MAXINE WATERS, CA
CHAIRWOMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

PATRICK MCHENRY, NC
RANKING MEMBER

July 11, 2019

Memorandum

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Subject: July 16, 2019 Full Committee Markup

The Committee on Financial Services will meet to mark up the following measures, in an order to be determined by the Chairwoman, at 10:00 a.m. on Tuesday, July 16, 2019, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

H.R. 3621, the "Student Borrower Credit Improvement Act" (Pressley)

Summary: This bill removes adverse credit file information relating to defaulted or delinquent private education loans for borrowers who demonstrate a history of timely loan repayments for these loans. The Credit Reporting Agencies (CRAs) would be required to remove delinquent or defaulted private education loan information from consumer reports, if a borrower makes nine out of ten consecutive monthly payments. In addition, the bill protects student loan borrowers by ensuring that repayment plans be affordable and reasonable, and by protecting the statute of limitations on payments even when payments are made by a borrower. The bill also permits reasonable interruptions in the consecutive repayment periods for those facing unique and extenuating life events, such as service members who are receiving imminent danger or other special pay duty when deployed, and residents in Federally-declared natural disaster areas. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: Given increasing tuition costs, those who need loans to pay for higher education are increasingly incurring larger private education loan debts. However, unlike Federal student loans, private education lenders do not have to offer borrowers flexible repayment options, which has resulted in high defaults and delinquencies on these types of loans that, in turn, impair many young consumers' credit standing.[1]

According to the Consumer Bureau, student loan debt exceeds $1.5 trillion, which creates a drag on our country's economy by hindering borrowers' ability to qualify for mortgage and auto loans, pursue entrepreneurial ventures, build wealth, save for retirement, and pursue certain careers, including civic-minded jobs.[2] Federal student loan borrowers have some repayment options that are not required to be provided to private education loan borrowers. Although some private education loan holders may allow student borrowers to postpone payments while they are enrolled in school full-time, this period is usually capped at 48 or 66 months. This can create a financial paradox for continuing education students, who

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[1] Consumer Financial Protection Bureau, Annual report of the CFPB Student Loan Ombudsman (2017), *available at* https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf.
[2] Consumer Financial Protection Bureau, Student Loan Affordability: Analysis of Public Input on Impact and Solutions (2013), *available at* https://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf.

may need additional time to finish an undergraduate degree, and for those who want to obtain a graduate degree but cannot afford to make loan payments while they are still in school. As such, even before some students graduate, their reports may contain negative information related to their private education loans.

Furthermore, the bill would address concerns raised during the debate on S. 2155 from the 115th Congress, which included a provision on rehabilitating private student loans. Various stakeholders raised concerns that the provision would permit abusive behavior by student loan creditors and debt collectors. [3]

This legislation is substantially similar to Title III of the discussion draft of the "Comprehensive Consumer Credit Reporting Reform Act of 2019" considered at a full committee hearing on February 26, 2019.[4]

H.R. 3623, "Climate Risk Disclosure Act of 2019" (Casten)

Summary: This bill requires public companies to disclose in their annual reports information relating to the financial and business risks associated with climate change. The bill also requires the SEC to establish, in consultation with other relevant Federal agencies, climate-related risk disclosure metrics and guidance, which will be industry-specific, and will require companies to make both quantitative and qualitative disclosures. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: The Securities Exchange Act of 1934 requires public companies to file annual reports with the SEC to publicly disclose company information that investors would find pertinent in making investment decisions.[5] This reporting requirement mandates the disclosure of information related to risk exposure, material financial data, and an analysis performed by management on the company's financial condition.[6] Although the effects of climate change pose significant risks to companies and investors, companies are currently not required to report climate-related risk exposure and risk management strategies. This bill is similar to Senator Warren's Climate Risk Disclosure Act of 2018 (S.3481) which has support from science advocacy groups such as the Union of Concerned Scientists; investment management firms such as Boston Trust, JSA Financial Group, and Trillium Asset Management; investor advocacy groups including Americans for Financial Reform, Corporate Accountability, and Public Citizen; environmental groups including the Sierra Club, Greenpeace USA, and the Center for International Environmental Law; and religious groups such as the Adrian Dominican Sisters, Daughters of Charity, Province of St. Louise, Sisters of St. Francis of Philadelphia, and the Unitarian Universalist Association.

H.R. 3624, the "Outsourcing Accountability Act of 2019" (Axne)

Summary: This bill would require public companies to annually disclose the total number of employees they employ in each state and foreign country, as well as the percentage change from the previous year. The bill exempts smaller and newly-public companies from this requirement. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: The Securities Exchange Act of 1934 requires public companies to file annual reports with the Securities and Exchange Commission (SEC) containing information that investors would find

[3] Coalition letter *available at* https://nclc.org/images/pdf/legislation/house-opp-s2155-2018.pdf.
[4] Financial Services Committee Hearing, *supra* note 6.
[5] *See* 15 U.S.C. § 78m(a).
[6] SEC, Form 10-K, General Instructions, *available at* https://www.sec.gov/about/forms/form10-k.pdf.

pertinent in making investment decisions.[7] This reporting requirement mandates the disclosure of information related to risk exposure, material financial data, and an analysis performed by management on the company's financial condition.[8] Although public companies are currently required to disclose their total number of employees, there is no requirement that they disclose where those employees are geographically based. This makes it difficult for investors and consumers to know if the companies they are investing in are creating and protecting American jobs.

At a May hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Health Slavkin Corzo, AFL-CIO's Director of Capital Markets Policy noted that although traditionally disclosed, voluntary outsourcing disclosure has declined in recent decades and that "one possible reason for the declining reporting is that multinational companies have increasingly focused job creation in non-US markets and would prefer not to disclose numbers that could lead to reputational risks." Ms. Slavkin stated that requiring this type of disclosure "would go a long way towards providing investors the information they need to integrate offshoring into the evaluation of companies' human capital management." This bill is supported by AFL-CIO and Public Citizen.

H.R. 3625, the "PCAOB Whistleblower Protection Act of 2019" (Garcia - TX)

Summary: This bill would establish a whistleblower program at the Public Company Accounting Oversight Board (PCAOB) similar to the whistleblower program at the SEC. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: The PCAOB is a self-regulatory organization and the principal regulator overseeing accounting firms that audit public companies and SEC-registered brokers and dealers. The PCAOB has the authority to bring disciplinary action against these firms for noncompliance with the Sarbanes-Oxley Act of 2002, or SEC and PCAOB rules. Under the Dodd-Frank Act, Congress established a whistleblower program at the SEC, but not the PCAOB. If eligible for a reward upon the successful completion of a PCAOB disciplinary action, whistleblowers may be incentivized to come forward when they suspect violations of the Sarbanes-Oxley Act, the rules of the PCAOB and the SEC, and other laws, rules, and professional standards governing the audits of public companies, brokers, and dealers. These whistleblowers would also be protected from retaliation by their employer.

At a June hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, former SEC prosecutor Jordan Thomas said, "there is no doubt that a successful PCAOB whistleblower program would encourage more reporting of public company accounting frauds or misdeeds surrounding public company audits." This bill is supported by Lynn E. Turner, former Chief Accountant at the Securities and Exchange Commission and Member of PCAOB's Standards Advisory Group; the Institute of Internal Auditors (IIA); and Public Citizen.

H.R. 3629, the "Clarity in Credit Score Formation Act of 2019" (Lynch)

Summary: This bill establishes clear Federal oversight of the development of credit scoring models by directing the Consumer Bureau to set standards for validating the accuracy and predictive value of credit scoring models, both before their initial use by creditors and at regular intervals thereafter, for as long as those models are available for purchase. The bill gives the Consumer Bureau explicit authority to prohibit credit scoring developers from weighing, considering, or including certain factors or making available for

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[7] *See* 15 U.S.C. § 78m(a).
[8] SEC, Form 10-K, General Instructions, *available at* https://www.sec.gov/about/forms/form10-k.pdf.

purchase or using certain outdated credit scoring models or versions that may create misleading and false determinations of consumers' creditworthiness. The bill would also require the Consumer Bureau to study the impact of having more non-traditional data on consumer reports and the use of alternative data in credit scoring models on consumers' access to, and the affordability of, credit products and services and other matters, including a review of the impact on consumers with limited or no traditional credit histories, racial and ethnic minorities, women, and consumers residing in Federally-assisted rental housing. The Amendment in the Nature of a Substitute (ANS) would make technical changes to the bill.

Background: Although Federal prudential regulators review the performance of the use of credit scoring models by lenders as part of safety and soundness reviews, no Federal regulator is currently tasked with monitoring the development or initial and ongoing validation of credit scoring models. The Government Accountability Office recently urged regulators to clarify for lenders on the appropriate use of alternative data in the underwriting process.[9]

Consumers with minimal or no traditional credit history may have difficulty accessing affordable credit or unable to secure rental housing because they do not have sufficient credit information to generate a score. This has an impact especially on communities of color and creditworthy low-income households that could with the appropriate underwriting, safely participate in the prime lending market.[10]

Some stakeholders point to the benefits of using alternative payment data, such as utility, rental and telecommunications payment histories, to improve creditors' ability to differentiate between high- and low-risk profiles of consumers with no or thin credit files, which, presumably, would also expand access to credit for "credit invisibles."[11] Other stakeholders, however, have warned that the consideration of certain non-traditional data, such as utility, rental, and telecommunications data, to evaluate consumers' creditworthiness may cause more harm than good for some consumers. These stakeholders recommend evaluating the unique benefits and disadvantages of increasing the reporting of alternative data to the nationwide CRAs and as factors in scoring models.[12]

This bill is substantially similar to Title V of the discussion draft of the "Comprehensive Consumer Credit Reporting Reform Act of 2019" considered at a full committee hearing on February 26, 2019.[13]

H.R. 3641, the "Stronger Enforcement of Civil Penalties Act of 2019" (Porter)

Summary: The bill would increase the SEC's statutory limits on civil monetary penalties; directly link the size of these penalties to the scope of harm and associated investor losses; and substantially raise the financial stakes for repeat securities law violators. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: Specifically, the bill would increase the per-violation cap applicable to the most serious securities laws violations from $181,071 to $1 million per violation for individuals, and from $905,353 to

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[9] Government Accountability Office, Financial Technology: Agencies Should Provide Clarification on Lenders' Use of Alternative Data (2018), *available at* https://www.gao.gov/assets/700/696149.pdf.
[10] Consumer Financial Protection Bureau, Data Point: Credit Invisibles (2015), *available at* https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.
[11] Michael Turner and Patrick Walker, Predicting Financial Account Delinquencies with Utility and Telecom Payment Data (2015), *available at* http://www.perc.net/wp-content/uploads/2015/05/Alt-Data-and-Traditional-Accounts.pdf.
[12] Chi Chi Wu, Proceed with Caution on Credit Scoring with Alternative Data (2015), *available at* https://www.americanbanker.com/opinion/proceed-with-caution-on-credit-scoring-with-alternative-data.
[13] Financial Services Committee Hearing, supra note 6.

$10 million per violation for entities. It would also triple the penalty cap for recidivists who have been held criminally or civilly liable for securities fraud within the preceding five years. The SEC would be able to assess these types of penalties through administrative action, and not just in federal court. This increased authority is consistent with that requested by former SEC Chair Schapiro and agreed to by former SEC Chair White.[14] This bill is similar to a bipartisan bill in the Senate (S.779) and a modest increase to a provision in former Chairman Hensarling's CHOICE Act from the 115th Congress (Section 211 of H.R. 10).

At a June hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Professor Urska Velikonja of Georgetown University stated that the current "one-size-fits-all approach currently enacted into law does not fit the varied universe of securities violations well and that this proposal takes these variations into account and provides alternative measures for setting civil fines to deter appropriately." Former SEC prosecutor Jordan Thomas stated that the bill is "long overdue and would strengthen the SEC's national enforcement program." Additionally, Thomas noted that "the provisions enhanced penalties against recidivists. . .[and] would greatly strengthen the enforcement remedies available against repeat offenders." This bill is supported by North American Securities Administrators Association (NASAA) and Public Citizen.

H.R. 3701, To establish a statute of limitations for certain actions of the Securities and Exchange Commission, and for other purposes. (Gonzalez-TX)

Summary: The bill would provide the SEC with a 10-year statute of limitations for civil monetary penalties, which would begin on the date at which the violation occurred. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: In *Gabelli v. SEC*, the Supreme Court held that the SEC has a five-year limit, or statute of limitations, to seek a civil penalty against a defendant and that the five-year limit begins at the date the violation occurs, not the date the SEC discovered it.[15] This bill would overturn that holding and provide the SEC with a 10-year limitation. The bill is similar to a bill in the Senate from the 114th Congress (S. 1960).

At a June hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Professor Urska Velikonja of Georgetown University stated that if the *Gabelli* ruling remains the governing law for civil monetary penalties in securities enforcement cases, "securities violators could defraud investors with impunity, so long as they avoid prosecution for five years." Former SEC prosecutor Jordan Thomas echoed this noting that this legislative response would help strengthen the SEC's "enforcement arsenal" because "many of the largest and most egregious securities violations occur over extended periods of time. . .Thus, lengthening the statute of limitations for civil money penalties to 10 years would better enable the Commission to seek and obtain penalties commensurate with the full scope of the violation in such cases." This bill is supported by the North American Securities Administrators Association (NASAA) and Public Citizen.

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[14] Letter from SEC Chairman Mary Schapiro to Senator Jack Reed re: SEC Penalty Authority (Nov. 28, 2011), available at http://www.davispolk.com/files/uploads/IMG/Mary-Schapiro--Letter-to-Senator-Jack-Reed.pdf.

[15] *Gabelli v. SEC*, 568 U.S. 442 (2013).

H.R. 3702, the Reforming Disaster Recovery Act of 2019 (Green)

Summary: H.R. 3702 would permanently authorize the Community Development Block Grant-Disaster Relief (CDBG-DR) program and would strengthen administration and oversight of the program to ensure disaster relief is distributed efficiently and equitably. The Amendment in a Nature of a Substitute would make technical changes to the bill.

Background: The Community Development Block Grant (CDBG), administered by HUD, is the federal government's largest and most widely available source of financial assistance for state and local government-directed neighborhood revitalization, housing rehabilitation, and economic development activities. One of the national objectives of the CDBG program allows communities and states to use program funds to address serious and immediate public health and safety threats. Accordingly, Congress has used the CDBG program's framework to provide additional assistance (CDBG-DR) for state and local recovery activities in the wake of presidentially-declared disasters. In response to a disaster, Congress must pass each supplemental CDBG-DR appropriation on a case-by-case basis. To date, Congress has appropriated $87 billion in CDBG-DR assistance.

CDBG-DR grants are generally governed by the underlying CDBG statute and rules and the relevant supplemental appropriation act. The supplemental appropriation act typically identifies the amount appropriated, the period covered, the eligible uses of funds (to the extent that they are different from the underlying CDBG statute and rules), and the certifications required for assistance. For each supplemental appropriation, HUD publishes a corresponding Federal Register notice establishing the allocation of funds to eligible grantees and describing the rules, statutes, waivers, and alternative requirements that apply to allocations under the notice.

In July 2018, the HUD Office of Inspector General (HUD OIG) found that HUD's use of multiple Federal Register notices to administer CDBG-DR assistance created challenges for grantees. Specifically, HUD OIG found, among other challenges, that grantees had to navigate confusing and sometimes duplicative requirements contained in multiple notices. HUD OIG recommended that HUD codify the CDBG-DR program to: (1) establish a permanent framework for future disasters; (2) reduce the existing volume of Federal Register notices; (3) provide a standardized set of rules for all grantees; and (4) ensure that grants are closed in a timely manner. Further, the GAO has found that historically, disaster relief has been inequitably distributed among people of different races and ethnicities, economic classes, and homeownership status.[16] As a result, some of the largest HUD fair housing settlements have come after major disasters, as states and localities receiving disaster recovery grants often did not serve affected families equitably.[17]

H.R. ____, "Accurate Access to Credit Information Act 2019'' (Gottheimer)

Summary: This legislation directs the CRAs to create a single online portal landing page to make it easier for consumers to access free credit reports, credit scores, dispute errors and place or lift security freezes. This landing page would also contain information on consumer rights and clearly written language as to

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[16] GAO, *Disaster Assistance: Federal Assistance for Permanent Housing Primarily Benefited Homeowners; Opportunities Exist to Better Target Rental Housing Needs* (Jan. 14, 2010).

[17] National Fair Housing Alliance, *Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report* (2018).

handle report disputes. The bill also codifies the Consumer Bureau's supervision of the nationwide CRAs and clarifies the Consumer Bureau has authority, under Gramm-Leach-Bliley Act, to prescribe and enforce data security safeguards for the nationwide CRAs, and creates an Ombudsman at the Consumer Bureau tasked with resolving persistent errors on reports that are not addressed in a timely fashion and allowing the Ombudsman to impose civil penalties for repeated mistakes by CRAs.

Background: According to the Consumer Bureau, many consumers believe consumer reports are "hard to get and hard to understand."[18] Unlike a consumer's Federal right to obtain a free annual consumer report from each of the nationwide CRAs and nationwide specialty CRAs, in most cases, consumers have no legal right to their credit score.[19] Unlike other businesses where dissatisfied and unhappy consumers can decide to stop doing business with a company, consumers have almost no control over whether furnishers provide information about them to CRAs that is compiled and maintained in the CRAs' databases. Consumers' concerns about credit reporting errors and their fears about stolen credit information and identity theft have also increased consumers' purchases of credit monitoring services and other products from the nationwide CRAs, which have allowed these companies to profit, in part, from their own deficient practices.

The Consumer Bureau has found that there is significant consumer confusion about the differences between the credit scores available to consumers and those that are sold to, and used by, creditors or lenders. This confusion can lead to consumers forming inaccurate perceptions of their ability to access credit on affordable term. In addition, CRAs frequently market consumer reporting products and services as "free" when they are actually paid-subscription services that automatically convert after a trial period.

In addition, following the Equifax data breach which compromised at least 145.5 million consumers' data, GAO recently found that consumers have little control over what information credit reporting agencies have, and that Federal oversight could be improved, including by enhancing the Consumer Bureau's oversight of CRAs and strengthening Federal enforcement of data safeguards.[20]

This bill builds on a bipartisan amendment Senators Kennedy and Schatz introduced in the 115th Congress that was not considered by the Senate.[21]

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[18] Consumer Voices on Credit Reports and Scores, *supra* note 5.

[19] The Dodd-Frank Act, amended the FCRA, to require "adverse action notices" (which are disclosures sent to consumers by creditors when a person has applied, but been denied, credit by a company to identify for the consumer, the CRA that the company obtained a report from to help make this decision) and "risk-based pricing notices" (which are disclosures sent to consumers by creditors informing a consumer that their request for new credit has been granted to them but, on materially less favorable terms and conditions, than the creditor has provided to other consumers to identify the CRA that the creditor obtained a report from to help make this decision) to include credit score disclosures.

[20] Government Accountability Office, Consumer Data Protection: Actions Needed to Strengthen Oversight of Consumer Reporting Agencies 31 (2019), *available at* https://www.gao.gov/products/GAO-19-196.

[21] Sen. John Kennedy (R-La.) Introduces Amendment To Give Consumers More Control Over Their Credit Reports (2018), *available at* https://www.kennedy.senate.gov/public/2018/3/sen-john-kennedy-r-la-introduces-amendment-to-give-consumers-more-control-over-their-credit-reports