren Weldon

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CFPB Legal Division/Office of Law & Policy

- Office of Law & Policy specific responsibilities:
  - Development of CFPB legal interpretations with respect to the Federal consumer financial laws and the agency's regulatory, supervisory, and enforcement authorities and jurisdiction.
  - Review of proposed and final CFPB regulations, including assessment of legal interpretations, proper use of agency authorities, and compliance with administrative law requirements.
  - Review of potential CFPB enforcement and supervisory actions to ensure proper use of agency authorities and validity of underlying legal theories supporting existence of violations.
  - Assisting in the development of supervision programs, including through legal advice on the scope of agency authority and review of examination procedures and supervisory guidance.
  - Review of testimony, speeches, consumer advisories, and other documents to assess legal accuracy and sufficiency, consistency with CFPB policy, and legal, prudential, and other risks.

Taskforce Member Orientation

TAB 6 – Taskforce Governance

Consumer Financial Protection Bureau

Consumer Financial Protection Bureau
Charter of the Bureau's Taskforce on Federal Consumer Financial Law

1. **Official Designation (Title).**

Taskforce on Federal Consumer Financial Law.

2. **Authority.**

Pursuant to the executive and administrative powers conferred on the Consumer Financial Protection Bureau ("Bureau" or "CFPB") by Sections 1013(a) and 1021(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the Director of the Consumer Financial Protection Bureau ("Director") establishes the Taskforce on Federal Consumer Financial Law ("Taskforce").

3. **Objective and Scope of Activities.**

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

4. **Description of Duties.**

The duties of the Taskforce are to provide an objective and independent evaluation, in the form of one consensus final report to the Director, of the Bureau's current regulatory framework. The findings should identify where there may be gaps or where regulation should be simplified or modernized to help the Bureau more effectively carry out the mission of protecting consumers.

5. **Agency or Official to Whom the Taskforce Reports.**

The Taskforce shall report to the Director of the Consumer Financial Protection Bureau.

6. **Staff Director**

The Staff Director is a full-time employee who shall ensure that the Taskforce operates in accordance with the terms of the charter, in addition to other responsibilities delegated by the Director. The Staff Director for the Taskforce will be designated by the Director.

7. **Chair.**

The Director will also appoint a Taskforce chair ("Chair"), who will approve or call all Taskforce meetings, prepare and approve all meeting agendas, attend all Taskforce meetings, and adjourn any meeting when determined to be in the public interest. The Chair will have authority over the final report or recommendation content that will be presented to the Director for approval. The Chair will be required to perform all necessary actions to produce the final report, including mediation of intra-group conflicts, reconciliation of opposing views to reach majority consensus, and seeking support in addressing dissent, as needed, from the Staff Director. The Director or the Staff Director may appoint a Chair pro tem who shall preside at a meeting of the Taskforce in the absence of the Chair.

8. Support.

The Bureau's Office of the Director will facilitate support of the Taskforce's activities to the extent permitted by law and subject to the availability of resources. The Staff Director shall select employees to support Taskforce operations. Employees who will support the Taskforce will be appointed through internal and external details or hires. In selecting employees for these positions, the Staff Director shall seek to meet Taskforce resource and skill needs. Employees who may be selected to support the Taskforce may include, but are not limited to, a Chief of Staff, attorneys, advisors, economists, analysts, and paralegals. Bureau employees assigned to support the Taskforce will work to support the Chair's overall direction and report to the Staff Director.

Taskforce communication and interaction with other Bureau staff and Bureau resources will be facilitated by the Staff Director.

9. Estimated Number and Frequency of Meetings.

In coordination with the Staff Director and Chair, the Taskforce shall meet as frequently as necessary to complete the report within the timeframe provided by the Director. The Taskforce will also facilitate a process to solicit public comment and engagement on its work.

10. Duration.

The Taskforce is expected to operate from January 2020 until the final report is delivered to the Director. The Taskforce is expected to deliver findings to the Director no later than January 2021. This Charter will expire 90 days after the final report is delivered to the Director, unless renewed by appropriate action.

11. Memberships and Designation.

The Director shall select the members of the Taskforce. In selecting members to the Taskforce, the Director shall seek to assemble members who are consumer financial law experts and academics with diverse points of view, such as attorneys and economists with significant experience researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and objectivity including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics; and experts from social sciences related to the Bureau's mission.

The Taskforce shall consist of approximately five members serving for the duration of the Taskforce. All members selected by the Director shall serve for the duration of Taskforce operation, unless extended by the Director. In the case of a Taskforce member's resignation or removal from the Taskforce, the Director may select a replacement, in alignment with Section 11.

The Director will select Taskforce members to work for a temporary period of time using available non-competitive hiring authorities. Taskforce members will be expected to adhere to the conflict of interest statutes and Standards of Ethical Conduct for Employees of the Executive Branch, seek guidance from Bureau ethics officials when they perceive potential conflicts, and comply with Bureau confidentiality regulations.

12. Recordkeeping.
The records created or received by the Taskforce will be maintained in accordance with the Bureau records retention policy.

13. Authorization Date.
The Taskforce is authorized to perform its duties upon signature by the Director.

Signed:

Kathleen L. Kraninger   Date: 1/08/2020

Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau

Taskforce on Federal Consumer Financial Law

Roles and Responsibilities

2020 - 2021

Consumer Financial Protection Bureau

Who serves on the Taskforce?

The Taskforce is a diverse group of experts in consumer financial protection. The Taskforce Charter provided specific considerations for the Director in selecting Taskforce members. In assembling the Taskforce, the Director looked for consumer financial law experts and academics with diverse points of view, significant experience in researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, the Director sought prominent experts who are recognized for their professional achievements and objectivity including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics; and experts from related social sciences related to the Bureau's mission.

The membership of the Taskforce on Federal Consumer Financial Law is:

- Dr. J. Howard Beales, III, Emeritus Professor of Strategic Management and Public Policy at the George Washington University and former Director of the Bureau of Consumer Protection at the Federal Trade Commission;
- Dr. Thomas Durkin, Senior Economist (Retired) at the Federal Reserve Board;
- L. Jean Noonan, Partner at Hudson Cook, former General Counsel at Farm Credit Administration, and former Associate Director the Bureau of Consumer Protection's Credit Practice at the Federal Trade Commission; and
- Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia School of Law, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center.

What is the purpose of the Taskforce?

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

The Taskforce may recommend that the Bureau take certain actions in the future, suggest studies or propose changes in a particular industry or market. While Taskforce discussions and any formal recommendations are very important to the Bureau, any decision to act in response to such recommendations rests solely with the Bureau Director.

Does the Taskforce make decisions about Bureau functions such as regulation, supervision, enforcement, or any Bureau action?

No. The Taskforce is an independent body that exists within the Bureau structure but operates outside of normal Bureau processes. It will recommend actions, through a final report, and those recommendations will be considered by the Director. Recommendations from the Taskforce do not bind the Bureau and all final decisions rests with the Director.

How does the Taskforce interact with the Bureau?

The Taskforce Charter provides that the Director shall designate a Staff Director, who shall ensure that the Taskforce operates in accordance with the terms of the charter, in addition to other responsibilities delegated by the Director. Taskforce communication and interaction with Bureau staff and resources will be facilitated by the Staff Director.

The Director or her designee will hold monthly check-in meetings with the Taskforce Chair and the Staff Director. At this meeting, the Chair will update senior leadership on progress and, as needed, seek support in addressing dissent. The Staff Director will provide direction on day-to-day Taskforce operations. The Staff Director will facilitate access to Bureau data and processes, receive resource requests and work with Bureau stakeholders to consider and respond to those requests, and provide project management support to help the Taskforce meets its expected report delivery date. A designee of the Staff Director will serve as timekeeper for Taskforce members. Following report completion, the Front Office and senior staff will have time to review report language, in line with procedures for clearing reports by quasi-independent Bureau offices.

Will the Taskforce elect a Chair?

No. The Director shall appoint a Chair from among the members of the Taskforce. The Chair shall call to order and preside at all meetings of the Taskforce. The Director or the Staff Director may appoint a Chair pro tem who shall preside at a meeting of the Taskforce in the absence of the Chair.

The Chair will play a vital role in the success of Taskforce operations and the effectiveness of Taskforce output. The Chair will have authority over the final report or recommendation content that will be presented to the Director for review. The Chair will be required to perform all necessary actions to produce the final report, including mediation of intra-group conflicts, reconciliation of opposing views to reach consensus, and seeking support in addressing dissent, as needed, from the Staff Director. The Chair will provide input to the Front Office through the Staff Director on resource needs, including staff and data, following consideration of available resources and consultation with Taskforce members.

When and where does the Taskforce meet?

The Taskforce will meet in person regularly as frequently as necessary to complete the report within the span of Taskforce operation.

Are Taskforce members paid?

Taskforce members will receive compensation in accordance with the Bureau's compensation program and the hiring authority used to bring them into the Bureau; they may also be reimbursed for additional expenses as appropriate, consistent with Bureau policy.

What are my responsibilities as a Taskforce member?

Through the Charter, the Taskforce may identify unique responsibilities for members. In general, the Taskforce members' responsibilities include, but are not limited to:

- Provide information, analysis, and recommendations to the Bureau.
- Work in a team setting and be open to discussing and understanding differing viewpoints.
- Give everyone a chance to speak and withhold judgment on an idea presented by others until it has a chance to be developed.
- Work to reconcile dissenting opinions to reach consensus on final report and recommendations.

How are meetings conducted?

The Staff Director will work with the Chair to identify the specific methods or requirements by which meetings are run and consensus decisions are reached.

How will the final report be drafted?

The Staff Director will work with the Chair to identify the specific methods or requirements by which report language will be drafted. Taskforce members will be assigned chapters individually or in groups, with support from Taskforce staff. Final report language will be reviewed by the Taskforce as a whole, with adoption by consensus.

How will the Taskforce navigate dissenting opinions?

The Taskforce will produce one final report. As such, there will be no option for concurring or dissenting reports. The Chair will mediate intra-group conflicts and work the group towards compromise in case of dissenting viewpoints. Members are expected to work in good faith to reconcile disagreements to reach consensus on one final report. In case of irreconcilable differences, the Chair can seek support from the Staff Director.

How long do members serve?

As appropriate and considering the particular hiring authority used to hire the Taskforce members, Taskforce members will serve for the entire duration of Taskforce operation. The Taskforce will operate from January 2020 until the final report is delivered to the Director. The Taskforce is expected to deliver findings to the Director no later than January 2021.

How long will the Taskforce last?

The Taskforce is expected to deliver findings to the Director no later than January 2021.

What is the Taskforce Charter?

The charter is the document that officially identifies the membership, duties, meeting requirements and any special instructions for the Taskforce.

Are Taskforce meetings open to the media and general public?

No. Given the day-to-day nature of Taskforce work, it would not be feasible for all Taskforce meetings to be open to public observation. The Taskforce will also facilitate a process to solicit public comment and engagement on its work through a variety of methods such as seeking input through Requests for Information.

How can Taskforce members interact with the media and general public during Taskforce operation?

Taskforce members are subject to the Bureau's Confidentiality Regulations, 12 C.F.R part 1070. These rules prohibit Taskforce members from disclosing non-public Bureau information without authorization. These rules will apply to the Taskforce members beyond the duration of the Taskforce. In other words, Taskforce members are not permitted to disclose non-public Bureau information without authorization even beyond the duration of the Taskforce members' terms. In addition, Taskforce members are subject to the Bureau's policies concerning external speaking engagements and media inquiries. Taskforce members are not permitted to interact with the media and general public about matters specific to the Taskforce outside of Bureau-sponsored engagements for the duration of the Taskforce.