

Developments in Fintech: The CFPB Product Sandbox and No-Action Letter Policy, State Sandboxes, and Federal Actions

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INTRODUCTION

Financial technology (“fintech”) services companies have continued to innovate, and regulatory agencies have continued to react to their innovations, as discussed in earlier *Annual Surveys*.¹ During the past year, the Consumer Financial Protection Bureau (“CFPB”) issued a formal proposal relating to its revised policy on no-action letters and its financial service product sandbox (“Product Sandbox”).² State legislatures also continue to enact similar regulatory sandboxes.³ The Federal Deposit Insurance Corporation (“FDIC”) has weighed in by creating an Office of Innovation to help banks compete with fintech companies, highlighting the need for depository institutions to be given the ability to innovate in order to keep up with the activities of non-depository financial services companies.⁴ Finally, the General Accounting Office (“GAO”) has issued a study on the use of alternative data by fintech companies, including recommendations regarding how the federal regulatory agencies should address its use.⁵

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1. See Robert Savoie & Philip (PJ) Hoffman, *The Evolving Regulatory Response to Innovation: Special Purpose National Bank Charters, Regulatory Sandboxes, and No-Action Letters*, 74 BUS. LAW. 527 (2019) (in the 2019 *Annual Survey*) [hereinafter Savoie & Hoffman, *Innovation*]; Robert Savoie & Philip (PJ) Hoffman, *Marketplace Lending and Fintech: The States Object*, 73 BUS. LAW. 509 (2018) (in the 2018 *Annual Survey*); Robert Savoie & Philip (PJ) Hoffman, *Marketplace Lending Developments: A Survey of Federal and State Issues Confronting the Industry*, 72 BUS. LAW. 529 (2017) (in the 2017 *Annual Survey*).

2. Policy on No-Action Letters and the BCFP Product Sandbox, 83 Fed. Reg. 64036 (proposed Dec. 13, 2018) (to be codified at 12 C.F.R. ch. X) [hereinafter CFPB Sandbox Proposal].

3. See S. 161, 80th Sess. (Nev. 2019) (to be codified in scattered sections of NEV. REV. STAT.); UTAH CODE ANN. §§ 13-55-101 to 13-55-108 (West Supp. 2019); H.R. 57, 65th Leg., Gen. Sess. (Wyo. 2019) (to be codified at WYO. STAT. ANN. §§ 40-28-101 to 40-28-109 (taking effect Jan. 1, 2020)).

4. See Neil Haggerty, *FDIC to Launch Innovation Office to Help Banks Compete with Fintechs*, AM. BANKER (Oct. 23, 2018, 5:36 PM), <https://www.americanbanker.com/news/fdic-to-launch-innovation-office-to-help-banks-compete-with-fintechs>.

5. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-111, FINANCIAL TECHNOLOGY: AGENCIES SHOULD PROVIDE CLARIFICATION ON LENDERS’ USE OF ALTERNATIVE DATA (Dec. 2018), <https://www.gao.gov/assets/700/696149.pdf> [hereinafter GAO REPORT].

THE CFPB'S POLICY ON NO-ACTION LETTERS AND THE PRODUCT SANDBOX

The CFPB telegraphed its desire to create a regulatory sandbox in July 2018 when it hired Paul Watkins, the lead architect of the first state regulatory sandbox, from the Arizona Office of the Attorney General.⁶ Less than five months later, the CFPB formally proposed to revise its policy on no-action letters and to create the Product Sandbox.⁷ No-action letters were designed to recognize the value offered by innovative financial technologies by the CFPB undertaking not to recommend enforcement or supervisory action with respect to the subject matter of the letter.⁸ Regulatory sandboxes are designed to allow regulators to waive certain regulatory requirements or provide a safe harbor for innovative financial products that may not fully comply with current rules and guidance that were created to deal with older types of financial products.⁹

The stated purpose for the revised no-action letter policy and the Product Sandbox is to allow the CFPB to more effectively ensure that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed.¹⁰ The CFPB believes that this will allow the markets for consumer financial products and services to operate transparently and efficiently, and facilitate access and innovation.¹¹ As noted in the previous *Survey*, the CFPB has issued only one no-action letter under its 2016 policy.¹² The CFPB believed that this outcome strongly suggested that the no-action letter process and the relief available under the 2016 policy were inadequate to incentivize companies to participate in the program.¹³ The CFPB chose to revise the policy in two ways, by modifying that process and by adopting the Product Sandbox.¹⁴ The stated goals of the revised policy are to streamline the no-action letter application process, update the CFPB's processing of applications, expand the types of statutory and/or regulatory relief available for recipients of a no-action letter, specify procedures for an extension where the relief provided is of limited duration, and provide for coordination with existing or future programs offered by other regulatory agencies for the purpose of facilitating innovation.¹⁵ This survey will discuss the revised no-action letter policy first, followed by a discussion of the Product Sandbox.

6. See Press Release, Consumer Fin. Prot. Bureau, Bureau of Consumer Financial Protection Announces Director for the Office of Innovation (July 18, 2018), <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-director-office-innovation/>.

7. See CFPB Sandbox Proposal, *supra* note 2, at 64036.

8. See Policy on No-Action Letters; Information Collection, 81 Fed. Reg. 8686, 8692 (Feb. 22, 2016); Savoie & Hoffman, *Innovation*, *supra* note 1, at 534–35.

9. See Savoie & Hoffman, *Innovation*, *supra* note 1, at 531.

10. CFPB Sandbox Proposal, *supra* note 2, at 64036.

11. *Id.*

12. *Id.*; see Savoie & Hoffman, *Innovation*, *supra* note 1, at 535.

13. CFPB Product Sandbox, *supra* note 2, at 64036.

14. *Id.* at 64037.

15. *Id.*

NO-ACTION LETTER POLICY

The CFPB restructured its no-action letter policy in several key ways. The CFPB first identified several aspects of its prior policy that appeared redundant or unduly burdensome.¹⁶ It determined that it could reduce the burden of the application process by focusing on the quality and persuasiveness of the application, with increased emphasis on the potential benefits of the product or service in question, the extent to which the applicant identified and controlled for the potential risks to consumers, and the degree to which a letter is needed.¹⁷ Due to these changes, the CFPB self-imposed an expected timeframe of sixty days within which to grant or deny an application from the date it deemed the application complete.¹⁸

In addition, the CFPB has removed the data-sharing commitment relating to the product or service subject to the application, it revised the policy to have a default expectation that the no-action letters are not inherently limited in duration, and it will evaluate applications in part on that basis.¹⁹ The CFPB also restructured the policy to have no-action letters be issued by duly authorized officials at the CFPB, as opposed to the current policy where the letters are standard staff-level recommendations.²⁰ The policy now has an explicit acknowledgement that the CFPB may coordinate with other regulatory agencies that offer no-action letters or similar relief.²¹

APPLICATIONS FOR NO-ACTION LETTERS

The CFPB defines a no-action letter as a document provided to a particular entity or entities, based upon particular facts or circumstances, through which the CFPB exercises its discretionary supervision and enforcement authority by providing no-action relief.²² An application should include several items: the applicant must identify the entity or entities applying for the no-action letter; the application must include a description of the product or service it provides, including an explanation of how the product or service functions, the terms upon which it will be offered, and the manner in which it is offered or provided; the applicant must explain the potential consumer benefits of either the product or service itself, or the manner in which it is offered; an applicant must explain the potential consumer risks raised by the introduction of the product or service itself, or the way in which it is offered, and how those risks will be mitigated; the application must identify the applicable laws and regulations from which relief is sought and explain the potential uncertainty or limitation that would be addressed; any request for confidentiality must address the availability of such

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 64039.

treatment under the applicable law and include a separate letter analyzing such request; and applicants must specifically identify any other regulatory agencies with which the CFPB should coordinate.²³ The CFPB also acknowledged the potential inability of trade associations, service providers, or other third parties to submit complete applications.²⁴ The CFPB encouraged any such entity to submit an application in order to obtain a provisional no-action letter subject to the submission of additional information and the CFPB's later issuance of a standard no-action letter.²⁵

The CFPB will evaluate applications based upon their quality and persuasiveness.²⁶ The most important information for this evaluation will be the explanation of the benefits of the product or service, the risks of the product or service, and the analysis of the laws or regulations from which relief is sought.²⁷

ISSUANCE AND REVOCATION OF NO-ACTION LETTERS AND COORDINATION WITH OTHER REGULATORY AGENCIES

The CFPB will issue no-action letters signed by the assistant director or other authorized members of the Office of Innovation.²⁸ No-action letters will identify the recipient, describe the subject matter and product or service, and state that the letter is limited to circumstances where the recipient offers the product or service only as described.²⁹ The letters will be limited to the recipients and will not apply to other similarly situated companies.³⁰ They will require the recipient to inform the CFPB of material changes to the information included in the application that could increase the risk of material, tangible consumer harm.³¹ The letters will include any other limitations or conditions imposed by the CFPB, and whether the CFPB intends to publicly disclose information about the letter.³² No-action letters will also include a statement that, subject to good faith and substantial compliance with the terms and conditions of the letter, the CFPB will not make supervisory findings or take enforcement actions against the recipient relating to the product or service subject to the letter.³³

The CFPB contemplates that no-action letters may be revoked under certain circumstances. The no-action letters will provide that any revocation, other than for the recipient's failure to substantially comply in good faith with the terms and conditions of the letter, would be prospective only, and thus would not include an action to impose retroactive liability upon the recipient.³⁴ The

23. *Id.*

24. *Id.*

25. *Id.* at 64039–40.

26. *Id.* at 64040.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

CFPB noted that it anticipates revocation to be rare, given its review of no-action programs administered by other regulatory agencies.³⁵ The contemplated reasons for revocation are: the applicant's failure to substantially comply in good faith with the terms and conditions of the letter; a CFPB determination that the recipient's offering of the described product or service is causing material, tangible harm to consumers; or a CFPB determination that the legal uncertainty that was the basis for a no-action letter has changed as a result of a statutory change or a Supreme Court decision.³⁶ The CFPB will notify the no-action letter recipient of the grounds for revocation and will permit an opportunity to respond.³⁷ The recipient will also be given an opportunity to cure any non-compliance with the terms and conditions of the letter if that is the basis for revocation.³⁸ The CFPB would provide written reasons for the revocation and would give the recipient a reasonable period to wind down the product or service, unless the revocation was based upon the product or service causing consumer harm and allowing a wind-down period would increase consumer harm.³⁹

The CFPB is interested in coordinating with state regulatory agencies that issue similar forms of no-action relief.⁴⁰ Accordingly, the CFPB intends to enter into agreements, where possible, to coordinate the issuance of no-action letters with state and federal regulatory agencies.⁴¹ The CFPB intends to make no-action letters publicly available on its website along with, where appropriate, a version or summary of the application.⁴² The CFPB notes that it may be restricted from revealing certain information pursuant to applicable laws limiting the disclosure of confidential information by governmental agencies.⁴³ Accordingly, the CFPB anticipates that it will be limited in its ability to disclose much of the information relating to the explanation of the benefits of the product or service, the risks of the product or service, including subsequent updates of such information relating to consumer harm, and the analysis of the laws or regulations from which relief is sought.⁴⁴

THE CFPB'S PRODUCT SANDBOX

The Product Sandbox will provide a broader range of regulatory relief and certainty than the no-action letter policy, with some exceptions.⁴⁵ The Product Sandbox would focus on a defined time period when the protections will be granted.⁴⁶ The CFPB anticipates that a two-year period would generally be

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 64041.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 64037.

46. *Id.*

appropriate in most instances.⁴⁷ The Product Sandbox would require applicants to commit to data sharing with the CFPB regarding the products or services offered through the Product Sandbox.⁴⁸ The structure of the Product Sandbox is as follows.

PRODUCT SANDBOX RELIEF AND APPLICATION PROCEDURES

The Product Sandbox will offer three types of relief. First, an applicant is eligible under the Product Sandbox for the same form of no-action letter relief described above.⁴⁹

Second, the Product Sandbox will provide formal approval for the product under statutory safe harbors contained in the Truth in Lending Act, Equal Credit Opportunity Act, and Electronic Funds Transfer Act.⁵⁰ The CFPB would condition this safe harbor determination on the good-faith compliance with certain terms and conditions and specify the legal authority and rationale for the issuance of the approval.⁵¹ Due to the nature of a safe harbor under federal law, a recipient would be immune from federal and state enforcement actions, as well as private lawsuits, while operating within the terms and conditions of the approval.⁵²

Third, the Product Sandbox will provide relief in the form of formal exemptions by regulatory order.⁵³ An exemption is a type of relief that releases a company from the obligation to comply with a particular requirement. The Product Sandbox would include formal exemptions from statutory provisions as well as corresponding regulations, which would thus release companies from the obligations to comply with those statutes and regulations.⁵⁴ The legal mechanism by which these exemptions would be issued consists of existing statutory exemption-by-order provisions enacted by Congress that allow the CFPB to grant such exemptions.⁵⁵ The CFPB also intends to grant relief from regulations that do not mirror the corresponding statutory provisions by using its rulemaking authority or other general authority, such as regulatory exemptions.⁵⁶ The exemption will require good-faith compliance with certain terms and conditions in order for the recipient to be exempt from specified statutory or regulatory provisions in connection with the product or service as described.⁵⁷ As with the safe harbor approval, a recipient of such an exemption would be immune

47. *Id.*

48. *Id.*

49. *Id.* at 64042.

50. *Id.* at 64041 & n.61 (citing 15 U.S.C. §§ 1640(f), 1691e(e), 1693m(d)).

51. *Id.* at 64041–42.

52. *Id.* at 64042.

53. *Id.*

54. *Id.*

55. *Id.* at 64042 & nn.64–65 (citing 12 U.S.C. § 1831t(d); 15 U.S.C. §§ 1639(p), 1640(f), 1691c-2(g)(2), 1691e(e), 1693m(e)).

56. *Id.* at 64042 & n.66 (citing 12 U.S.C. § 5532(e)).

57. *Id.* at 64042.

from federal and state agency action and private litigation when operating in conformity with the exemption.⁵⁸

Product Sandbox applications must include much of the same information as no-action letter applications, such as identification of the applicant, a description of the product or service, an analysis of the laws and regulations with respect to which relief is sought and a description of the uncertainty or barrier at issue, a discussion of any request for confidential treatment or coordination with other regulatory agencies, and provisions for trade associations, service providers, and other third parties.⁵⁹ The application must address the requested duration of participation in the Product Sandbox and any other limitations on participation, such as limitations on the volume of transactions, the number of consumers, or geographic scope.⁶⁰

The Product Sandbox also asks for a more robust description and analysis of the benefits and harms raised by an application.⁶¹ An application should include an explanation of the potential consumer benefits of the product or service and the manner in which it is offered, and it should suggest metrics for evaluating whether those benefits are actually realized.⁶² The explanation of the potential consumer risks and plan for mitigation of those risks must include plans for addressing unanticipated consumer harms and the amount of company resources available to provide restitution for material, quantifiable, economic harm to consumers caused by the product or service.⁶³

The CFPB will evaluate an application for the Product Sandbox based upon the quality and persuasiveness of the application, just as with the no-action letter policy.⁶⁴ The CFPB will put particular emphasis on the explanations of potential benefits and harms and the legal analysis of the applicable laws and regulations from which relief is sought.⁶⁵

ADMISSION TO THE PRODUCT SANDBOX AND COORDINATION WITH OTHER REGULATORY AGENCIES

The CFPB will grant admission to the Product Sandbox through a document that sets forth the terms and conditions for a recipient's participation in the Product Sandbox.⁶⁶ The document will identify the recipient, state the subject matter and scope of the relief given, explain the limitation of the document to the described product or service, and limit its applicability to only the recipient.⁶⁷ The document will require the recipient to report specified information about the

58. *Id.*

59. *Id.* at 64042–43. These portions of the application are substantially similar to those described for no-action letters, and thus are not described in detail here.

60. *Id.* at 64042.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 64043.

65. *Id.*

66. *Id.*

67. *Id.*

effects of the product or service on complaint patterns, default rates, and similar metrics so that the CFPB can detect any material, tangible consumer harm.⁶⁸ The document will reflect a commitment by the recipient to compensate consumers for material, quantifiable, economic harm caused by the product or service as contemplated.⁶⁹ Any other applicable limitations or conditions will be specified, along with the nature and extent of the recipient's data sharing commitment and the extent to which information about the recipient and its participation in the Product Sandbox will be publicly disclosed.⁷⁰ Finally, the document will reflect a commitment to the relief granted, and provide commitments similar to the no-action letter policy regarding a lack of enforcement against a recipient who complies in good faith with the terms and conditions document and revocation.⁷¹ Product Sandbox participants may seek extensions of eligibility for participation.⁷²

STATE FINANCIAL SERVICES REGULATORY SANDBOXES

State legislatures have also passed new laws creating regulatory sandboxes. As discussed in the previous *Survey*, Arizona was the first state to establish a regulatory sandbox program through a law enacted in March 2018.⁷³ Since its establishment, the Arizona sandbox has hosted fintech companies offering wallet payment systems and blockchain enabled vehicle title loans, among others.⁷⁴ Nevada, Utah, and Wyoming also created their own regulatory sandboxes in an effort to increase innovation in the financial services space.⁷⁵

In January 2020, Nevada will launch its Regulatory Experimentation Program.⁷⁶ This program will offer participants the opportunity to test innovative financial products or services with up to 7,500 Nevada residents.⁷⁷ Only products and services governed by Nevada law related to escrow agencies, mortgage brokering, lending, and servicing, and money transmission are eligible for the

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 64043–44.

72. *Id.* at 64044.

73. See Savoie & Hoffman, *Innovation*, *supra* note 1, at 532; see also ARIZ. REV. STAT. ANN. §§ 41-5601 to 41-5612 (2018), amended by H.R. 2177, 54th Leg., 1st Reg. Sess. (Ariz. 2019).

74. See *Sandbox Participants*, ARIZ. ATT'Y GEN., <https://www.azag.gov/fintech/participants> (last visited Nov. 15, 2019).

75. See S. 161, 80th Sess. (Nev. 2019) (to be codified in scattered sections of NEV. REV. STAT.); UTAH CODE ANN. §§ 13-55-101 to 13-55-108 (West Supp. 2019); H.R. 57, 65th Leg., Gen. Sess. (Wyo. 2019) (to be codified at WYO. STAT. ANN. §§ 40-28-101 to 40-28-109 (taking effect Jan. 1, 2020)).

76. See S. 161, 80th Sess. § 9 (Nev. 2019) (defining "Program" to mean "Regulatory Experimentation Program for Product Innovation").

77. *Id.* § 16 ("1. Any consumer of the product or service must be a resident of this State on the date that the product or service is first provided to the consumer. 2. Except as otherwise provided in subsection 3, not more than 5,000 consumers may be provided a given product or service by a participant during the period of testing. 3. If the Director approves a request for relief by a participant pursuant to section 19 of this act, not more than 7,500 consumers may be provided a given product or service by the participant during the period of testing.").

program.⁷⁸ Nevada's experimentation program will allow participants to operate without a license for up to two years, although an extension may be granted.⁷⁹

Effective in July 2019, Utah's regulatory sandbox also allows participants to test financial products or services without being licensed.⁸⁰ The Utah Department of Commerce hopes that peer-to-peer lenders, money transmitters, and entities offering certain blockchain or cryptocurrency products may benefit from the sandbox.⁸¹ Once an applicant completes an application process similar to those used in connection with the CFPB's no-action letter and the Product Sandbox, the applicant has twenty-four months within which to test its products or services with Utah residents.⁸² During the sandbox period, the Utah Department of Commerce will monitor participants through required periodic updates which, depending on the product or service offered, may require disclosure of the number of loans originated or number of monetary transmissions, as well as information on default rates.⁸³

Beginning in January 2020, Wyoming's Financial Technology Sandbox Act allows applicants to participate in its regulatory sandbox. Much of the application and technical processes for Wyoming's sandbox are similar to those of Utah. However, unlike Utah, Wyoming requires all sandbox applicants to be domestic business entities.⁸⁴ For this reason, the Wyoming sandbox may be less desirable for some financial innovators. Furthermore, the act permits the Wyoming Banking Commissioner or the Secretary of State to waive only certain portions of existing state financial services laws, and requires the commissioner or secretary to identify the specific provisions to be waived.⁸⁵

THE FDIC OFFICE OF INNOVATION

In an effort to keep up with innovation changes at the CFPB and state level, the FDIC announced in the fall of 2018 that it would establish an Office of Innovation.⁸⁶ In public remarks in early 2019, FDIC Chairman Jelena McWilliams stated that the FDIC and the banking industry need to develop products to attract unbanked and underbanked consumers: "This means being accessible to

78. *Id.* § 6.

79. *Id.* § 25.

80. See Press Release, Utah Dep't of Commerce, Utah 2nd State to Launch Regulatory Sandbox Now Available at Department of Commerce 1 (July 2, 2019), https://commerce.utah.gov/releases/2019-07-02_cmrc-regulatory-sandbox.pdf.

81. See *id.* at 2.

82. UTAH CODE ANN. § 13-55-104(1), (2)(a) (West Supp. 2019).

83. See *id.* § 13-55-108; *Frequently Asked Questions, "How Will the Department of Commerce Monitor Testing in the Sandbox?"*, UTAH DEP'T COM., <https://commerce.utah.gov/sandbox.html> (last visited Nov. 15, 2018).

84. Compare H.R. 57, 65th Leg., Gen. Sess. § 2 (Wyo. 2019) (to be codified at WYO. STAT. ANN. § 40-28-104(b)), with UTAH CODE ANN. § 13-55-103 (West Supp. 2019).

85. H.R. 57, 65th Leg., Gen. Sess. § 2 (Wyo. 2019) (to be codified at WYO. STAT. ANN. §§ 40-28-103, 40-28-104(g)).

86. See Neil Haggerty, *FDIC to Launch Innovation Office to Help Banks Compete with Fintechs*, AM. BANKER (Oct. 23, 2018, 5:36 PM), <https://www.americanbanker.com/news/fdic-to-launch-innovation-office-to-help-banks-compete-with-fintechs>.

both the millennial who has never stepped foot inside a bank branch and also the young immigrant who cannot afford a smartphone.⁸⁷ By mid-2019, the FDIC was still considering how to utilize this proposed office by focusing on four key questions: how to provide a safe regulatory environment to promote the technological innovation that is already occurring, how to promote technological development at community banks, what changes in policy must occur to support innovation, and how can the FDIC transform its own technology, examination processes, and culture to enhance the stability of the financial system, protect consumers, and reduce the compliance burden on our regulated institutions.⁸⁸

THE GAO STUDY ON ALTERNATIVE DATA BY FINTECH COMPANIES

The GAO issued its Financial Technology Report in December 2018 based on interviews with eleven fintech lenders.⁸⁹ Of these lenders, approximately half stated that they use alternative data when making credit decisions.⁹⁰ This alternative information may be financial data, such as the number of on-time rent payments, or non-financial data, such as a borrower's educational institution and degree.⁹¹ The GAO report found that use of alternative data could give rise to fair lending issues, is less transparent than traditional credit data, and likely is less reliable.⁹² However, the report also noted that the use of such data allows fintech lenders to expand credit access to consumers without an adequate credit history, may allow consumers to access better credit classifications and receive lower-priced credit, and may allow for faster credit decisions.⁹³

Ultimately, the GAO report recommended that the CFPB and other banking regulators communicate more frequently with fintech lenders and their bank partners on the appropriate use of alternative data in the underwriting process.⁹⁴ The report concluded that such communications will provide fintech lenders with greater assurance that they are complying with fair lending laws and will help bank partners effectively manage risks associated with partnering with companies using alternative data.⁹⁵

87. Jelena McWilliams, Chairman, Fed. Deposit Ins. Corp., Address at Fla. Bankers Ass'n Leadership Dinner: Banking on the American Dream (Jan. 31, 2019), <https://www.fdic.gov/news/news/speeches/spjan3119.pdf>.

88. *Message from the Chairman*, FED. DEPOSIT INS. CORP. (May 23, 2019), <https://www.fdic.gov/about/strategic/report/2018annualreport/chairman.html>.

89. GAO REPORT, *supra* note 5, at 2 n.5.

90. *Id.* at 33. "Alternative data" is defined as information not traditionally used by the national consumer reporting agencies in calculating a credit score. *Id.*

91. *Id.*

92. *Id.* at 37.

93. *Id.* at 36.

94. *Id.* at 45.

95. *Id.*