Hot Topics in Artificial Intelligence, Machine Learning, and Alternative Data in Financial Services

Association of Corporate Counsel, June 22, 2022

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Today's Discussion

- CFPB and Regulator Leadership Set the Agenda
- What is AI, Machine Learning, and Alternative Data?
- Key Areas of Regulatory Risk
  - Fair Lending
  - Marketing / Lead Generation
  - Anti-money Laundering
- Best Practices to Mitigate Risk

Setting the Stage: CFPB and Regulator Leadership Focus on Fair Lending and Discrimination in Financial Services

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CFPB and Bank Regulators

- **CFPB**
  - New Director Rohit Chopra and staffing changes at the Bureau
  - Big announcements, taking on tech, taking on FDIC, promoting competition, and more
  - Guidance to staff re engaging with former employees, and heightened scrutiny
- **Bank Regulators (FRB, OCC, FDIC, NCUA)**
  - Focus on fintech integrations
  - Third-party risk management
  - Fair lending/redlining initiatives

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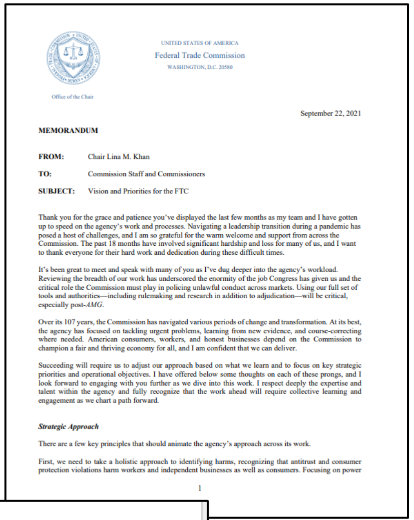
FTC, State Attorneys General, & State Regulators

- FTC
  - New Chair Lina Kahn
  - June 16, 2022 Combatting Online Harms Through Innovation Report to Congress
  - Resurrection of its penalty offense authority? (education/student loans, endorsements and testimonials)
  - A focus on growing role of private equity and other investors
- State AGs
  - Debt collection practices
  - Installment lending
  - Buy now/ pay later and lease-to-own
  - Privacy and data security
- CA Department of Financial Innovation and Protection: UDAAP authority, active investigations, registration, and more – a "mini-CFPB"
- NY Department of Financial Services



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

September 22, 2021

MEMORANDUM

FROM: Chair Lina M. Khan

TO: Commission Staff and Commissioners

SUBJECT: Vision and Priorities for the FTC

Thank you for the grace and patience you've displayed the last few months as my team and I have gotten up to speed on the agency's work and processes. Navigating a leadership transition during a pandemic has posed a host of challenges, and I am so grateful for the warm welcome and support from across the Commission. The past 18 months have involved significant hardship and loss for many of us, and I want to thank everyone for their hard work and dedication during these difficult times.

It's been great to meet and speak with many of you as I've dug deeper into the agency's workload. Reviewing the breadth of our work has underscored the enormity of the job Congress has given us and the critical role the Commission must play in policing unlawful conduct across markets. Using our full set of tools and authorities—including rulemaking and research in addition to adjudication—will be critical, especially post-*AMG*.

Over its 107 years, the Commission has navigated various periods of change and transformation. At its best, the agency has focused on tackling urgent problems, learning from new evidence, and course-correcting where needed. American consumers, workers, and honest businesses depend on the Commission to champion a fair and thriving economy for all, and I am confident that we can deliver.

Succeeding will require us to adjust our approach based on what we learn and to focus on key strategic priorities and operational objectives. I have offered below some thoughts on each of these prongs, and I look forward to engaging with you further as we dive into this work. I respect deeply the expertise and talent within the agency and fully recognize that the work ahead will require collective learning and engagement as we chart a path forward.

Strategic Approach

There are a few key principles that should animate the agency's approach across its work.

First, we need to take a holistic approach to identifying harms, recognizing that antitrust and consumer protection violations harm workers and independent businesses as well as consumers. Focusing on power

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CFPB and Bank Regulators

- In the course of examining banks' and other companies' compliance with consumer protection rules, the CFPB **will scrutinize discriminatory conduct that violates the prohibition against UDAAP.**

"When a person is denied access to a bank account because of their religion or race, this is unambiguously unfair," said CFPB Director Rohit Chopra. "We will be expanding our anti-discrimination efforts to combat discriminatory practices across the board in consumer finance."

for and eliminating illegal discrimination.

CFPB Consumer Laws and Regulations **UDAAP**

Unfair, Deceptive, or Abusive Acts or Practices

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice.[1] The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[2] In addition, CFPB has supervisory authority for detecting

potentially unfair or deceptive acts and practices); and

- Understanding the interplay between unfair, deceptive, or abusive acts or practices and other consumer protection and antidiscrimination statutes.

Unfair Acts or Practices

The standard for unfairness in the Dodd-Frank Act is that an act or practice is unfair when:

(1) It causes or is likely to cause substantial injury to consumers;

(2) The injury is not reasonably avoidable by consumers; and

[1] Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; PL 111-203 (July 21, 2010).

[2] Sec. 1031 of the Dodd-Frank Act. The principles of "unfair" and "deceptive" practices in the Act are similar to those under Sec. 5 of the Federal Trade Commission Act (FTC Act). The Federal Trade Commission (FTC) and federal banking regulators have applied these standards through case law, official policy statements, guidance, examination procedures, and enforcement actions that may inform CFPB.

[3] Dodd-Frank Act, Secs. 1024; 1025(b)(1); 1026(b) of the Act.

CFPB Manual V.3 (March 2022) UDAAP 1

AI and ML at the CFPB

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Innovation spotlight: Providing adverse action notices when using AI/ML models

By Patrice Alexander Ficklin, Tom Pahl, and Paul Watkins – JUL 07, 2020

As part of our consumer protection mission, Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation we are monitoring is artificial intelligence (AI), and particularly a subset of AI, machine learning (ML). For example, in 2017, the Bureau issued a Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process (RFI). We also issued a No-Action Letter to Upstart Network, Inc., a company that uses ML in making credit decisions, and later shared key highlights (https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter/) from information provided by Upstart.

Financial institutions are starting to deploy AI across a range of functions, including as virtual assistants that can fulfill customer requests, in models to detect fraud or other potential illegal activity, or as compliance monitoring tools. One additional area where AI may have a profound impact is in credit underwriting.

In 2015, the Bureau released a Data Point titled "Credit Invisibles (https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-invisibles/)." The Data Point reported that 26 million consumers–about one in 10 adults in America–could be considered credit invisible because they do not have any credit record at the nationwide credit bureaus. Another 19 million consumers have too little information to be evaluated by a widely used credit scoring model.

AI has the potential to expand credit access by enabling lenders to evaluate the creditworthiness of some of the millions of consumers who are unscorable using traditional underwriting techniques. These technologies typically involve the use of models that allow lenders to evaluate more information about credit applicants. Consideration of such information may lead to more efficient credit decisions and potentially lower the cost of credit. On the other hand, AI may create or amplify risks, including risks of unlawful discrimination, lack of transparency, and privacy concerns. Bias in the source data or model construction can also lead to inaccurate predictions. In considering AI or other technologies, the Bureau is committed to helping spur innovation consistent with consumer protections.

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Consumer Education | Rules & Policy | Enforcement | Compliance | Data & Rese

Notice & Opportunities to Comment / Open Notices

Request for comment or information

Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning

APR 12, 2021

The Board of the Federal Reserve System, Bureau of Consumer Financial Protection, Federal Deposit Insurance Corporation, National Credit Union Administration, and the Office of the Comptroller of the Currency are gathering information and comments on financial institutions' use of artificial intelligence (AI), including machine learning (ML). The purpose of this request for information (RFI) is to understand respondents' views on the use of AI by financial institutions in their provision of services to customers and for other business or operational purposes; appropriate governance, risk management, and controls over AI; and any challenges in developing, adopting, and managing AI. The RFI also solicits respondents' views on the use of AI in financial services to assist in determining whether any clarifications from the agencies would be helpful for financial institutions' use of AI in a safe and sound manner and in compliance with applicable laws and regulations, including those related to consumer protection.

PROPOSED RULE WITH REQUEST FOR PUBLIC COMMENT

Read it in the Federal Register

View issued pdf

SUBMIT A FORMAL COMMENT

Regulations.gov comment form for this notice

Read Comments Received

What is AI, Machine Learning, and Alternative Data?

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Introduction to AI and Machine Learning

- The mainstream use of artificial intelligence and machine learning in financial services is helping business enterprises to pull out actionable insights from large and complex datasets and deliver services.
- It comes in the form of deep learning technologies, autonomous processes, or smart robots. Artificial intelligence is making its presence felt everywhere in the connected world.
  - Chatbots, virtual assistants, and business intelligence bots
  - Targeted online advertising
  - Predictive analytics
  - Voice recognition
  - Pattern recognition

Artificial Intelligence and Machine Learning

- Financial institutions are exploring how best to leverage developments in AI and ML for credit decisioning and AML efforts.
  - AI is a term used to address various technologies and systems able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.
  - Machine learning (ML) refers to algorithms that improve their performance through the sharing or analysis of pattern information.

Alternative Data

- Alternative data means information not typically found in the consumer's credit files of the nationwide consumer reporting agencies or customarily provided by consumers as part of applications for credit.
  - Examples of alternative data include information derived from a customer's social media activities, mobile device data, website data, and online browsing activity.
- Financial services industry increasingly using alternative sources of data to streamline and improve credit underwriting.
- Prudential banking regulators recognize that alternative data may be used in connection with fraud detection, credit underwriting, and account servicing and management.

Alternative Data (cont.)

- U.S. banking regulators have recognized that the use of alternative data "may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system . . . . These innovations reflect the continuing evolution of automated underwriting and credit score modeling, offering the potential to lower the cost of credit and increase access to credit." https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf
- At the same time, however, the banking regulators have cautioned financial institutions to engage in "responsible use of such data," and to ensure that any such use complies with applicable consumer protection laws and regulations.

Fair Lending Considerations

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Fair Lending Overview

- The use of data in credit decisioning is governed by federal fair and equal lending laws, specifically the Fair Credit Reporting Act ("FCRA") and the Equal Credit Opportunity Act ("ECOA"), and their implementing regulations.
- These laws are enforced by the CFPB, FTC, and through private litigation. In addition, both the CFPB and FTC have general authority to police unfair and deceptive acts and practices (UDAAP/UDAP), and have used that authority when creditors failed to provide accurate information about the information used to make credit decisions, what the terms of credit are and what may impact changes in rates and repayment, and other credit-related activity that was not disclosed to borrowers at the time of applying for and accepting credit.
- This general regulatory background sets the framework through which the regulators and Congress analyze new and alternative sources and types of data and underwriting practices in the marketplace.

Fair Lending Overview

- The Equal Credit Opportunity Act (ECOA) applies to all creditors and those who, in the ordinary course of business, regularly refer prospective applicants to creditors. Implemented by Regulation B.
- Illegal to discriminate against applicant regarding **<u>any</u>** aspect of a credit transaction
  - On the basis of race, color, religion, national origin, sex or marital status, or age (if applicant has capacity to contract)
  - Because all or part of the applicant's income derives from any public assistance program
  - Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act
- The CFPB has ECOA rulemaking authority and supervises for and enforces compliance. FTC also has enforcement authority.

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Fair Lending Overview, cont.

- Reg. B covers creditor activities before, during, and after the extension of credit.
  - Information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing information about credit; revocation, alteration, or termination of credit; collection procedures.

- Reg. B prohibited practices (12 C.F.R. § 1002.4):
  - Discriminating against applicants on a prohibited basis regarding any aspect of a credit transaction.
  - Making oral/written statements, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

Disparate Impact & Disparate Treatment

- Two theories of ECOA/Reg. B liability: disparate impact & disparate treatment.
- Disparate treatment occurs when a creditor treats an applicant differently based on a prohibited basis.
  - Can be overt/open **<u>or</u>** be found by comparing treatment of applicants who received different treatment for no discernable reason other than a prohibited basis.
- Disparate impact occurs when a creditor employs facially neutral policies or practices that have an adverse effect or impact on a member protected class
  - **<u>Unless</u>** they meet a legitimate business need that cannot reasonably be achieved by means that are less disparate in their impact.

Fair Lending Regulatory Concerns

- **Discrimination and Digital Redlining.** The most common concern voiced across government and civil society entities that focus on alternative credit data and AI driven lending was that such programs will continue existing structural roadblocks to credit for marginalized groups, and result in discriminatory outcomes (either intentional or unintentional) that may violate fair lending laws. The overriding concern is that entities will not properly use, calibrate, monitor, or adjust any data sources or algorithms used in new lending platforms to properly control for statistical discrimination (especially that causing a disparate impact on marginalized groups, even through the use of a facially neutral system).

- **Unfair Data Inclusion**. FCRA prohibits certain data elements from being included in consumer reports, and also places requirements on CRAs to ensure a certain level of accuracy in the data used to create consumer reports. Several commentors and government agencies stated concerns that alternative data may be collected and used outside of FCRA's requirements. For example, social media data (e.g., friend groups and educational institutions) as a proxy for credit worthiness was seen as less reliable and fair compared to the inclusion of rent or utility payments into a credit decision.

- **Improper Additional Data Uses.** A variety of sources noted for the potential misuse of alternative credit data outside of the underwriting context. Because alternative credit data can include a range of data points, including Internet activity, social media, and other data typically associated with digital advertising and other uses of such information, some entities are worried that consumers may grant access to information to receive credit but that the same information will be repurposed for other uses without the consumer's knowledge.

- **Deceptive Terms and Conditions.** The sources we reviewed noted that, because consumers may not be aware of the types of data or activity that has bearing on their credit decisions when a company uses alternative data and AI to make such decisions, they may be unable to address or challenge adverse terms or changes in a credit offer.

CFPB Long-Term Actions – Artificial Intelligence

- "Although use of AI holds the potential to expand credit access to underserved consumers, use of such technologies may also hold risks, including risks of unlawful discrimination and lack of transparency"
- "The Bureau recognizes the importance of continuing to monitor the use of AI and is evaluating whether rulemaking, a policy statement, or other Bureau action may become appropriate"
- 2017 Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process
- 2018 Calls for Evidence
- 2020 Adverse Action Tech Sprint
- 2020 Request for Information on the Equal Credit Opportunity Act and Regulation B

Federal Register / Vol. 82, No. 33 / Tuesday, February 21, 2017 / Notices 11183

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 15, 2017.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–03310 Filed 2–17–17; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2017–0005]

Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) seeks information about the use or potential use of alternative data and modeling techniques in the credit process. Alternative data and modeling techniques are changing the way that some financial service providers conduct business. These changes hold the promise of potentially significant benefits for some consumers but also present certain potentially significant risks. The Bureau seeks to learn more about current and future market developments, including existing and emerging consumer benefits and risks, and how these developments could alter the marketplace and the consumer experience. The Bureau also seeks to learn how market participants are or could be mitigating certain risks to consumers, and about consumer preferences, views, and concerns.

DATES: Comments must be received on or before May 19, 2017.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2017–0005, by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: Please note the number associated with any question to which you are responding at the top of each response (you are not required to answer all questions to receive consideration of your comments). The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov*. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202–435–7275.

Authority: 12 U.S.C. 5511(c).

SUPPLEMENTARY INFORMATION: The Bureau would like to encourage responsible innovations that could be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system. To that end, in reviewing the comments to this request for information (RFI), the Bureau seeks not only to understand the benefits and risks stemming from use of alternative data and modeling techniques but also to begin to consider future activity to encourage their responsible use and lower unnecessary barriers, including any unnecessary regulatory burden or uncertainty that impedes such use.

The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may encompass the following groups, some of which may overlap in part:

- Individual consumers;
- Consumer, civil rights, and privacy advocates;
- Community development and service organizations;
- Lenders, including depository and non-depository institutions;
- Consumer reporting agencies, including specialty consumer reporting agencies;
- Data brokers and aggregators;
- Model developers and licensors, as well as companies involved in the analysis of new or existing models;
- Consultants, attorneys, or other professionals who advise market participants on these issues;
- Regulators;
- Researchers or members of academia;
- Telecommunication, utility, and other non-financial companies that rely on consumer data for eligibility decisions;
- Participants in non-U.S. consumer markets with knowledge of or experience in the use of alternative data or modeling techniques for use in the credit process; and
- Any other interested parties.

All commenters are welcome to respond in any manner they see fit, including by sharing their knowledge of standard practices, their understanding of the market as a whole, or their own positions and views on the questions included in this RFI. Commenters may also choose to answer only a subset of questions. The information obtained in response to this RFI will help the Bureau monitor consumer credit markets and consider any appropriate steps. Comments may also help industry develop best practices. The Bureau seeks information predominantly pertaining to products and services offered to consumers. However, because some of the Bureau's authorities relate to small business lending,[1] the Bureau welcomes information about alternative data and modeling techniques in business lending markets as well. Information submitted by financial institutions should not include any personal information relating to any customer, such as name, Social Security

[1] For example, the Equal Credit Opportunity Act covers both consumer and commercial credit transactions. 15 U.S.C. 1691 *et seq.* In addition, section 1071 of the Dodd-Frank Act requires data collection and reporting for lending to women-owned, minority-owned, and small businesses. The Bureau has yet to write regulations implementing that section but it has begun that process.

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Where Is the CFPB Headed with Its Focus on Tech and Payment Systems?

Focus on payments systems, data harvesting, consumer choice/access restrictions, and more (e.g., EFTA, GLBA, etc.)

Denial of Credit / Access: The CFPB is more closely scrutinizing the use of big data when it is used to deny credit (or access to financial services); less likely to object to the use of big data by creditors to reconsider credit applications that would otherwise be denied.

- FTC Report, Big Data: A Tool for Inclusion or Exclusion (2016)

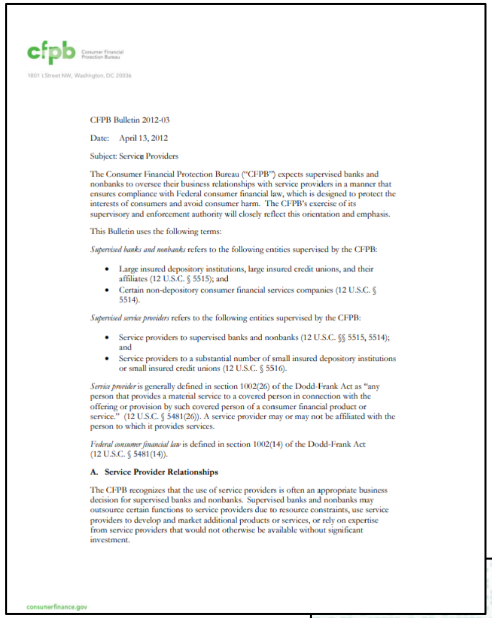
FCRA Disparate Impact: One concern with using big data is that it may present fair lending issues if its use causes a disparate impact. When a creditor determines that a big data factor may be leading to a discriminatory impact, the creditor should determine whether:

1) the factor is highly correlated with the discriminatory impact,

2) there is a good basis for continuing to use that factor, and

3) there is a better variable that could be used for the same purpose that does not lead to a discriminatory impact.

Third Party Vendor Management Policy, CFPB Bulletin 2012-03 (April 13, 2012) - CFPB will focus on primary providers of financial service and service providers. If the CFPB believes that service providers are not complying with a consumer financial services law, or are committing a UDAAP violation when interacting with the institution's customers, the CFPB plans to hold both companies accountable. May include exams/investigations.



cfpb Consumer Financial Protection Bureau

1801 L Street NW, Washington, DC 20036

CFPB Bulletin 2012-03

Date: April 13, 2012

Subject: Service Providers

The Consumer Financial Protection Bureau ("CFPB") expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB's exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

This Bulletin uses the following terms:

Supervised banks and nonbanks refers to the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates (12 U.S.C. § 5515); and
- Certain non-depository consumer financial services companies (12 U.S.C. § 5514).

Supervised service providers refers to the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (12 U.S.C. §§ 5515, 5514); and
- Service providers to a substantial number of small insured depository institutions or small insured credit unions (12 U.S.C. § 5516).

Service provider is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." (12 U.S.C. § 5481(26)). A service provider may or may not be affiliated with the person to which it provides services.

Federal consumer financial law is defined in section 1002(14) of the Dodd-Frank Act (12 U.S.C. § 5481(14)).

A. Service Provider Relationships

The CFPB recognizes that the use of service providers is often an appropriate business decision for supervised banks and nonbanks. Supervised banks and nonbanks may outsource certain functions to service providers due to resource constraints, use service providers to develop and market additional products or services, or rely on expertise from service providers that would not otherwise be available without significant investment.

consumerfinance.gov

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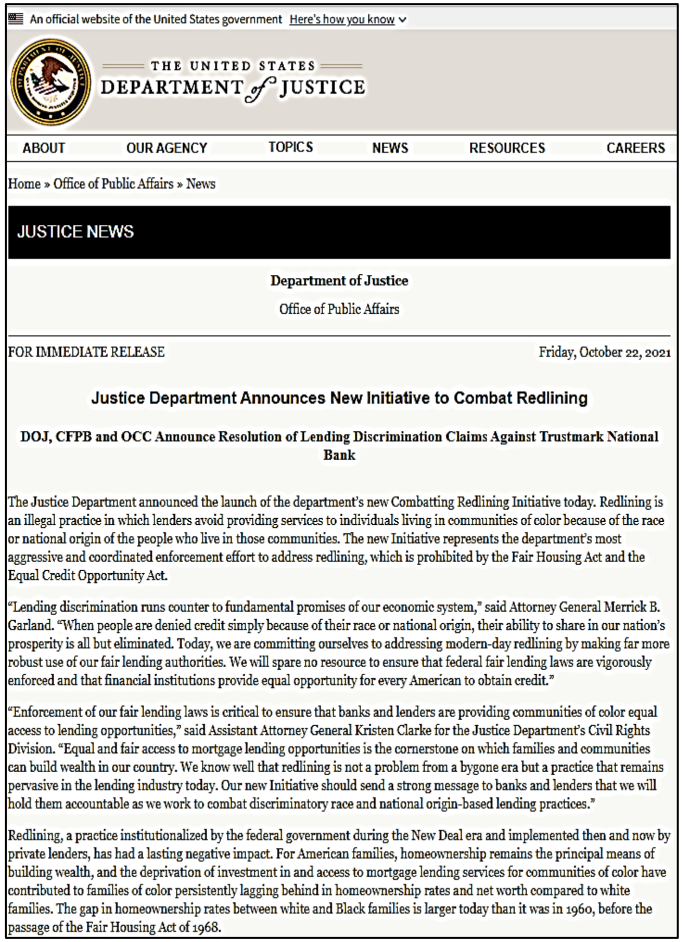
Combatting Redlining Initiative

- Led by Civil Rights Division's Housing and Civil Enforcement Section, partnering with U.S. attorney offices, financial regulatory agencies (incl. CFPB), and state AGs.
- Takeaways:
  - Use U.S. attorneys' offices to ensure that fair lending enforcement takes advantage of local expertise on housing markets and credit needs;
  - Extend DOJ's analyses of potential redlining to non-depository institutions that DOJ indicated are originating the majority of mortgage loans;
  - Strengthen DOJ's partnership with financial regulatory agencies to ensure identification and referral of fair lending violations to DOJ; and
  - Increase coordination with state attorneys general on fair lending matters.
- All types of loans, and all types of lenders
- Director Chopra's comments focused on the use of AI in lending decisions. The CFPB will be "watching for digital redlining," citing what he called "algorithmic bias" and the need for investigation of whether "discriminatory black box models are undermining th[e] goal" of equal opportunity.



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JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE — Friday, October 22, 2021

Justice Department Announces New Initiative to Combat Redlining

DOJ, CFPB and OCC Announce Resolution of Lending Discrimination Claims Against Trustmark National Bank

The Justice Department announced the launch of the department's new Combatting Redlining Initiative today. Redlining is an illegal practice in which lenders avoid providing services to individuals living in communities of color because of the race or national origin of the people who live in those communities. The new Initiative represents the department's most aggressive and coordinated enforcement effort to address redlining, which is prohibited by the Fair Housing Act and the Equal Credit Opportunity Act.

"Lending discrimination runs counter to fundamental promises of our economic system," said Attorney General Merrick B. Garland. "When people are denied credit simply because of their race or national origin, their ability to share in our nation's prosperity is all but eliminated. Today, we are committing ourselves to addressing modern-day redlining by making far more robust use of our fair lending authorities. We will spare no resource to ensure that federal fair lending laws are vigorously enforced and that financial institutions provide equal opportunity for every American to obtain credit."

"Enforcement of our fair lending laws is critical to ensure that banks and lenders are providing communities of color equal access to lending opportunities," said Assistant Attorney General Kristen Clarke for the Justice Department's Civil Rights Division. "Equal and fair access to mortgage lending opportunities is the cornerstone on which families and communities can build wealth in our country. We know well that redlining is not a problem from a bygone era but a practice that remains pervasive in the lending industry today. Our new Initiative should send a strong message to banks and lenders that we will hold them accountable as we work to combat discriminatory race and national origin-based lending practices."

Redlining, a practice institutionalized by the federal government during the New Deal era and implemented then and now by private lenders, has had a lasting negative impact. For American families, homeownership remains the principal means of building wealth, and the deprivation of investment in and access to mortgage lending services for communities of color have contributed to families of color persistently lagging behind in homeownership rates and net worth compared to white families. The gap in homeownership rates between white and Black families is larger today than it was in 1960, before the passage of the Fair Housing Act of 1968.

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Combatting Redlining Initiative, Cont.

- CFPB has stated repeatedly that racial equity is a priority and fair lending will be key.
- DOJ Task Force – New Combatting Redlining Initiative (Oct. 22, 2021)
  - AG Garland: "We will spare no resource to ensure that federal fair lending laws are vigorously enforced and that financial institutions provide equal opportunity for every American to obtain credit."
  - **American Trustmark National Bank** settlement (approved Oct. 27, 2021) was the first under the initiative.
    - Consent Order – Create $3.85m loan subsidy program for majority-Black and Hispanic neighborhoods in Memphis; open new lending office in such a neighborhood; $5m civil penalty
    - Broader view of what constitutes redlining.
  - Several fair lending probes already open, more to come.

"Technology companies and financial institutions are amassing massive amounts of data and using it to make more and more decisions about our lives, including loan underwriting and advertising.

While machines crunching numbers might seem capable of taking human bias out of the equation, that's not what is happening."

Source: Remarks of Director Rohit Chopra at a Joint DOJ, CFPB, and OCC Press Conference on the Trustmark National Bank Enforcement Action (Oct. 22, 2021)

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CFPB, DOJ, and OCC v. Trustmark National Bank

Complaint alleges that Trustmark violated the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, and the Consumer Financial Protection Act of 2010 (CFPA).

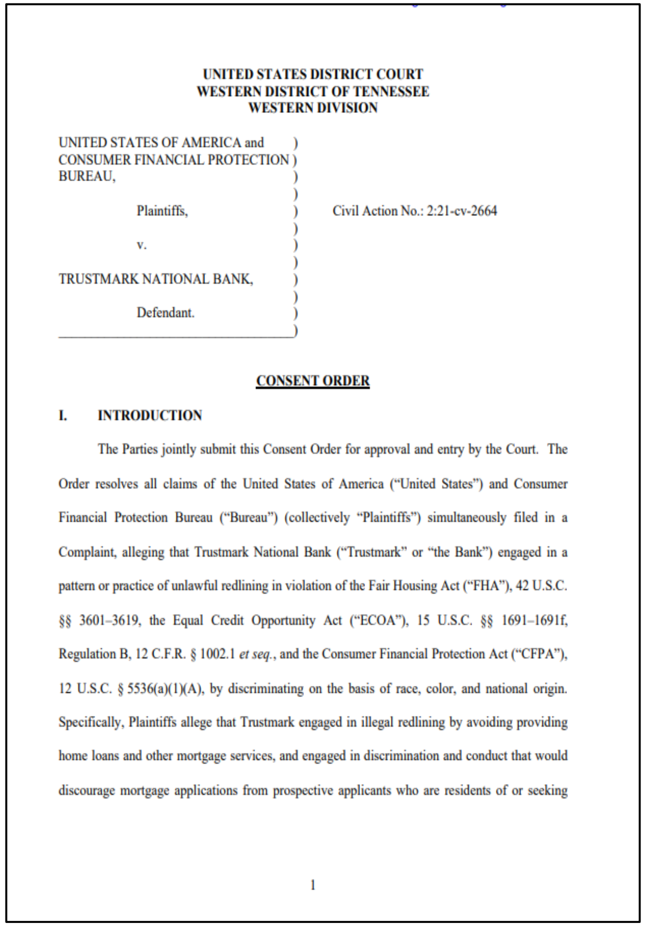
Allegations

- ECOA and Regulation B prohibit creditors from discriminating against applicants and prospective applicants in credit transactions on the basis of characteristics such as race, color, and national origin, including by redlining or engaging in conduct that would discourage on a prohibited basis a prospective applicant from applying for credit.
- **Avoided locating branches in majority-Black and Hispanic communities**
- **Avoided assigning loan officers to majority-Black and Hispanic communities**
- **Failed to monitor its fair lending compliance**
- **Discouraged applicants and prospective applicants in majority-Black and Hispanic neighborhoods**

Enforcement Action

Congress entrusted the Bureau to enforce the CFPA, ECOA, and ECOA's implementing Regulation B. The proposed consent order, if entered by the court, would require Trustmark to:

- **Invest $3.85 million via a loan subsidy program**
- **Increase physical presence in and outreach to majority-Black and Hispanic neighborhoods**
- **Comply with fair lending requirements**
- $5 million penalty to the CFPB, and will credit the $4 million penalty collected by the OCC



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA and CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiffs, v. TRUSTMARK NATIONAL BANK, Defendant.	Civil Action No.: 2:21-cv-2664

CONSENT ORDER

I. INTRODUCTION

The Parties jointly submit this Consent Order for approval and entry by the Court. The Order resolves all claims of the United States of America ("United States") and Consumer Financial Protection Bureau ("Bureau") (collectively "Plaintiffs") simultaneously filed in a Complaint, alleging that Trustmark National Bank ("Trustmark" or "the Bank") engaged in a pattern or practice of unlawful redlining in violation of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601–3619, the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691–1691f, Regulation B, 12 C.F.R. § 1002.1 *et seq.*, and the Consumer Financial Protection Act ("CFPA"), 12 U.S.C. § 5536(a)(1)(A), by discriminating on the basis of race, color, and national origin. Specifically, Plaintiffs allege that Trustmark engaged in illegal redlining by avoiding providing home loans and other mortgage services, and engaged in discrimination and conduct that would discourage mortgage applications from prospective applicants who are residents of or seeking

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Lender Innovation: Artificial Intelligence in Underwriting

Using an algorithm, rather than a human, to analyze a variety of factors to more accurately assess credit applicants.

Beware of unwitting discrimination

- “Black box” problem – algorithms can’t explain a result.
- What if algorithm considers a data point that correlates strongly with protected characteristic?
- Algorithms could include information that creates biases against certain groups.

cfpb Consumer Financial Protection Bureau (cfpb.gov/)

Innovation spotlight: Providing adverse action notices when using AI/ML models

By Patrice Alexander Ficklin, Tom Pahl, and Paul Watkins - JUL 07, 2020

As part of our consumer protection mission, Congress tasked the Bureau with ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. One area of innovation we are monitoring is artificial intelligence (AI), and particularly a subset of AI, machine learning (ML). For example, in 2017, the Bureau issued a Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process (RFI). We also issued a No-Action Letter to Upstart Network, Inc., a company that uses ML in making credit decisions, and

AI algorithms can be compatible with ECOA/Reg. B; “a creditor may disclose a reason for a denial even if the relationship of that disclosed factor to predicting creditworthiness may be unclear to the applicant.”

In 2015, the Bureau released a Data Point titled "Credit Invisibles (cfpb.gov/data-research/research-reports/data-point-credit-invisibles/)." The Data Point reported that 26 million consumers–about one in 10 adults in America–could be considered credit invisible because they do not have any credit record at the nationwide credit bureaus. Another 19 million consumers have too little information to be evaluated by a widely used credit scoring model.

AI has the potential to expand credit access by enabling lenders to evaluate the creditworthiness of some of the millions of consumers who are unscorable using traditional underwriting techniques. These technologies typically involve the use of models that allow lenders to evaluate more information about credit applicants. Consideration of such information may lead to more efficient credit decisions and potentially lower the cost of credit. On the other hand, AI may create or amplify risks, including risks of unlawful discrimination, lack of transparency, and privacy concerns. Bias in the source data or model construction can also lead to inaccurate predictions. In considering AI or other

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Lender Innovation: Alternative Data in Underwriting

- Information not traditionally used by national consumer reporting agencies in calculating a credit score:
  - On-time utility, cable, or mobile phone bill payments;
  - Cash flow data from bank statements; or
  - Data related to consumer behavior on the Internet (e.g., time spent on social media).
- Could be even more predictive than traditional data.
- Potential to expand credit access to "credit invisibles" and those with low credit scores under traditional model – disproportionately low-income, people of color, women, immigrants, and the elderly.

Alternative Data in Underwriting, cont.

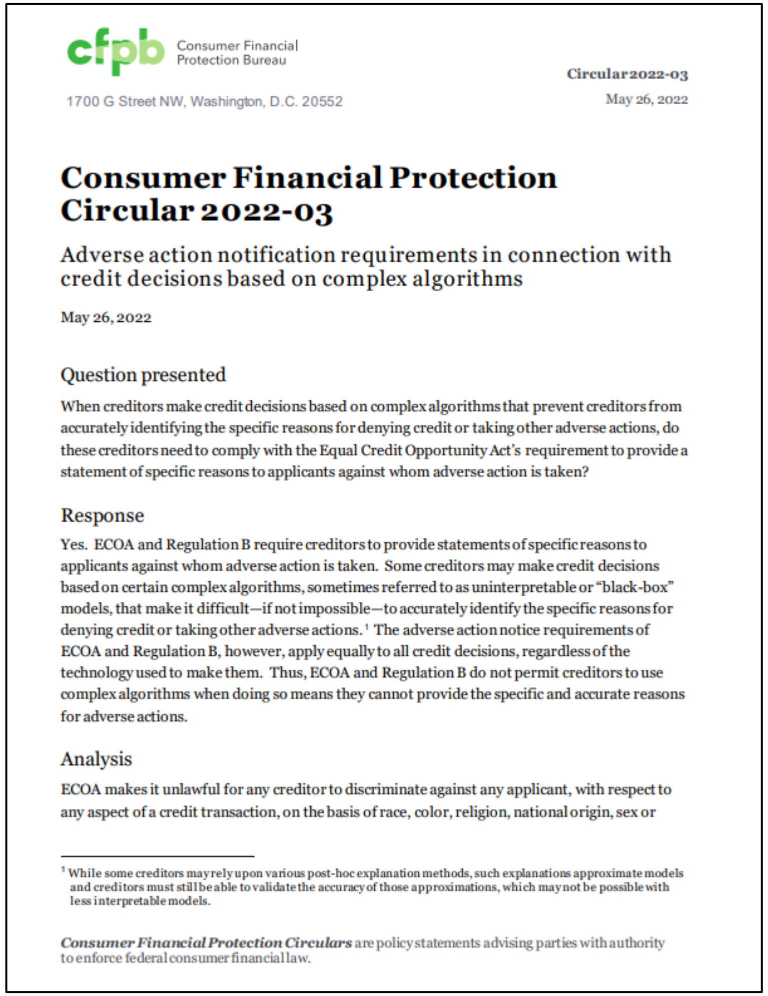
- How are lenders using it
  - Creating proprietary blends of alternative data points to assess creditworthiness and underwriting traditionally risky borrowers
    - Lending Club Corp.
    - Prosper Marketplace Inc.
    - Upstart Network Inc.
  - "Second Chance" or "Second Look" programs – alternative data considered only when FICO score either doesn't exist or not satisfactory to obtain credit
    - Sunrise Banks NA

Alternative Data in Underwriting, cont.

- **BUT** beware of unwitting discrimination – use of certain data points could yield disparate impacts for protected classes, even if an algorithm is facially neutral
  - Time spent on social media – younger consumers
  - Typos and grammatical mistakes – immigrants and non-native English speakers
  - Zip codes – people of color, immigrants

CFPB Acts to Protect the Public from Black-Box Credit Models Using Complex Algorithms

- CFPB confirmed that federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse actions, even if the creditor is relying on credit models using complex algorithms.
- The CFPB published a *Consumer Financial Protection Circular* to remind the public, including those responsible for enforcing federal consumer financial protection law, of creditors' adverse action notice requirements under the Equal Credit Opportunity Act (ECOA).
  - Federal consumer financial protection laws and adverse action requirements should be enforced regardless of the technology used by creditors.
  - Creditors cannot justify noncompliance with ECOA based on the mere fact that the technology they use to evaluate credit applications is too complicated, too opaque in its decision-making, or too new.



cfpb Consumer Financial Protection Bureau

1700 G Street NW, Washington, D.C. 20552

Circular 2022-03

May 26, 2022

Consumer Financial Protection Circular 2022-03

Adverse action notification requirements in connection with credit decisions based on complex algorithms

May 26, 2022

Question presented

When creditors make credit decisions based on complex algorithms that prevent creditors from accurately identifying the specific reasons for denying credit or taking other adverse actions, do these creditors need to comply with the Equal Credit Opportunity Act's requirement to provide a statement of specific reasons to applicants against whom adverse action is taken?

Response

Yes. ECOA and Regulation B require creditors to provide statements of specific reasons to applicants against whom adverse action is taken. Some creditors may make credit decisions based on certain complex algorithms, sometimes referred to as uninterpretable or "black-box" models, that make it difficult—if not impossible—to accurately identify the specific reasons for denying credit or taking other adverse actions.[1] The adverse action notice requirements of ECOA and Regulation B, however, apply equally to all credit decisions, regardless of the technology used to make them. Thus, ECOA and Regulation B do not permit creditors to use complex algorithms when doing so means they cannot provide the specific and accurate reasons for adverse actions.

Analysis

ECOA makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex or

[1] While some creditors may rely upon various post-hoc explanation methods, such explanations approximate models and creditors must still be able to validate the accuracy of those approximations, which may not be possible with less interpretable models.

Consumer Financial Protection Circulars are policy statements advising parties with authority to enforce federal consumer financial law.

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Data Use / Marketing / Lead Generation

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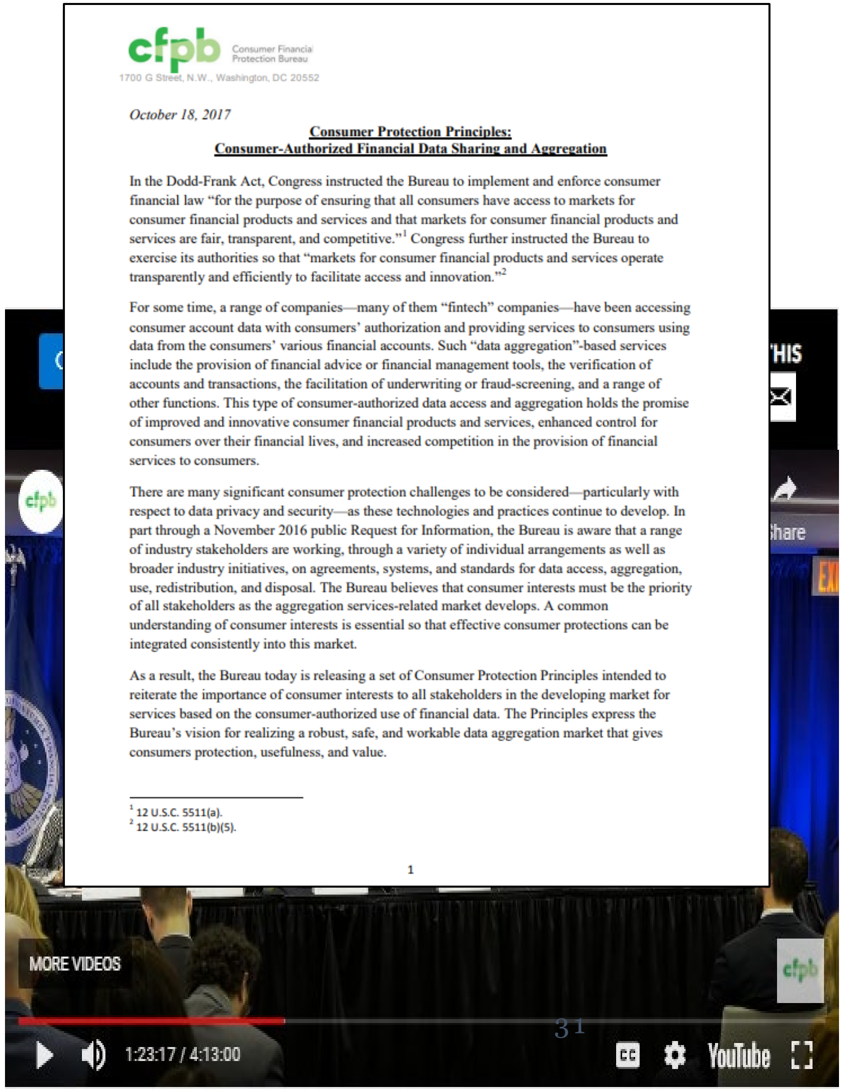
Section 1033 – Consumer-Authorized Financial Data Sharing and Aggregation

- Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides, among other things, that subject to rules prescribed by the CFPB, a consumer financial services provider must make available to a consumer information in the control or possession of the provider concerning the consumer financial product or service that the consumer obtained from the provider.
- November 22, 2016 – Request for Information
- November 18, 2017 – Principles Statement
- February 26, 2020 – Symposium
- October 22, 2020 – Advance Notice of Proposed Rulemaking issued solicit comments and information to assist the Bureau in developing regulations to implement section 1033.
- February 4, 2021 – ANPR comments closed (99 comments received)
- July 9, 2021 – Executive Order (EO) encourages CFPB to commence rulemaking under section 1033.
- Present – Pre-Rule Stage
- Final Rule?


cfpb Consumer Financial Protection Bureau
1700 G Street, N.W., Washington, DC 20552

October 18, 2017

Consumer Protection Principles:
Consumer-Authorized Financial Data Sharing and Aggregation

In the Dodd-Frank Act, Congress instructed the Bureau to implement and enforce consumer financial law "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."[1] Congress further instructed the Bureau to exercise its authorities so that "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."[2]

For some time, a range of companies—many of them "fintech" companies—have been accessing consumer account data with consumers' authorization and providing services to consumers using data from the consumers' various financial accounts. Such "data aggregation"-based services include the provision of financial advice or financial management tools, the verification of accounts and transactions, the facilitation of underwriting or fraud-screening, and a range of other functions. This type of consumer-authorized data access and aggregation holds the promise of improved and innovative consumer financial products and services, enhanced control for consumers over their financial lives, and increased competition in the provision of financial services to consumers.

There are many significant consumer protection challenges to be considered—particularly with respect to data privacy and security—as these technologies and practices continue to develop. In part through a November 2016 public Request for Information, the Bureau is aware that a range of industry stakeholders are working, through a variety of individual arrangements as well as broader industry initiatives, on agreements, systems, and standards for data access, aggregation, use, redistribution, and disposal. The Bureau believes that consumer interests must be the priority of all stakeholders as the aggregation services-related market develops. A common understanding of consumer interests is essential so that effective consumer protections can be integrated consistently into this market.

As a result, the Bureau today is releasing a set of Consumer Protection Principles intended to reiterate the importance of consumer interests to all stakeholders in the developing market for services based on the consumer-authorized use of financial data. The Principles express the Bureau's vision for realizing a robust, safe, and workable data aggregation market that gives consumers protection, usefulness, and value.

[1] 12 U.S.C. 5511(a).
[2] 12 U.S.C. 5511(b)(5).

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Section 1071 – Business Lending Data (Regulation B)

- Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the Bureau, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. https://www.consumerfinance.gov/1071-rule/
- May 15, 2017 – Request for Information
- September 15, 2020 – SBREFA Outline
- December 15, 2020 – SBREFA Report
- September 1, 2021 – NPRM issued
    - CFPB proposes to require covered financial institutions to collect and report to the Bureau data on applications for credit for small businesses, including those that are owned by women or minorities.
    - NPRM addresses CFPB's approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the proposed rule's effective and compliance dates.
    - Comments were due by January 6, 2022.
- Final Rule?

Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking

December 14, 2020

Proposed data points for small business lending data collection

On September 1, 2021, the Consumer Financial Protection Bureau (Bureau) issued a notice of proposed rulemaking (NPRM) to implement the small business lending data collection requirements set forth in section 1071 of the Dodd-Frank Act. This chart summarizes the data points that covered financial institutions (FIs) would be required to collect and report with respect to small business applications for covered credit transactions pursuant to proposed § 1002.107 in the NPRM. For more information on the NPRM, visit https://www.consumerfinance.gov/1071-rule.

Data point	NPRM section	Description	Data elements to be reported	Notes
Unique identifier	107(a)(1)	FI would report an alphanumeric application or loan identifier unique within the FI to the specific application.	Unique alphanumeric application or loan number not to exceed 45 characters. Must begin with the FI's Legal Entity Identifier (LEI).	FIs would be permitted to use numbers generated solely for 1071 data reporting or other purposes as unique identifiers.
Application date	107(a)(2)	FI would report application date using either: (i) the date the application was received by the FI; or (ii) the date shown on a paper or electronic application form.	A complete calendar date (i.e., month, day, and year).	For an application that was not submitted directly to the FI or its affiliate, the FI would be permitted to report the application date as the date the application was received by the party that initially received the application, the date the application was received by the FI, or the date shown on the application form. The NPRM includes a proposed safe harbor so that an FI would not violate 1071 if it reports an application date that is within

1 **CONSUMER FINANCIAL PROTECTION BUREAU** | PROPOSED DATA POINTS FOR SMALL BUSINESS LENDING DATA COLLECTION

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Anti-money Laundering

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AI and ML for AML Purposes

- When it comes to AML, current systems tend to be rule-based and in many cases manual, requiring review of various data points against established requirements and rules (both with respect to identifying customers and for monitoring suspicious activity).
  - AI and ML can be used to improve and monitor the determinations made by employees engaged in performing various compliance functions, including customer onboarding and transaction monitoring and investigations.
  - Increasingly, financial institutions are using AI to confirm customer identity by collecting and comparing traditional, publicly available data used for verification (name or address) with data from non-traditional sources, such as an access device's IP address or biometric data.

Regulatory Developments

- The United States has implemented a comprehensive AML framework through the Bank Secrecy Act (BSA) and FinCEN's implementing regulations that requires financial institutions to verify the identity of their customers, perform risk-based due diligence on their customers, and screen customers against U.S. economic sanctions programs.
- The use of AI/ML by a financial institution for customer identification, verification, and related purposes appears consistent with this legal framework, provided that the financial institution implements these technologies consistent with regulatory expectations.
- As explained by a former Director of FinCEN in 2019, U.S. federal regulators are "committed to working with industry on ways in which technological advances with respect to identity can fit within our current regulatory framework or may lead to changes in our regulations."

Regulatory Developments

- Private industry and U.S. policy makers have begun to take steps to gain a better understanding of how AI and ML are used, and some of the potential advantages and disadvantages that they present.
- In 2018, FinCEN and the banking regulators issued a joint statement recognizing the use of AI by FIs in their AML programs, and noted AI's potential to improve compliance and efficiency. The joint statement explained that the regulators "welcome these types of innovative approaches to further efforts to protect the financial system against illicit financial activity" and recognize that "these types of innovative approaches can maximize utilization of banks' BSA/AML compliance resources."
- In 2019, the U.S. Chamber of Commerce released recommended AI policy principles that encouraged policy makers to take "flexible risk-based approaches based on use cases, rather than prescriptive requirements when governing the development, deployment, and use of AI technologies."
- In February 2021, the Treasury Department held a policy roundtable for public and private industry experts to discuss the interplay between digital identity, AML, and anti-fraud activities.
- In 2021, the federal banking regulators issued a Request for Information (RFI) seeking industry input on the use of AI and ML for operational and regulatory compliance purposes. Numerous comments were submitted by trade associations, companies, and consumer advocates.
- FinCEN established an Innovation Hours Program that serves as a forum for policymakers and industry to discuss innovative products and services, such as AI and digital identity.

Best Practices

Developing Products and Services that Use AI, ML & Alternative Data – Key Considerations

- Incorporation of fair lending principles into Compliance Management System
- Designing use of Alternative Data and AI/ML consistent with regulatory expectations
  - Transparency
  - Security
  - Accuracy
  - Monitoring and Revision
  - Oversight
- Third Party Risk Management

Developing Products and Services that AI, ML & Alternative Data – Key Considerations

- **Transparency**: Concerns around transparency in the use of alternative data for credit decisioning focus on two areas. First, that consumers should understand what data will be used to make decisions about them. Second, that consumers understand how those decisions will be made using the identified data.
  - <u>What Information is Used</u>. Inform consumers about the types of data that will be used in the credit decisioning process, regardless of whether that data is traditional data or alternative data.
  - <u>How Information is Used</u>. Inform consumers how the information will be used. Various lenders that use AI and alternative data in their decisioning process include disclosures and information about their products and methods. In addition to being clear about how the underwriting process occurs, companies should also make clear if additional data may be used after granting credit to alter the terms.

Developing Products and Services that AI, ML & Alternative Data – Key Considerations (cont.)

- **Security:** General agreement that reasonable cybersecurity protections should be in place for such platforms, although the standards may vary depending on the federal and state legal overlay. The FTC has brought several enforcement actions against creditors that failed to maintain the security of the credit information they maintained about consumers. Any lending platform should include reasonable cybersecurity protections for the data used in the platform.

- **Accuracy**: Concerns have been raised of the ability for users of alternative data to ensure the accuracy of that data and the ability of consumers to correct inaccurate information. Entities that plan to leverage alternative data and AI should assess their data sets, determine potential gaps or inaccuracies in the data, and calibrate the uses and models of that data to account for those potential inaccuracies. Companies using alternative data should include procedures to account for inaccuracies or gaps in its data sets, and account for such possibilities as the products continue to be developed.

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Developing Products and Services that AI, ML & Alternative Data – Key Considerations (cont.)

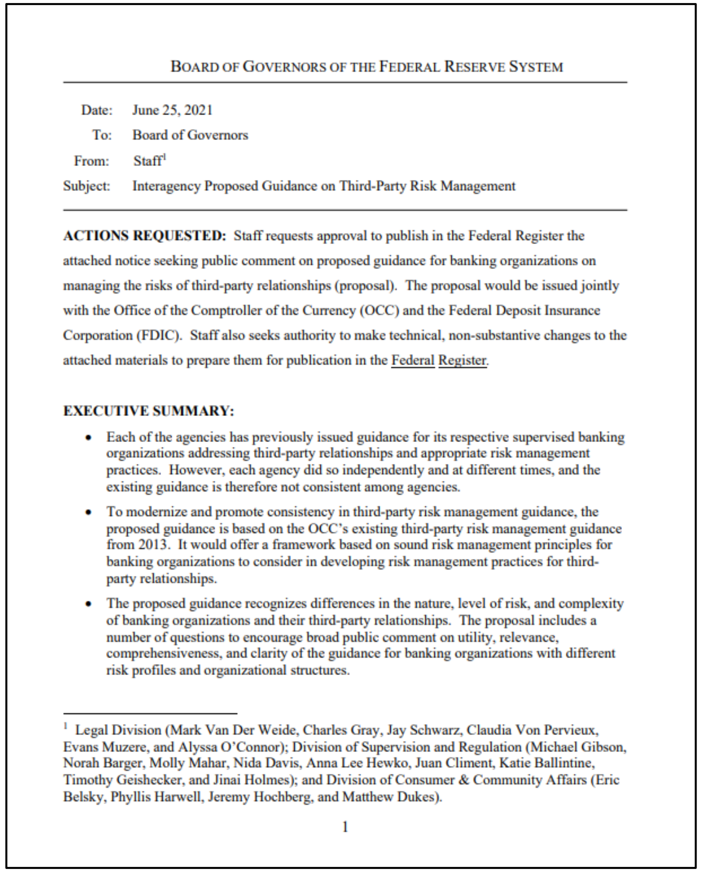
- **Monitoring and Revision:** One of the most consistent concerns is the potential for alternative data to lead to discriminatory practices (either intentionally or unintentionally) that could negatively impact minorities and other marginalized communities in the credit marketplace. In order to control for such unintended consequences:
  - Monitor the outputs of credit models that leverage any data to make decisions about credit applicants. This monitoring should seek to identify potential discriminatory outcomes from credit decisions, such as biases against certain racial, ethnic, gender, or other marginalized groups. By identifying potential disparate impacts as they arise, entities engaged in AI lending programs can seek to correct those limitations before they become systemic. A model governance and monitoring program can help achieve the positive goals of an AI and alternative data fueled lending program while avoiding negative outcomes.
  - Update the model and data sources to correct any identified bias. If the monitoring program identifies potential sources and/or outcomes that indicate discriminatory bias, an entity using an AI and alternative data lending program should determine if modifications to its model or data sources could correct that bias. Internal testing and revisions to AI models can help avoid real world unintended negative outcomes.

Developing Products and Services that AI, ML & Alternative Data – Key Considerations (cont.)

- **Oversight:** Engage independent oversight of data collection and use practices to increase objectivity and prevent unintended outcomes. For example, part of the CFPB's reasoning for granting a No Action Letter for ECOA violations to Upstart was that company's agreement to enter into "Model Risk Assessment Plan" CFPB. Upstart also entered into a similar agreement with the NAACP to engage in 2 year reviews of fair lending compliance with Upstart's model and alternative data by a civil rights law firm. This type of third party oversight is stated to be a "a model for companies like Upstart to protect borrowers from the discriminatory effects of these practices and ensure lenders cannot repackage age-old discrimination that has locked Black borrowers out of consumer credit markets."

Third-Party Risk Management

- The federal bank regulatory agencies have requested public comment on proposed guidance designed to help banking organizations manage risks associated with third-party relationships, including relationships with financial technology-focused entities. The proposed guidance is intended to assist banking organizations in identifying and addressing the risks associated with third-party relationships and responds to industry feedback requesting alignment among the agencies with respect to third-party risk management guidance.
- "Third-party relationships can include relationships with entities such as vendors, financial technology (fintech) companies, affiliates, and the banking organization's holding company."
- July 19, 2021 – NPRM issued
- September 17, 2021 – Public comment period closed



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Date: June 25, 2021
To: Board of Governors
From: Staff[1]
Subject: Interagency Proposed Guidance on Third-Party Risk Management

ACTIONS REQUESTED: Staff requests approval to publish in the Federal Register the attached notice seeking public comment on proposed guidance for banking organizations on managing the risks of third-party relationships (proposal). The proposal would be issued jointly with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). Staff also seeks authority to make technical, non-substantive changes to the attached materials to prepare them for publication in the Federal Register.

EXECUTIVE SUMMARY:

- Each of the agencies has previously issued guidance for its respective supervised banking organizations addressing third-party relationships and appropriate risk management practices. However, each agency did so independently and at different times, and the existing guidance is therefore not consistent among agencies.
- To modernize and promote consistency in third-party risk management guidance, the proposed guidance is based on the OCC's existing third-party risk management guidance from 2013. It would offer a framework based on sound risk management principles for banking organizations to consider in developing risk management practices for third-party relationships.
- The proposed guidance recognizes differences in the nature, level of risk, and complexity of banking organizations and their third-party relationships. The proposal includes a number of questions to encourage broad public comment on utility, relevance, comprehensiveness, and clarity of the guidance for banking organizations with different risk profiles and organizational structures.

[1] Legal Division (Mark Van Der Weide, Charles Gray, Jay Schwarz, Claudia Von Pervieux, Evans Muzere, and Alyssa O'Connor); Division of Supervision and Regulation (Michael Gibson, Norah Barger, Molly Mahar, Nida Davis, Anna Lee Hewko, Juan Climent, Katie Ballintine, Timothy Geishecker, and Jinai Holmes); and Division of Consumer & Community Affairs (Eric Belsky, Phyllis Harwell, Jeremy Hochberg, and Matthew Dukes).

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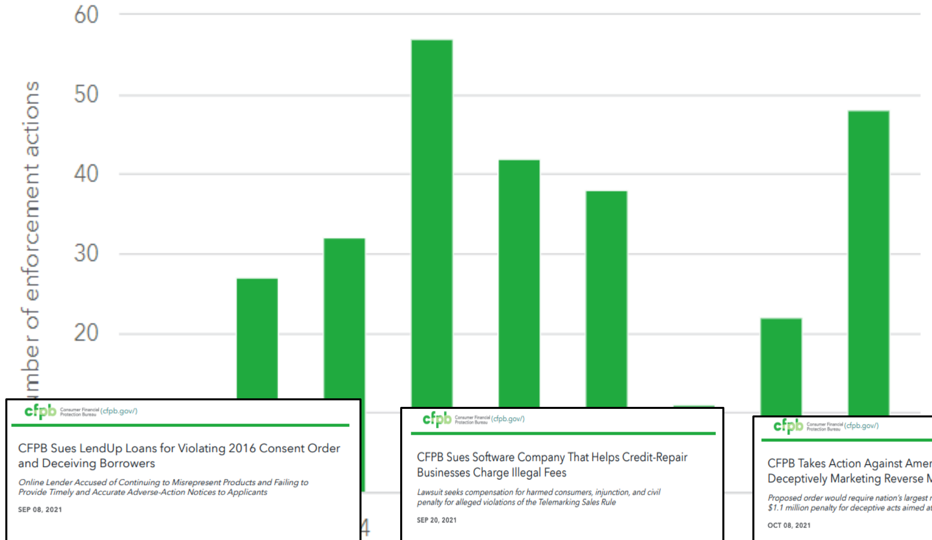
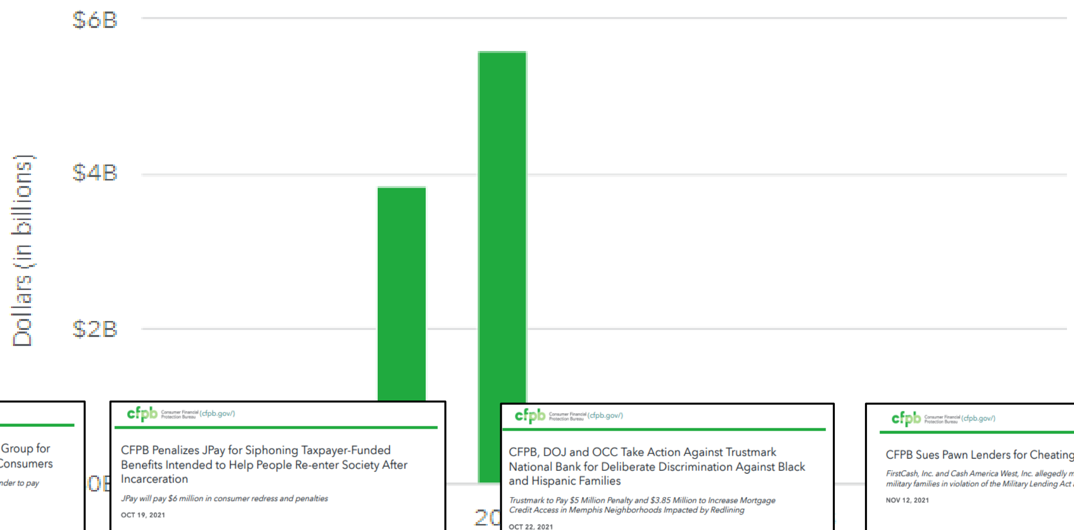
CFPB Enforcement by the Numbers (through 2020, excluding 19 in 2021)

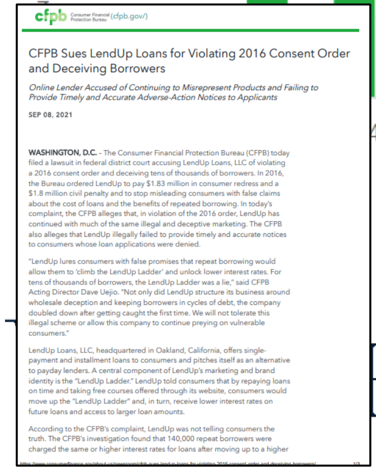
- $12.9 billion in consumer relief – Monetary compensation, principal reductions, canceled debts, and other consumer relief ordered as a result of enforcement actions.
- 175 million people eligible for relief – Estimated consumers or consumer accounts eligible to receive relief from enforcement actions.
- $1.6 billion in penalties – Civil money penalties ordered as a result of enforcement actions.

Actions by Year



Relief by Year





cfpb Consumer Financial Protection Bureau (cfpb.gov/)

CFPB Sues LendUp Loans for Violating 2016 Consent Order and Deceiving Borrowers

Online Lender Accused of Continuing to Misrepresent Products and Failing to Provide Timely and Accurate Adverse-Action Notices to Applicants

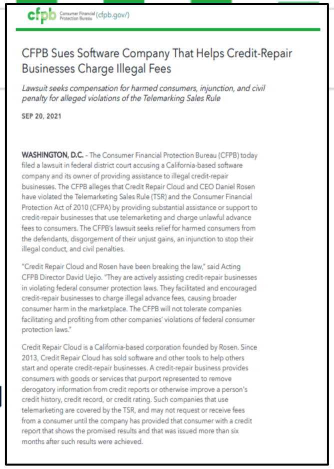
SEP 08, 2021

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) today filed a lawsuit in federal district court accusing LendUp Loans, LLC of violating a 2016 consent order and deceiving tens of thousands of borrowers. In 2016, the Bureau ordered LendUp to pay $1.83 million in consumer redress and a $1.8 million civil penalty and to stop misleading consumers with false claims about the cost of loans and the benefits of repeated borrowing. In today's complaint, the CFPB alleges that, in violation of the 2016 order, LendUp has continued with many of the same illegal and deceptive marketing. The CFPB also alleges that LendUp illegally failed to provide timely and accurate notices to consumers whose loan applications were denied.

"LendUp lures consumers with false promises that repeat borrowing would allow them to 'climb the LendUp Ladder' and unlock lower interest rates. For tens of thousands of borrowers, the LendUp Ladder was a lie," said CFPB Acting Director Dave Uejio. "Not only did LendUp structure its business around wholesale deception and keeping borrowers in cycles of debt, the company doubled down after getting caught the first time. We will not tolerate this illegal scheme or allow this company to continue preying on vulnerable consumers."

LendUp Loans, LLC, headquartered in Oakland, California, offers single-payment and installment loans to consumers and pitches itself as an alternative to payday lenders. A central component of LendUp's marketing and brand identity is the "LendUp Ladder." LendUp told consumers that by repaying loans on time and taking free courses offered through its website, consumers would move up the "LendUp Ladder" and, in turn, receive lower interest rates on future loans and access to larger loan amounts.

According to the CFPB's complaint, LendUp was not telling consumers the truth. The CFPB's investigation found that 140,000 repeat borrowers were charged the same or higher interest rates for loans after moving up to a higher



cfpb Consumer Financial Protection Bureau (cfpb.gov/)

CFPB Sues Software Company That Helps Credit-Repair Businesses Charge Illegal Fees

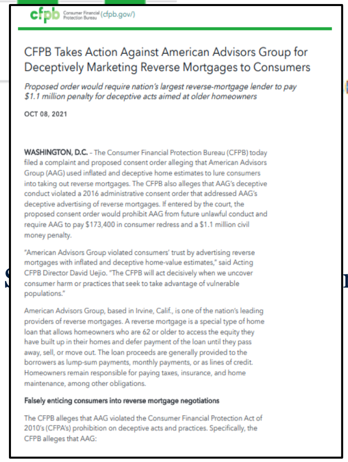
Lawsuit seeks compensation for harmed consumers, injunction, and civil penalty for alleged violations of the Telemarketing Sales Rule

SEP 20, 2021

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) today filed a lawsuit in federal district court accusing a California-based software company and its owner of providing assistance to illegal credit-repair businesses. The CFPB alleges that Credit Repair Cloud and CEO Daniel Rosen have violated the Telemarketing Sales Rule (TSR) and the Consumer Financial Protection Act of 2010 (CFPA) by providing substantial assistance or support to credit-repair businesses that use telemarketing and charge unlawful advance fees to consumers. The CFPB's lawsuit seeks relief for harmed consumers from the defendants, disgorgement of their unjust gains, an injunction to stop their illegal conduct, and civil penalties.

"Credit Repair Cloud and Rosen have been breaking the law," said Acting CFPB Director David Uejio. "They are actively assisting credit-repair businesses in violating federal consumer protection laws. They facilitated and encouraged credit-repair businesses to charge illegal advance fees, causing broader consumer harm in the marketplace. The CFPB will not tolerate companies facilitating and profiting from other companies' violations of federal consumer protection laws."

Credit Repair Cloud is a California-based corporation founded by Rosen. Since 2013, Credit Repair Cloud has sold software and other tools to help others start and operate credit-repair businesses. A credit-repair business provides consumers with goods or services that purport to remove derogatory information from credit reports or otherwise improve a person's credit history, credit record, or credit rating. Such companies that use telemarketing are covered by the TSR, and may not request or receive fees from a consumer until the company has provided that consumer with a credit report that shows the promised results and that was issued more than six months after such results were achieved.



cfpb Consumer Financial Protection Bureau (cfpb.gov/)

CFPB Takes Action Against American Advisors Group for Deceptively Marketing Reverse Mortgages to Consumers

Proposed order would require nation's largest reverse-mortgage lender to pay $1.1 million penalty for deceptive acts aimed at older homeowners

OCT 08, 2021

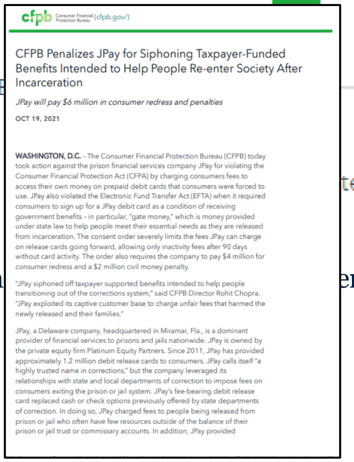
WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) today filed a complaint and proposed consent order alleging that American Advisors Group (AAG) used inflated and deceptive home estimates to lure consumers into taking out reverse mortgages. The CFPB also alleges that AAG's deceptive conduct violated a 2016 administrative consent order that addressed AAG's deceptive advertising of reverse mortgages. If entered by the court, the proposed consent order would prohibit AAG from future unlawful conduct and require AAG to pay $173,400 in consumer redress and a $1.1 million civil money penalty.

"American Advisors Group violated consumers' trust by advertising reverse mortgages with inflated and deceptive home-value estimates," said Acting CFPB Director David Uejio. "The CFPB will act decisively when we uncover consumer harm or practices that seek to take advantage of vulnerable populations."

American Advisors Group, based in Irvine, Calif., is one of the nation's leading providers of reverse mortgages. A reverse mortgage is a special type of home loan that allows homeowners who are 62 or older to access the equity they have built up in their homes and defer payment of the loan until they pass away, sell, or move out. The loan proceeds are generally provided to the borrowers as lump-sum payments, monthly payments, or as lines of credit. Homeowners remain responsible for paying taxes, insurance, and home maintenance, among other obligations.

Falsely enticing consumers into reverse mortgage negotiations

The CFPB alleges that AAG violated the Consumer Financial Protection Act of 2010's (CFPA's) prohibition on deceptive acts and practices. Specifically, the CFPB alleges that AAG:



cfpb Consumer Financial Protection Bureau (cfpb.gov/)

CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-enter Society After Incarceration

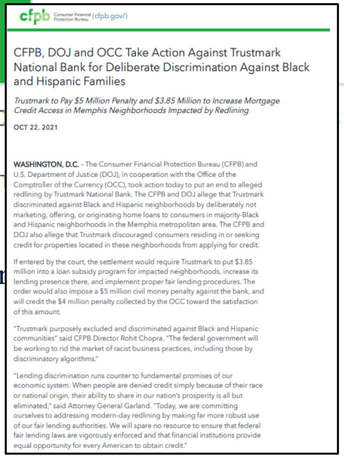
JPay will pay $6 million in consumer redress and penalties

OCT 19, 2021

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) today took action against the prison financial services company JPay for violating the Consumer Financial Protection Act (CFPA) by charging consumers fees to access their own money on prepaid debit cards that consumers were forced to use. JPay also violated the Electronic Fund Transfer Act (EFTA) when it required consumers to sign up for a JPay debit card as a condition of receiving government benefits – in particular, "gate money," which is money provided under state law to help people meet their essential needs as they are released from incarceration. The consent order severely limits the fees JPay can charge on release cards going forward, allowing only inactivity fees after 90 days without card activity. The order also requires the company to pay $4 million for consumer redress and a $2 million civil money penalty.

"JPay siphoned off taxpayer supported benefits intended to help people transitioning out of the corrections system," said CFPB Director Rohit Chopra. "JPay exploited its captive customer base to charge unfair fees that harmed the newly released and their families."

JPay, a Delaware company, headquartered in Miramar, Fla., is a dominant provider of financial services to prisons and jails nationwide. JPay is owned by the private equity firm Platinum Equity Partners. Since 2011, JPay has provided approximately 1.2 million debit release cards to consumers. JPay calls itself "a highly trusted name in corrections," but the company leveraged its relationships with state and local departments of correction to impose fees on consumers exiting the prison or jail system. JPay's fee-bearing debit release card replaced cash or check options previously offered by state departments of correction. In doing so, JPay charged fees to people being released from prison or jail who often have few resources outside of the balance of their prison or jail trust or commissary accounts. In addition, JPay provided



cfpb Consumer Financial Protection Bureau (cfpb.gov/)

CFPB, DOJ and OCC Take Action Against Trustmark National Bank for Deliberate Discrimination Against Black and Hispanic Families

Trustmark to Pay $5 Million Penalty and $3.85 Million to Increase Mortgage Credit Access in Memphis Neighborhoods Impacted by Redlining

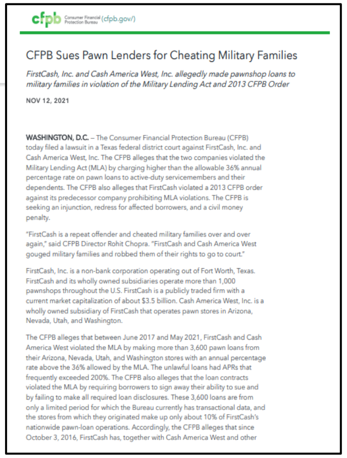
OCT 22, 2021

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) and U.S. Department of Justice (DOJ), in cooperation with the Office of the Comptroller of the Currency (OCC), took action today to put an end to alleged redlining by Trustmark National Bank. The CFPB and DOJ allege that Trustmark discriminated against Black and Hispanic neighborhoods by deliberately not marketing, offering, or originating home loans to consumers in majority-Black and Hispanic neighborhoods in the Memphis metropolitan area. The CFPB and DOJ also allege that Trustmark discouraged consumers residing in or seeking credit for properties located in these neighborhoods from applying for credit.

If entered by the court, the settlement would require Trustmark to put $3.85 million into a loan subsidy program for impacted neighborhoods, increase its lending presence there, and implement proper fair lending procedures. The order would also impose a $5 million civil money penalty against the bank, and will credit the $4 million penalty collected by the OCC toward the satisfaction of this amount.

"Trustmark purposely excluded and discriminated against Black and Hispanic communities" said CFPB Director Rohit Chopra. "The federal government will be working to rid the market of racist business practices, including those by discriminatory algorithms."

"Lending discrimination runs counter to fundamental promises of our economic system. When people are denied credit simply because of their race or national origin, their ability to share in our nation's prosperity is all but eliminated," said Attorney General Garland. "Today, we are committing ourselves to addressing modern-day redlining by making far more robust use of our fair lending authorities. We will spare no resource to ensure that federal fair lending laws are vigorously enforced and that financial institutions provide equal opportunity for every American to obtain credit."



cfpb Consumer Financial Protection Bureau (cfpb.gov/)

CFPB Sues Pawn Lenders for Cheating Military Families

FirstCash, Inc. and Cash America West, Inc. allegedly made pawnshop loans to military families in violation of the Military Lending Act and 2013 CFPB Order

NOV 12, 2021

WASHINGTON, D.C. – The Consumer Financial Protection Bureau (CFPB) today filed a lawsuit in a Texas federal district court against FirstCash, Inc. and Cash America West, Inc. The CFPB alleges that the two companies violated the Military Lending Act (MLA) by charging higher than the allowable 36% annual percentage rate on pawn loans to active-duty servicemembers and their dependents. The CFPB also alleges that FirstCash violated a 2013 CFPB order against its predecessor company prohibiting MLA violations. The CFPB is seeking an injunction, redress for affected borrowers, and a civil money penalty.

"FirstCash is a repeat offender and cheated military families over and over again," said CFPB Director Rohit Chopra. "FirstCash and Cash America West gouged military families and robbed them of their rights to go to court."

FirstCash, Inc. is a non-bank corporation operating out of Fort Worth, Texas. FirstCash and its wholly owned subsidiaries operate more than 1,000 pawnshops throughout the U.S. FirstCash is a publicly traded firm with a current market capitalization of about $3.5 billion. Cash America West, Inc. is a wholly owned subsidiary of FirstCash that operates pawn stores in Arizona, Nevada, Utah, and Washington.

The CFPB alleges that between June 2017 and May 2021, FirstCash and Cash America West violated the MLA by making more than 3,600 pawn loans from their Arizona, Nevada, Utah, and Washington stores with an annual percentage rate above the 36% allowed by the MLA. The unlawful loans had APRs that frequently exceeded 200%. The CFPB also alleges that the loan contracts violated the MLA by requiring borrowers to sign away their ability to sue and by failing to make all required loan disclosures. These 3,600 loans are from only a limited period for which the Bureau currently has transactional data, and the stores from which they originated make up only about 10% of FirstCash's nationwide pawn-loan operations. Accordingly, the CFPB alleges that since October 3, 2016, FirstCash has, together with Cash America West and other

Developing Products and Services that Use Alternative Data – Additional Considerations

- Beware of Pitfall with Lack of AI Implementation Traceability and Records
- Introducing Program Bias into Decision Making.
- Data Sourcing and Violation of Personal Privacy.
- Black Box Algorithms and Lack of Transparency.
- Legal and Regulator Arbitrage and Risk

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For Additional Information

For an index of articles and presentations on consumer financial services related topics by Venable attorneys, see www.Venable.com/cfs.

Thought Leadership

Showing 110 of 735 Results

Chair Kahn says Don't Do the Crime If You Can't Do the Time 3min

November 22, 2021

A hallmark of Chair Lina Khan's tenure thus far at the FTC has been her effort to stoke fear to try to deter conduct that she does not like. The FTC's recent Penalty Offense Notices and the Enforcement Statement on Negative Option Marketing provide examples. Last week, during the Commission's open ...

Update on Consumer Financial Services Investigations and Enforcement 2min

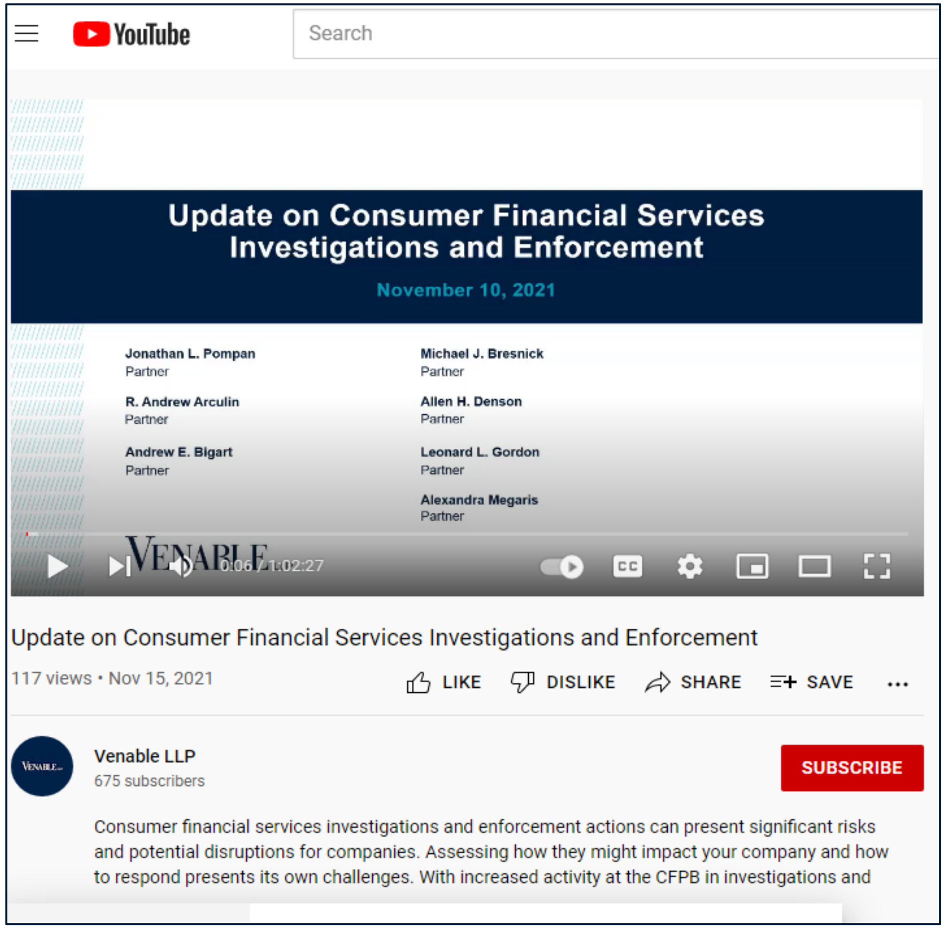
November 17, 2021

Consumer financial services investigations and enforcement actions can present significant risks and potential disruptions for companies. Assessing how they might impact your company and how to respond presents its own challenges. With increased activity at the CFPB in investigations and enforcement, ...

New York Enacts the Consumer Credit Fairness Act, with Immediate Impact on Collections Litigation in the State 4min

November 12, 2021

On November 8, 2021, New York Governor Kathy Hochul signed into law the Consumer Credit Fairness Act (the Act). The Act provides new requirements and prohibitions for debt collection in New York State and reduces the statute of limitations on suits filed by creditors from six years to three years. The ...



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