15 March 2019

The Honorable Mike Crapo, Chairman
The Honorable Sherrod Brown, Ranking Member
U.S. Senate Committee on Banking, House and Urban Affairs
Dirksen 534
Washington, DC 20510

RE: Request for information on use and protection of information

Via submissions@banking.senate.gov

Dear Chairman Crapo and Senator Brown,

The undersigned are among a large group of consumer and civil rights organizations that has submitted a separate group comment (led by National Consumer Law Center) in response to your information request concerning the use and protection of sensitive information by private companies, including credit bureaus. We submit this additional filing concerning the use and protection of sensitive information by the CFPB, a financial regulator.

We are **attaching a comment** that we and many of the same groups filed to the CFPB in its 2018 Request for Information on Data Governance. We believe that the comment is directly responsive to your request and to the request's amplification by the Chairman's questioning on CFPB data practices to CFPB Director Kathy Kraninger at the Semi-Annual report hearing this week.

As we note in that comment attached:

> "Our groups believe that to protect consumers in financial markets, data collection and evaluation play a critical role that must continue. We do not believe there is any reason for the Bureau to stop collecting information nor to restrict its reuse among the various offices and divisions of the Bureau. On the contrary, either action would make it harder for the Bureau to accomplish its main functions and underlying mission.
>
> Nothing in the comprehensive report accompanying this RFI suggests otherwise.[1] In fact, the report describes a well-functioning and evolving data management and governance structure. Longstanding, unsubstantiated external allegations of endemic data privacy breaches inside the bureau are rebutted by the report's finding that any privacy "breaches" were and are *de minimis* and are being addressed under well-coordinated data governance rules. The report shows that the young bureau has shown itself capable of developing and adapting processes to protect the data it collects and to use those data safely and securely, across offices and decisions, to conduct the bureau's statutory responsibilities."

We also call your attention to a comment in that same CFPB docket by a group of **legal scholars and former regulators**, with which we concur.

Thank you for the opportunity to provide our views to the committee on this important matter. If you or your staff have any question concerning this submission, please contact Ed Mierzwinski, U.S. PIRG (edm@pirg.org) or Linda Jun, Americans for Financial Reform (linda@ourfinancialsecurity.org).

(Continued, see next page)

[1] "Sources And Uses Of Data At The Bureau Of Consumer Financial Protection," CFPB report accompanying this RFI, 26 September 2018.

Respectfully submitted,

Americans for Financial Reform
Center for Digital Democracy
Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
National Community Reinvestment Coalition (NCRC)
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
Public Citizen
Reinvestment Partners
U.S. PIRG
Woodstock Institute

ATTACHMENT: Consumer Group Comment to CFPB December 2018, Data Governance RFI

Americans for Financial Reform Education Fund
California Reinvestment Coalition
Center for Digital Democracy
Center for Global Policy Solutions
Center for Responsible Lending
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Legal Services NYC
Long Island Housing Services, Inc.
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
New Jersey Citizen Action
Reinvestment Partners
Tzedek DC
U.S. PIRG
Woodstock Institute

To: Consumer Financial Protection Bureau (CFPB), via Regulations.gov

DATE 27 Dec 2018
RE: Docket No. CFPB-2018-0031

Comments of undersigned Consumer and Civil Rights Groups on Docket No. CFPB-2018-0031 concerning the Consumer Financial Protection Bureau's "Data Governance Program and its Data Collections."

Summary

Our organizations represent the consumers, seniors, servicemembers, veterans, students and underrepresented communities across our nation who rely on the consumer protections that the CFPB was created to support and enforce. It is essential that the CFPB not retreat from its core mission to protect and inform consumers, and to make our financial markets more fair, accountable, transparent and competitive. Continued access, use, sharing and reuse of data is vital to carrying out this mission.

Our groups believe that to protect consumers in financial markets, data collection and evaluation play a critical role that must continue. We do not believe there is any reason for the Bureau to stop collecting information nor to restrict its reuse among the various offices and divisions of the Bureau. On the contrary, either action would make it harder for the Bureau to accomplish its main functions and underlying mission.

Nothing in the comprehensive report [CFPB Data Report] accompanying this RFI suggests otherwise.[1] In fact, the report describes a well-functioning and evolving data management and governance structure. Longstanding, unsubstantiated external allegations of endemic data privacy breaches inside the bureau are rebutted by the report's finding that any privacy "breaches" were and are *de minimis* and are being addressed under well-coordinated data governance rules.[2] The report shows that the young bureau has shown itself capable of developing and adapting processes to protect the data it collects and to use those data safely and securely, across offices and decisions, to conduct the bureau's statutory responsibilities.

Two recent episodes -- one resolved, one not -- demonstrate the need for data to accomplish the Bureau's missions.

First, the impact of restricting data collection can be seen in the previous acting director's decision to freeze data collection, which proved to be unnecessary and unfounded. Freezing data collection froze the machinery of the CFPB and temporarily prevented it from fulfilling its mission.[3]

Conversely, as discussed further below, the previous acting director's decision not to collect available Home Mortgage Disclosure Act (HMDA) data could jeopardize multiple CFPB missions going forward. This decision should also be reversed.

Earlier this year, without any evidentiary justification, the Bureau issued an interpretative and procedural rule that excused most mortgage lenders from reporting the discretionary data points added to the HMDA pursuant to Dodd-Frank in 2015. That decision was an example of selectively following only one of the CFPB's Dodd-Frank statutory objectives: reviewing "outdated, unnecessary, or unduly burdensome regulations . . . in order to reduce unwarranted regulatory burdens," without addressing or balancing its action against any of the Bureau's other

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[1] "Sources And Uses Of Data At The Bureau Of Consumer Financial Protection," [CFPB Data Report], report accompanying this RFI, 26 September 2018, available at https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/, last visited 26 Dec 2018. Note that the page also includes links to all Consumer Bureau "Data governance policies, charters, and data sharing procedures" and links to all Memoranda of Understanding (MOUs) on Data Sharing with other government agencies.

[2] See pages 15-16, CFPB Data Report, 26 September 2018. Nearly all of the CFPB's 371 incidents were "discrete breaches." "For almost all of these breaches, the number of individuals potentially impacted by each breach is most likely one. This means that those breaches each involve separate pieces of information and no multiple data lapses occurred for any breach." Further, "The Bureau also has not experienced a "major incident" as that term is defined by OMB and FISMA."

[3] *See* Jesse Eisinger, *The CFPB's Declaration of Independence,* PROPUBLICA, 15 Feb 2018, available at https://www.propublica.org/article/consumer-financial-protection-bureau-declaration-of-dependence, last visited 24 Dec 2018; James Kim & Bowen "Bo" Ranney, *CFPB data collection freeze impacting CFPB examinations*, Consumer Finance Monitor (Ballard Spahr, 15 Dec 2017) available at https://www.consumerfinancemonitor.com/2017/12/15/cfpb-data-collection-freeze-impacting-cfpb-examinations/ last visited 24 Dec 2018; Lalita Clozel, *CFPB to Resume Private Consumer Data Collection*, the Wall Street Journal, 31 May 2018, available at https://www.wsj.com/articles/cfpb-to-resume-private-consumer-data-collection-1527796179, last visited 24 Dec 2018.

Congressional mandates. The Brookings Institution issued a harsh rebuke.[4] The added data points could assist in Fair Lending examinations and enforcement, could aid in improving lending to small businesses and provide a variety of other benefits to Bureau analysts. Further, even though HMDA data has been collected for decades and Dodd-Frank requires the CFPB to evaluate the costs and benefits, the decision to stop collecting this information did not include any real analysis of purported industry burden to be weighed against the lost benefits of the information's collection and analysis. This decision was not evidence-based. We are concerned about the lack of transparency and failure to provide opportunity for public input in the CFPB's sudden issuance of this interpretative rule that limits data without proper explanation.

Despite these missteps, simply put, the RFI appears to be yet another open-ended request to regulated industries to answer a series of questions in a way that could lead to further restricting data collection and reuse. Both the data freeze and the HMDA restriction served the interests of regulated firms, but not the mission of the Bureau.

The RFI states:

> "The Bureau recently concluded a Call for Evidence in which it sought public comment, through a series of RFIs, on multiple aspects of the Bureau's work. This RFI is not intended to duplicate that work. Accordingly, the Bureau is not seeking comments on the following data or Data Collections that are addressed in other recent Bureau RFIs [including consumer complaints, the public complaint database and CIDs, among others]."

We believe that it is critical that the Bureau continue to collect consumer complaints, continue to provide a public Consumer Complaint Database, continue to issue Civil Investigative Demands (CID)s from companies for research, enforcement and other purposes, and continue to perform myriad other data collection, use, sharing and reuse tasks as appropriate and under its well-established Data Governance framework that further its mission.

We also believe that a true holistic analysis would recognize that the issues in this RFI overlap with and are in no way separate from that "recently concluded…Call for Evidence." Taking this into account, our comments incorporate all our previous RFI comments by reference -- especially to the two RFIs focused directly on data and the complaint database but also to the others. We will also comment on any previous RFI as it relates to the questions raised herein, since this RFI is really a continuation of or a re-opening of that "concluded" call.[5]

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[4] "Beyond eliminating penalties, the announcement included a policy decision to re-examine transactional coverage and possible elimination of discretionary data; suggesting that the Bureau is retreating from its commitment to transparency and its enforcement role. CFPB's HMDA rule sought to expand data reporting to improve fair lending oversight, and enhance accountability for the mortgage industry's lending practices." See also Makada Henry-Nickie and Aaron Klein, *CFPB's retreat from collecting mortgage data should sound alarm bells*, The Brookings Inst., 23 Jan 2018, available at https://www.brookings.edu/research/cfpbs-retreat-from-collecting-mortgage-data-should-sound-alarm-bells/, last visited 24 Dec 2018.

[5] A non-comprehensive list of previous consumer, community and civil rights group responses to previous RFIs is available at Americans for Financial Reform, last visited 21 December http://ourfinancialsecurity.org/consumer-responses-cfpb-rfis/. Similarly, a list of "Comments from Scholars and Regulators" is available at the Digital

Finally, we call your attention to our AFR-led letter dated 30 April 2018, which raised significant concerns with the general RFI process. As we stated in that letter, we remain concerned that this RFI, like the series of other RFIs issued in 2018, has diverted the resources of the agency to a systemic re-evaluation of the very procedures that have made the Bureau successful. The Consumer Bureau's first commitment, spelled out in its mission statement, is to protect consumers, but the questions posed in the RFIs are slanted towards a weakening of the Bureau's role in protecting consumers. The RFIs pose questions that are almost entirely from an industry perspective and are insufficiently specific to elicit meaningful comment. The RFIs hint at changes desired by industry without providing enough detail to inform members of the public who do not have experience with the internal workings of the Bureau or the implications of the questions. This process weighted in industry's favor is not consistent with the CFPB mandate to focus on consumer protection.

Excerpt from the letter:

> "The questions posed in the Requests for Information are slanted towards a weakening of the Bureau's role in protecting consumers. Few, if any, requests are about where or how the Bureau should take stronger action against financial industry abuses.
> [...]
> "Moreover, the RFIs pose questions that are almost entirely from an industry perspective and are insufficiently specific to elicit meaningful comment. The RFIs hint at changes desired by industry without providing enough detail to inform members of the public who do not have experience with the internal workings of the Bureau or the implications of the questions. This process weighted in industry's favor is not consistent with the CFPB mandate to focus on consumer protection.[6]"

In the following comment, we explain the critical need for the Bureau to continue to collect, reuse and share data to accomplish its goals of protecting consumers and making financial markets work while also achieving efficiency in government processes.

I) Robust Collection and Use of Data Are Essential to CFPB's Consumer Protection Mandate

Congress specifically created the CFPB to protect consumers from harm. Congress tasked the CFPB with using its authority to see that "Federal consumer financial law is enforced consistently…to promote fair competition" and that "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."[7] The CFPB's job is "to exercise its authorities under Federal consumer financial law for the purpose of ensuring that…consumers are provided with timely and understandable information to make

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Commons @ Boston University School of Law, last visited 21 December 2018 https://lawdigitalcommons.bc.edu/cfpb-comments/

[6] Joint Letter to CFPB: An Inquiry Process Weighted in Industry's Favor, Americans for Financial Reform *et al*, 30 April 2018, available at http://ourfinancialsecurity.org/2018/04/joint-letter-cfpb-inquiry-process-weighted-industrys-favor/, last visited 26 Dec 2018.

[7] 12 U.S.C. § 5511(a)

responsible decisions about financial transactions…and are protected from unfair, deceptive, or abusive acts and practices and from discrimination."[8]

To carry out this mission of protecting consumers, Congress gave the CFPB six primary functions to carry out its consumer protection mandate: "(1) conducting financial education programs; (2) collecting, investigating, and responding to consumer complaints; (3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets; (4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law; (5) issuing rules, orders, and guidance implementing Federal consumer financial law; and (6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau."[9]

Any proposal to change or restrict the CFPB's data collection and data use and reuse should be evaluated in light of the CFPB's Congressional purpose and goals and its five statutory objectives. Note that these objectives operate together to achieve the Bureau's goals. In particular, objective 3 cannot be read out of context with the other four.

> "(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—(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 regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) 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 (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."[10]

The CFPB must collect and utilize a large volume and variety of data to carry out its consumer protection mandate. Data collection plays a crucial role in carrying out all of the CFPB's statutory functions, and the CFPB rightfully relies on data for direction on what steps the CFPB should take to protect consumers and the marketplace. Data is imperative to understand how markets and products are working for consumers, which undoubtedly relates to CFPB's ability to research, monitor and publish information about markets and consumer products. Similarly, it is essential for the CFPB to collect data on particular issues before it moves forward with rulemaking to understand market trends and identify gaps in consumer protection. Likewise, data guides CFPB's supervisory process and informs CFPB's pursuit of enforcement actions too. Limiting CFPB's access to data within the agency could drastically curtail its effectiveness in protecting consumers and the marketplace, the very purpose for the agency's existence.

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[8] 12 U.S.C. § 5511(b)

[9] 12 U.S.C. § 5511(c).

[10] 12 U.S.C. § 5511(b)

The CFPB has historically identified itself as a data-driven agency, and data should continue to drive its direction on how to best protect consumers and foster a fairer marketplace. Access to comprehensive data has made it possible for the CFPB to identify consumer harms and understand the extent of their effect, and the CFPB uses this data to fulfill its responsibility to protect consumers, minimize regulatory burden, and avoid market distortions. Each CFPB division and each of the CFPB's statutory functions critically depend on data to do their jobs. Any attempt to impede the CFPB's ability to collect data will curtail the CFPB's effectiveness because the agency needs data to do its research, inform its rulemaking, check for compliance, and identify predatory practices that require enforcement. Limiting the CFPB's ability to reuse the data it has internally will cause the CFPB's different divisions to unnecessarily duplicate its work, waste valuable, limited Bureau resources, limit coordination, hinder use of the most effective protection tools, cause gaps in its understanding, and reduce the CFPB's ability to identify and remove harmful practices in the marketplace.

The CFPB has also developed methods of critiquing and reviewing its own analysis of market problems to ensure it uses the best data and methods available and uses it appropriately. Its Research, Markets and Regulation division has established an in-house team of "PhD social scientists from different disciplines that design and conduct foundational, policy-relevant research on consumer finance and household behavior."[11] That team is informed by attending a variety of outside events; further, for the past several years, CFPB has held its own annual research conference featuring papers by outside economists and academic researchers.[12] The Bureau also maintains an Academic Research Council "[to advise us] on research methodologies, data collection, and analytic strategies and provides feedback about research and strategic planning."

II) The CFPB Has Strong Data Privacy Protections

As the CFPB's detailed report demonstrates, the CFPB has several policies and procedures in place to safeguard its data and limit access to highly sensitive and personal data to only those who need to know this information to carry out their part of the CFPB's statutory mandate.[13] The CFPB's current policies already provide adequate protection for the privacy of both financial institutions and consumers by limiting data access within the agency to certain divisions on an as-needed basis. For example, any supervisory information shared with the research team must not include identifying information without prior approval.

The CFPB's data policies are guided first by 12 CFR 1070, the rule governing confidentiality of information, which prohibits dissemination of confidential information outside of the agency except in certain prescribed circumstances. To provide further guidance on how to use and protect data, the CFPB established a data governance program that determines how data is shared within the agency and established Bureau-wide standards for how data is collected, used,

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[11] CFPB Researchers, available at https://www.consumerfinance.gov/data-research/cfpb-researchers/, last visited 26 Dec 2018.

[12] See the CFPB's archive of CFPB Research Conferences, available at https://www.consumerfinance.gov/data-research/cfpb-research-conference/ , last visited 26 Dec 2018.

[13] CFPB Data Report, *Id.,* Sources and Uses of Data at the Bureau of Consumer Financial Protection," 26 September 2018, available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_sources-uses-of-data.pdf , last visited 26 Dec 2018.

accessed, and disclosed. The CFPB's Policy on Information Governance dictates what information is classified confidential and how data should be secured and managed. Each division within the CFPB also has its own standards that supplement the overall data governance policy. The regulations, data governance policies and procedures, and each division's own standards all work together to protect confidentiality. The CFPB has also made these policies public through this report and this transparency allows all who come in contact with the CFPB to access the Bureau's policies in handling data.

The CFPB's mission requires the Bureau to collect and use a significant amount of data for a variety of its statutory functions, but as the CFPB's report details, there are thorough and thoughtful policies to protect privacy and safeguard its handling. Data is regularly shared within the CFPB as it is necessary for the various offices to do their job, and only shared between divisions, employees, and other agencies as needed. All data that is collected, shared, or reused at the CFPB is carefully tailored to be used only as needed for the purpose of better protecting consumers and the marketplace.

The best example of the CFPB's effectiveness in handling data is simply the absence of data problems at the CFPB. Since its inception, the CFPB has had very few problems with data and the reported issues were *de minimis*. While Acting Director Mulvaney cited privacy concerns in his attempt to freeze data collection, the CFPB's own Data Report[14] indicates that the CFPB's privacy protections are adequately protecting confidential data from unauthorized use. The Data Report notes nearly all of the CFPB's 371 incidents were "discrete breaches."

> "For almost all of these breaches, the number of individuals potentially impacted by each breach is most likely one. This means that those breaches each involve separate pieces of information and no multiple data lapses occurred for any breach." Further, "The Bureau also has not experienced a "major incident"as that term is defined by OMB and FISMA."[15]

Further, the CFPB Data Report indicates that the CFPB is "not aware of any attacks from outsiders that resulted in third parties gaining access to non-public data without appropriate authorization" and the CFPB has not had any major incidents with data.[16]

The CFPB Data Report also cites the most recent Inspector General report:

> "Overall, we found that the CFPB has substantially developed, documented, and implemented a privacy program that addresses applicable federal privacy requirements and security risks related to collecting, processing, handling, storing, and disseminating sensitive privacy data."[17]

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[14] CFPB Data Report, *Id.* at p. 12-15.

[15] CFPB Data Report, *Id*. at p 15-16.

[16] CFPB Data Report, *Id.* at 15.

[17] Excerpt from Independent Audit of the Consumer Financial Protection Bureau's Privacy Program, Off. of Inspector Gen., 2017-IT-C-008, Report on the Independent Audit of the Consumer Financial Protection Bureau's Privacy Program, (Feb.14,2018), available at https://oig.federalreserve.gov/reports/cfpb-privacy- program-feb2018.pdf , last visited 26 Dec 2018, cited in CFPB Data Report, page 19.

Given the strong protections that the CFPB already has in place to protect privacy, any further restriction on sharing data between divisions would curtail the CFPB's effectiveness in doing its job and should not be considered. General privacy concerns, especially without data or other evidence supporting them, must not be used as a vague excuse to hold back the CFPB from doing its job to protect consumers from harm.

III) Data Should Be Used for Multiple Purposes and Across the Government When Possible

While all precautions should be taken to protect confidentiality and highly sensitive information, it is most efficient for the CFPB to use the data it has for all applicable statutory purposes to save resources. The CFPB's internal policies and memorandums of understanding with other agencies facilitate careful sharing that allows multiple parts of our government to do their job with a more complete picture of the market and the problems consumers face that may affect other agencies as well as the CFPB.

Part of the President's own Management Agenda prioritizes cross-agency collaboration to share information and work together to "develop policies and procedures and incentivize investments that enable stakeholders to effectively and efficiently access and use data assets by: 1) improving dissemination, making data available more quickly and in more useful formats; (2) maximizing the amount of non-sensitive data shared with the public; and (3) leveraging new technologies and best practices to increase access to sensitive or restricted data while protecting the privacy, security, and confidentiality, and interests of data providers."[18]

In line with the President's Federal Data Policy, the CFPB has developed several effective policies and procedures to handle data safely and effectively. The CFPB should continue efforts to make data more available and accessible to the public and to other agencies.

When the Bureau collects Dodd-Frank authorized data to respond to consumer complaints, during supervisory exams or to address civil investigative requirements, the reuse of this data is the most efficient way to enhance, support or supplement other Bureau supervisory, enforcement, regulatory and educational efforts and should be encouraged.

> [The Bureau has acknowledged that] "The analysis or insights derived from the data one Bureau office collects can be useful to help inform the work of other offices in the Bureau ... data obtained for a particular purpose may prove relevant to work being conducted by another division for a different purpose. This has occurred most frequently with respect to data collected by Supervision for purposes of supervisory exams and later considered potentially relevant for research, market monitoring, rulemaking, or the assessment of significant rules, all of which is led by Research, Markets and Regulation.[19]

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[18] See President's Management Agenda, https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf (pg. 7 and 16), available at https://www.performance.gov/PMA/PMA.html (undated, last updated 18 Dec 2018, last visited 27 Dec 2018).

[19] CFPB Data Report, *Id.* at p. 40-41

Information that is gathered by one arm of the Consumer Bureau but benefits another of the agency's statutory functions should remain available to other departments to carry out their duties as effectively and efficiently as possible. For example, if a pattern of predatory behavior is revealed during a supervisory exam or upon review of numerous consumer complaints the enforcement and/or rulemaking divisions should use that data to pursue corrective action and to hold financial institutions accountable. The ability to share and reuse data, where necessary, allows the Bureau to detect and analyze future risks to fulfill its primary function of protecting consumers.

Section 1022(b)(2) of Dodd-Frank mandates that a comprehensive impact analysis be carried out before any rulemaking activity.[20] That analysis requires the Consumer Bureau to consider the rule's costs and its benefits. That analysis, of course, must be data-driven.

If the CFPB Markets team uncovers a questionable or concerning practice, as part of its data gathering duties on how a market works, that branch must maintain the ability to share that data with other Bureau branches. It is in the best interest of the firm, the industry and the public that the Bureau be able to share that data with appropriate other branch(es) of the agency to ensure that other parts of the Bureau are well-informed and that the right tool is used to address whatever concerns arise. Sharing a potential violation or bad practice might be best addressed by the Supervision team, rather than the Enforcement division. Different divisions that understand each other's duties and can direct data to the most appropriate department will use agency resources most efficiently and avoid redundant investigations.

In fact using data for multiple purposes and across agencies is standard. Numerous state and federal agencies, including the Bureau, share complaint data with the FTC's Sentinel system to enhance investigations and prevent future harmful behavior. In fact, Dodd-Frank expects data sharing among agencies from consumer complaints to supervisory examination reports.[21]

Other agencies have used and shared data across divisions and across agencies. For example, FEMA has improved delivery of disaster assistance, with the support of 16 federal government partners, by sharing data to improve assistance, reduce the burden on disaster survivors and avoid duplicate disaster assistance requests.[22]

Similarly, a recent FTC report on data brokers relied on data obtained through Orders to File Special Reports under Section 6(b) of the FTC Act issued to nine data broker firms, on analysis derived from previous enforcement actions against data brokers and on a variety of public sources of information. The result was a comprehensive survey of the ways that data brokers themselves collect information from public and government sources and a set of recommendations for policymaker reforms (unlike the CFPB, the FTC has extremely limited rulemaking authority and no supervisory authority).[23]

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[20] 12 U.S.C. § 5512(b)(2)

[21] 12 U.S.C. §§ 5512(c)(6)(B)-(C), 5514(b)(3), 5515(e)(1)(C), 5516(b)(1)

[22] See, for example, "*Disaster Assistance Program Coordination*," Project on Open Data, 24 Oct 2012, available at https://project-open-data.cio.gov/fema-case-study/, last visited 26 Dec 2018.

[23] Report, "Data Brokers, A Call for Transparency and Accountability," The Federal Trade Commission, May 2014, available at https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf, last visited 26 Dec 2018.

Similarly, the CFPB research team often conducts and publishes research reports providing an overview of a particular part of the financial marketplace. One such report was based on studies conducted in development of the CFPB's larger participant rule for supervision of consumer reporting agencies (credit bureaus):

> "On July 20, 2012 the CFPB published its larger participant rule permitting it to supervise companies with annual receipts from "consumer reporting," as defined in the rule, of over $7 million. Prior to the rule's effective date, the CFPB's Office of Deposits, Cash, Collections and Reporting Markets (DCCR) consulted existing reports, industry, and public sources in order to be able to depict key dimensions of, and processes in, the reporting and disputing of information in the U.S. credit reporting system. This paper summarizes learnings from DCCR's research and analysis. It is intended as a public service to provide basic descriptions of, and statistics regarding, the underlying processes by which consumer data is reported, matched to consumer files, and reviewed when consumers dispute its accuracy."[24]

Further, as discussed above, enhanced use of HMDA data by the CFPB is another instance where data used by various arms of the Bureau would be of significant value to multiple branches to meet the mission of oversight duties in fair lending, in supervision of the mortgage market and if necessary in the enforcement division.

> "Expanding HMDA reporting to include pricing and underwriting data is consequential to understanding market trends, assessing institutional lending patterns (particularly when alleging discrimination), and policing predatory practices in niche markets."[25]

Should the new CFPB director reverse course from the former acting director's decision to retreat on the enhanced use of HMDA data to root out discrimination and hold mortgage companies accountable, this data will be highly beneficial to the Bureau. However, under current restrictions, the lack of expanded HMDA data hurts the Bureau's enforcement abilities.

IV) Suggestions for Improvements to Bureau Processes for Collecting, Managing and Releasing Data

The RFI (page 7) requests advice on improvements to Bureau processes for collecting, managing and releasing data.

We concur with the Bureau's intent for using public domain data. The report acknowledges that

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[24] See, for example, the CFPB report "Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data," Dec 2012, available at https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf, last visited 26 Dec 2018.

[25] Makada Henry-Nickie and Aaron Klein, *CFPB's retreat from collecting mortgage data should sound alarm bells*, The Brookings Inst., 23 Jan 2018, available at https://www.brookings.edu/research/cfpbs-retreat-from-collecting-mortgage-data-should-sound-alarm-bells/, last visited 24 Dec 2018.

"Public data … are available for and intended for a variety of analyses by anyone within government or the general public and they generally do not contain sensitive data."[26]

The Bureau's public complaint database is an ideal example of how this process works well. Consumer Response should be commended for developing a powerful tool which can be used by all the divisions and offices of the Consumer Bureau to achieve its mission. After appropriate scrubbing and restrictions are placed on it, elements of that same tool -- in the form of a nearly-1.2-million public complaints (to date) in the database, are provided to consumers, researchers, academics and even other firms.[27] The tool helps individual consumers to protect themselves in the marketplace and alert others; data in the complaint database are also meant to be available for individuals, researchers, even other companies to study and evaluate patterns of problematic practices and discern if there is reason to combat/address practices that show signs of unfair, deceptive, or abusive behavior.

Consumer-driven tools, such as the CFPB's online complaint database, use a free market approach to encourage companies to police themselves and lessen the need for government intervention. The visibility of the data included in complaint information gives companies an incentive to treat consumers fairly and correct problems promptly on their own, potentially avoiding regulatory or enforcement activity.

Moreover, the agency concedes that "The Bureau views data collected through Consumer Response as intended to be collected for multiple purposes beyond simply resolving additional complaints, and therefore does not consider multiple uses of this data to be reuse."[28]

As the Bureau's 2016 Consumer Response Annual Report stated (emphasis added):

"Consumer Response <u>shares</u> complaint data, analyzes, and offers insights to other offices to help the Bureau:

- Understand problems consumers are experiencing in the marketplace and the impact of those experiences on their lives;
- Develop tools to empower people to know their rights and protect themselves;
- Scope and prioritize examinations and ask targeted questions when examining companies' records and practices;
- Identify and stop unfair practices before they become major issues; and
- Investigate issues and take action when we find problems."[29]

Nevertheless, the RFI also "invites comments on the Bureau's use of data collected through consumer response, supervisory and enforcement activities."

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[26] CFPB Data Report, *Id.* at p. 42

[27] See CFPB Public Consumer Complaint Database, available at https://www.consumerfinance.gov/data-research/consumer-complaints/search/ , last visited 27 Dec 2018.

[28] CFPB Data Report, *Id.* at p. 51

[29] P. 48, Consumer Response Annual Report 2016, publ. March 2017, Available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF, last visited 24 Dec 2018

In your efforts to improve the process for collecting, managing and releasing data, we strongly encourage the Bureau to make more robust use of the Consumer Response-related data currently collected. Since November 2017, the Consumer Bureau has amassed feedback on the outcomes of company complaint handling. The CFPB could enhance its data collection and complaint processes by making the newest portion of the system, the Feedback portion, publicly available.

Complaint outcomes offer invaluable information to individuals who are trying to evaluate a company's commitment to its customers. Consumers who use the complaint process as a pre-purchase tool would be well served to review the detailed feedback that individuals provide once they've received a response to a complaint filed with the CFPB. Consumer satisfaction or dissatisfaction in a complaint's outcome – and the *details why*--are precisely the kind of information consumers value to indicate if a company has a habit of standing behind its products and services.

This excellent addition to the complaint process provides firsthand feedback for consumers to determine whether a company stands behind its services and customer service claims. It allows the public to seek out firms that have positive complaint resolution practices.

The CFPB's system permits for both positive and negative feedback from consumers which allows businesses that cater to customers to stand out in this sort of system, and for other companies to strive to achieve that recognition through the feedback process. Sharing complaint outcome details with the public would enhance the valuable complaint tool the Bureau currently offers, and reduce the need to rely on its supervision and enforcement authority. Making consumer complaint feedback more transparent inspires corporate accountability and encourages the market to monitor itself.

Public access to this final portion of a complaint's lifecycle offers the public the opportunity to hold the CFPB accountable as well. Direct consumer feedback helps the CFPB better recognize companies that are consistently providing excellent customer service and companies that are falling short. Firsthand feedback on complaint outcomes can alert the Bureau and businesses to remaining unresolved problems, communications breakdowns, and the potential existence of festering harmful trends.

Another critical area of data collection to inform the CFPB's work is for it to complete the requirements on small business data collection required by Section 1071 of the Dodd-Frank Act.[30] As the California Reinvestment Coalition has explained:

> "Dodd Frank Section 1071 data would bring much needed transparency into who is receiving small business loans- and who is not. In the same way that HMDA data created greater transparency in the home lending market, 1071 small business data will shed light

[30] See "CFPB Explores Ways to Assess the Availability of Credit for Small Business", 10 May 2017, available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-explores-ways-assess-availability-credit-small-business/, last visited 26 Dec 2018.

> on small business lending trends, highlight disparities, and likely lead to increased lending."[31]

The CFPB should also take efforts to make the complaint database more accessible to small businesses and conduct outreach so that small businesses are aware of this tool and how they can use it. Collecting data from small business owners through the complaint database would enhance the CFPB's ability to carry out its responsibilities to enforce fair lending laws and better inform the Section 1071 rulemaking process as it moves forward.

VI) Conclusion -

Thank you for the opportunity to comment on the important role that data play in the operation of the Consumer Financial Protection Bureau. As noted previously, the Data Report accompanying this RFI describes a well-functioning and evolving data management and governance structure. Nothing in the report suggests that there is any need to curtail any of the CFPB's data operation. In fact, it is critical that the Bureau continue to collect, share within its divisions, with other federal agencies and the states, and reuse data to accomplish its mission.

Going forward, the Consumer Bureau must retain and enhance its abilities to collect, share, use and reuse data, including new data streams and data sets. The Bureau must be prepared to respond, especially as financial innovation and fintech companies create new challenges in the financial marketplace.

Sincerely,

Americans for Financial Reform Education Fund
California Reinvestment Coalition
Center for Digital Democracy
Center for Global Policy Solutions
Center for Responsible Lending
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Legal Services NYC
Long Island Housing Services, Inc.
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
New Jersey Citizen Action
Reinvestment Partners
Tzedek DC
U.S. PIRG
Woodstock Institute

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[31] News Release, "*California Reinvestment Coalition Goes To Washington*," 7 April 2017, available at https://californiareinvestment.com/2017/04/07/california-reinvestment-coalition-goes-to-washington/, last visited 26 Dec 2018.