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 8, 2019

Memorandum

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Subject: July 11, 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 Thursday, July 11, 2019, and subsequent days if necessary, in room 2128 of the Rayburn House Office Building:

H.R. 281, the "Ensuring Diverse Leadership Act of 2019" (Beatty)

Summary: This bill would require the Federal Reserve Banks to interview at least one individual reflective of gender diversity and at least one reflective of racial or ethnic diversity when appointing Federal Reserve Bank presidents. The Amendment in the Nature of a Substitute adds a requirement that the Federal Reserve annually report on the applicant pool demographics.

Background: Since its inception in 1913, leadership within the Federal Reserve System has traditionally been white and male. Ms. Janet Yellen has been the only woman to serve as its chair. In 2017, Mr. Raphael Bostic was appointed as the first African American reserve bank president. Only 7 women have ever been appointed to the same post. To increase diversity among future leadership selections, this bill would mandate an interview of both a minority candidate and a woman candidate when any of the Federal Reserve Banks consider candidates to fill a vacancy for president. The bill also revises the title of "Chairman of the Board of Governors of the Federal Reserve System" to be the gender-neutral title of "Chair."

Senator Harris introduced the companion bill, S.65, which is identical to legislation introduced in the 115th Congress, H.R. 485 and S.2829.

H.R. 1018, the "Improving Corporate Governance through Diversity Act of 2019" (Meeks)

Summary: This bill would require public companies to annually disclose the voluntarily, self-identified gender, race, ethnicity and veteran status of their board directors, nominees, and senior executive officers. The bill also requires SEC's Office of Minority Women and Inclusion to, among other things, solicit comment on and publish best practices for compliance with diversity disclosures, as well as create an advisory council that includes issuers and investors to advise on the disclosure requirements. The Amendment in the Nature of a Substitute makes technical changes to the bill.

Background:

Over 90 percent of companies that participated in Deloitte's 2017 board diversity survey agreed that increased board diversity will improve their companies' ability to innovate as well as their overall business performance.[1] Given the impact on performance, investors have an interest in the extent to which companies include diverse perspectives and people in their board rooms. Public companies are currently required to report the minimum skills, experiences and attributes required of their board members in their public, annual reports to the Securities and Exchange Commission (SEC).[2] However, in March 2015, several large institutional investors petitioned SEC for rulemaking to require issuers to specifically disclose in matrix format the race, gender and ethnicity of their board members.[3]

The bill is supported by the National Association for the Advancement of Colored People (NAACP), the National Urban League, the Council for Institutional Investors, the U.S. Chamber of Commerce, and the Latino Corporate Directors Association (LCDA).[4] LCDA's board resolution further documented their support of "a sensible, balanced approach to collecting critical data on board demographics."[5] Senator Menendez has introduced a companion bill, S.360.

Amendment in the Nature of a Substitute to H.R. 2852, the "Homebuyer Assistance Act of 2019" (Sherman, Duffy)

Summary: The ANS to H.R. 2852, the Homebuyer Assistance Act of 2019, would change the property appraisal requirements for mortgages backed by the Federal Housing Administration (FHA) by allowing licensed appraisers to conduct appraisals for such mortgages, rather than only certified appraisers. This would bring FHA standards in line with those set by Fannie Mae and Freddie Mac. This bill would also set minimum requirements for education specific to FHA appraisals that appraisers must undergo to be eligible to conduct FHA appraisals.

Background: There are two basic types of real estate appraisers that are credentialed at the state level: licensed and certified. In general, certification is required for complex or high-value appraisals. Today, the criterion for licensure and certification can vary by state, but there are minimum education, experience, and examination requirements set by the Appraiser Qualifications Board that states are required to adopt, and can choose to exceed. These minimum federal standards for licensure were not in place when Congress passed legislation requiring appraiser certification for FHA-backed mortgages in 2008. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, we now have minimum federal standards for state licensure of appraisers, ensuring greater consistency in competency of licenses appraisers across all states.

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[1] Deloitte, *Seeing is believing: 2017 board diversity survey* (2017).

[2] SEC's guidance stated that "to the extent a board or nominating committee in determining the specific experience, qualifications, attributes, or skills of an individual for board membership has considered the self-identified diversity characteristics referred to above (e.g., race, gender, ethnicity, religion, nationality, disability, sexual orientation, or cultural background) of an individual who has consented to the company's disclosure of those characteristics, we would expect that the company's discussion required by Item 401 would include, but not necessarily be limited to, identifying those characteristics and how they were considered." SEC's Compliance and Disclosure Interpretations for Regulation S-K (February 2019) at https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#116-11.

[3] California Public Employees Retirement System, et.al. Petition For Amendment Of Proxy Rule Regarding Board Nominee Disclosure – Chart / Matrix Approach (March 31, 2015).

[4] Latino Corporate Directors Association, *LCDA Board Resolution in Support of "Improving Corporate Governance Through Diversity Act" (S.360, H.R. 1018)*, March 7, 2019

[5] Ibid.

Fannie Mae and Freddie Mac both currently allow licensed appraisers to conduct appraisals for mortgages that they back while FHA continues to require certified appraisers. According to the Appraisal Foundation, FHA's heightened requirement has made it harder for licensed appraisers to obtain work, causing some to leave the profession altogether.[6] In fact, the number of licensed appraisers has decreased by over 70 percent since 2006.[7] This trend has disproportionately impacted rural markets that are experiencing a shortage of appraisers.[8]

This bill is supported by the following organizations: The Center for Responsible Lending, the Appraisal Foundation, the Appraisal Institute, the Real Estate Valuation Advocacy Association, the National Association of Appraisers, the American Society of Appraisers, the MBREA – Association for Valuation Professionals, the National Association of Realtors, the National Association of Home Builders, the American Bankers Association, the Mortgage Bankers Association, the Credit Union National Association, the National Association of Federal Credit Unions, the Community Home Lenders Association, and the Independent Community Bankers of America.

H.R. 3279, the "Diversity in Corporate Leadership Act of 2019" (Maloney)

Summary: This bill would require issuers to specifically disclose to shareholders with respect to the gender, racial, and ethnic diversity of their board of directors. The SEC would also be required to establish a diversity advisory group and to report annually to the House Committee on Financial Services on issuer board diversity data. The Amendment in the Nature of a Substitute makes technical changes to the bill.

Background: In response to petitions for specific board diversity requirements, this bill would provide investors and the public with information regarding the gender, racial, and ethnic diversity of corporate boards.[9] This bill would require public companies to disclose the gender, racial, and ethnic composition of their boards of directors every year in their proxy statements sent to shareholders and investors. This bill has support from the U.S. Chamber of Commerce, who commented that this legislation "would establish a model to organically boost diversity on boards through disclosure, rather than the counterproductive quota-driven strategies that some jurisdictions have attempted."[10]

Ms. Maloney introduced similar legislation in the 114th (H.R. 4718) and 115th (H.R. 1611) Congress that required the disclosure of a board's gender diversity.

H.R. 3614, the "Restricting Use of Credit Checks for Employment Decisions Act" (Lawson)

Summary: This bill would prohibit current and prospective employers from using credit reports for employment decisions, except when a credit report is required by local, state, or Federal law or for a national security clearance. The bill would also protect consumer privacy by barring hiring managers from skirting this legislation by asking questions about past defaults or bankruptcies during job interviews or including questions about credit history on any job applications. The Amendment in the Nature of a Substitute would make technical changes to the bill.

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[6] David S. Bunton, Testimony before the Subcommittee on Housing and Insurance, Committee on Financial Services, Nov. 16, 2016.
[7] *Id*.
[8] *Id*.
[9] California Public Employees Retirement System Petition, 2015.
[10] U.S. Chamber of Commerce, *Letter Supporting the Diversity in Corporate Leadership Act of 2019* (June 13, 2019).

Background: An individual's credit history has been shown to not predict their job performance[11]. Nevertheless, credit information is increasingly used by employers for hiring, promotion, and retention. People who have been unemployed for an extended period of time, and whose credit standing has been damaged because they were unable to pay their bills, cannot secure a new job to end their financial distress because prospective employers conduct credit checks as part of an application process. A 2013 Demos survey[12] of low- to middle-income households with credit card debt found that one in seven respondents who were unemployed had been told by a prospective employer that their credit history contributed to an adverse employment decision.

This practice creates obstacles for upward mobility and can be an invasion of consumers' privacy. A 2016 Demos report[13] found that the use of credit reports unnecessarily exposes consumers' financial information and potentially puts existing employees and job applicants in an uncomfortable position of having to discuss private matters, such as divorce, domestic abuse, or health/genetic conditions, in explaining their impaired credit history.

This legislation is substantially similar to Title II of the discussion draft of the "Comprehensive Consumer Credit Reporting Reform Act of 2019" considered at a full committee hearing on February 26, 2019.[14]

H.R. 3618, the "Free Credit Scores for Consumers Act of 2019" (Beatty)

Summary: This bill directs the nationwide CRAs and nationwide specialty CRAs to give consumers free copies of their credit scores that are used by creditors in making credit decisions, as determined by the Consumer Bureau, or if not practicable, educational credit scores whenever consumers obtain their free annual consumer reports. It also requires CRAs to include free credit scores with reports when consumers exercise their rights to free consumer reports under existing law, such as when individuals believe they may be or are victims of fraud. This bill also requires expanded explanatory information given to consumers about how scores are calculated by enhancing the contextual information that accompanies numerical scores to include both negative and positive factors that impacted their score.

Background: While current law provides consumers with the right to obtain free annual consumer reports from each of the nationwide CRAs and nationwide specialty CRAs, consumers are not entitled to a free credit score when they obtain this report. According to the Consumer Bureau, many consumers believe consumer reports are "hard to get and hard to read."[15] Providing consumers with their credit scores, along with their free annual consumer reports, will help all consumers, regardless of their income, to better understand their credit standing.

Many consumers do not understand how credit scores are calculated and what actions they can take to improve their credit standing. A 2015 Consumer Bureau survey found that consumers had questions about what actions to take to improve their scores once they had seen them, suggesting that additional disclosures

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[11] Andrew Weaver, Is Credit Status a Good Signal of Productivity? (2014), *available at* https://pdfs.semanticscholar.org/9e01/a6a4343604f7b80bbeb4ad5e56e2336a6df4.pdf.

[12] Amy Traub, Discredited, How Employment Credit Check Keep Qualified Workers Out of a Job, Demos 3 (2013), *available at* http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf.

[13] Amy Traub, Bad Credit Shouldn't Block Employment: How to Make State Bans on Employment Credit Checks More Effective, Demos (2016), *available at* https://www.demos.org/research/bad-credit-shouldnt-block-employment-how-make-state-bans-employment-credit-checks-more.

[1414] Financial Services Committee Hearing, *supra* note 6.

[15] Consumer Voices on Credit Reports and Scores 19, *supra* note 5.

and educational content is necessary.[16] The Consumer Bureau found that consumers were commonly confused by conflicting advice on how to improve their scores. Furthermore, when consumers apply for credit, they often do so without having critical information about their creditworthiness to be able to make more informed credit decisions. The Consumer Bureau previously found that consumers with accurate perceptions of their credit standing may be better equipped to shop for favorable credit terms.[17]

This bill is substantially similar to Title VI of the discussion draft of the "Comprehensive Consumer Credit Reporting Reform Act of 2019" considered at a full committee hearing on February 26, 2019.[18]

Amendment in the Nature of a Substitute to H.R. 3619, the "Appraisal Fee Transparency Act of 2019" (Clay)

Summary: The ANS to H.R. 3619, the Appraisal Fee Transparency Act of 2019 would provide the Appraisal Subcommittee (ASC) with greater flexibility to determine the structure and amount of the fee charged to appraisal management companies (AMCs), provide the ASC with greater flexibility to utilize fee proceeds to partner with different entities to ensure compliance with federal appraisal standards, add a representative of the Department of Veterans Affairs (VA) to the ASC, create a national registry of appraisers in training, and provide consumers with greater transparency in the disclosure of fees paid for appraisals.

Background: Under current law, the ASC is required to charge AMCs a fee of $25 per appraiser under contract with the AMC. The implementation of this fee is in the beginning stages but there are growing concerns that the amount of this fee is unnecessarily high and that structure of this fee incentivizes AMCs to reduce the number of appraisers that they contract with, which could exacerbate the appraiser shortage in some areas.[19] Further current statute allows for fee proceeds to be used for compliance, but limits the kinds of entities that the ASC can partner with to do so. This bill would provide the ASC with greater flexibility to determine fees for AMCs, and greater flexibility to partner with non-profit organizations and institutions of higher education in compliance efforts.

The ASC is currently made up of seven members as designated by the heads of the Department of Housing and Urban Development (HUD), the Federal Housing Finance Administration, the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA). The VA has unique policies governing appraisals and makes up a significant portion of the housing market but is not currently represented at the ASC. This bill would add a designee of the VA to the ASC.

The ASC currently maintains a national registry of appraisers and is in the process of creating a similar registry of AMCs. Lenders are reportedly reluctant to utilize appraiser trainees because they are not on the national registry.[20] This bill would create a national registry of appraiser trainees, which would help them obtain the experience necessary to become licensed appraisers.

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[16] *Id*.
[17] Consumer Financial Protection Bureau, The impact of differences between consumer- and creditor-purchased credit scores 2 (2011), *available at* https://files.consumerfinance.gov/f/2011/07/Report_20110719_CreditScores.pdf.
[18] Financial Services Committee Hearing, *supra* note 6.
[19] *See e.g*. Jeff Dickstein, Testimony before the Subcommittee on Housing, Community Development, and Insurance, Committee on Financial Services, Jun. 20, 2019.
[20] *Id*.

Today when a consumer receives the itemized costs in their mortgage at the closing table, often the cost of the appraisal lumps together the fee given to the appraiser and the fee given to the appraisal management company. Several states have passed laws to require the separate disclosure of these fees to ensure transparency for consumers, but under federal law, it is still optional to disclose these fees separately. This bill would establish a federal requirement to disclose these fees separately.

This bill is supported by the following organizations: the Real Estate Valuation Advocacy Association, the Appraisal Institute, the Appraisal Foundation, the Appraisal Society of America, the National Association of Appraisers, and the Association of Valuation Professionals (MBREA).

H.R. 3620, the "Strategy and Investment in Rural Housing Preservation Act of 2019" (Clay)

Summary: H.R. 3620 would permanently authorize the U.S. Department of Agriculture's (USDA) Multifamily Housing Preservation and Revitalization (MPR) Program, require USDA to come up with a plan for preservation of rural multifamily housing backed by USDA loans, and establish an advisory committee to advise USDA in implementing this plan. The Amendment in the Nature of a Substitute would technical changes to the bill

Background: The stock of affordable homes supported by USDA's Section 515 Rural Rental Housing Loans and Section 514 Farm Labor Housing Loans is aging, and, according to GAO, USDA does not have a coherent strategy to preserve these homes and prevent displacement of tenants.[21] Section 515 and Section 514 are USDA-backed multifamily loans providing low interest, long-term multifamily loans to support affordable rental housing. There are approximately 14,000 Section 515 and 514 properties across the country that are home to nearly 400,000 families with an average income of $13,181.[22]

Most of the residents in Section 515 rental housing, and 514 farm labor units also receive rental subsidies through the Section 521 Rental Assistance (RA) program, which ensures that tenants pay no more than 30 percent of their incomes for rent. The RA contracts are tied to the Section 515 and 514 loans on the properties, which means that when the loans mature, are prepaid, or foreclosed upon, the RA also ends, putting low income residents at risk of displacement. A growing number of Section 515 and 514 loans are projected to mature in the coming decades. In fact, by 2050, nearly all Section 515 and 514 loans will have matured.[23]

This bill permanently authorizes $1 billion in funding for the Multifamily Housing and Revitalization (MPR) Program, providing USDA the tools and funding necessary to develop a comprehensive strategy for preservation and avoid tenant displacement. The MPR Program is currently administered as a demonstration that allows USDA to restructure loans for existing rural rental housing projects. The bill also establishes an advisory committee made up of a diverse range of stakeholders to advise the USDA on the implementation of its plan for preservation.

This bill would ensure that tenants receive RD vouchers in the case of loan prepayment or maturation. For residents impacted by a Section 515 loan prepayment, Congress has authorized USDA to provide them with Rural Development (RD) vouchers that allow them to stay in their homes or move to other housing. However, residents who are similarly facing displacement as a result of when a Section 515 loan matures

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[21] See e.g. GAO, "Rural Housing Service: Better Data Controls, Planning, and Additional Options Could Help Preserve Affordable Rental Units," GAO-18-285, May 17,2018.
[22] USDA, "2017 Multi-Family Housing Annual Fair Housing Occupancy Report," April 6, 2018.
[23] National Housing Law Project, "An Advocate's Guide to Rural Housing Preservation: Prepayments, Mortgage Maturities, and Foreclosures," 2018.

or when a Section 514 loan matures or is prepaid are not offered vouchers because USDA lacks statutory authority to do so.

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.[24]

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.[25] 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 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. [26]

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.[27]

H.R. 3622, the "Restoring Unfairly Impaired Credit and Protecting Consumers Act" (Tlaib)

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[24] 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.
[25] 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.
[26] Coalition letter *available at* https://nclc.org/images/pdf/legislation/house-opp-s2155-2018.pdf.
[27] Financial Services Committee Hearing, *supra* note 6.

Summary: This bill would shorten the time period most adverse credit information stays on consumer reports by reducing the statutory time periods from 7 to 4 years and from 10 to 7 years for bankruptcy information. CRAs would also be required to remove adverse information from reports relating to a residential mortgage or private education loan that are found to have resulted from an unfair, deceptive, or abusive act or practice, or a fraudulent, discriminatory, or illegal activity of a financial institution as determined by the Consumer Bureau or a court. In addition, the bill mandates the expedited removal of paid or settled debt from consumer reports. CRAs would be prohibited from including medical collections on reports until 365 calendar days after the date of first delinquency.[28] The bill establishes the right for victims of financial abuse to have adverse information associated with an abuser's fraudulent activity removed from their consumer reports. It also protects consumer victims of fraudulent activity by expanding access to identity theft (ID) protection tools beyond victims of ID theft to all victims of fraud. The Amendment in the Nature of a Substitute makes technical changes to the bill.

Background: According to research, the value of most negative information contained on reports in predicting the likelihood of defaulting or being late on a payment gradually diminishes after two years.[29] As such, maintaining adverse credit information on consumer reports long after its predictive value has expired does not improve creditors' underwriting, but can impede some consumers' ability to obtain a job or promotion, given that some employers review consumers' full reports in making employment decisions. Furthermore, the current time frames that adverse information remains on a consumer report are not a universal standard. For example, the time limit for negative information in Sweden is three years.[30]

The Consumer Bureau has found that the medical pricing, billing, and reimbursement process lacks transparency and is prone to consumer confusion, which can result in consumers delaying or withholding payments until they have adequate time to clarify or resolve disputes with their insurance companies or medical service providers about what they actually owe.[31]

Victims of predatory lending activity also experience obstacles that unfairly follow them long after the predatory loan debt is addressed. For example, large numbers of minority borrowers who were eligible for safe and affordable loans were inappropriately steered towards high-priced subprime loans with ruinous features, which ultimately tarnished their creditworthiness. According to FICO, from 2008 to 2009, about 50 million people experienced a 20-point drop in their credit scores and about 21 million people had their scores decline by more than 50 points.[32]

According to a 2015 MasterCard survey,[33] a majority of consumers (77 percent) are anxious about their information being stolen or compromised. Consumers' concerns about the online security of their financial

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[28] Currently, CRAs wait at least 180 days before including medical collections on a report. *See* Credit Reporting Agencies Multistate Settlement *available at* https://www.mass.gov/service-details/credit-reporting-agencies-multistate-settlement.

[29] Vantage Score, What Influences your VantageScore Credit Score (2013), *available at* https://www.vantagescore.com/pdf/VantageScore%20Infographic%2005.pdf.

[30] Marieke Bos and Leonard Nakamura, Working Paper No. 12-19/R, Should Defaults Be Forgotten? Evidence from Quasi-Experimental Variation in Removal of Negative Consumer Credit Information 1 Federal Reserve Bank of Philadelphia (2013), *available at* https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2012/wp12-29R.pdf.

[31] Consumer Financial Protection Bureau, Consumer credit reports: A study of medical and non-medical collections (2014), *available at* https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[32] FICOblog, Score Performance (2011), *available at* https://www.fico.com/blogs/tag/score-performance/page/5/.

[33] Mastercard, MasterCard Survey Reveals Americans Anxious about Personal Security but Optimistic About New Ways to Pay (2015), *available at* https://newsroom.mastercard.com/press-releases/mastercard-survey-reveals-americans-anxious-about-personal-security-but-optimistic-about-new-ways-to-pay/.

information even outweighs fears about physical security dangers such as having their houses robbed (59 percent) or being pickpocketed (46 percent).
This legislation is substantially similar to Titles IV and VIII of the discussion draft of the "Comprehensive Consumer Credit Reporting Reform Act of 2019" considered at a full committee hearing on February 26, 2019.[34]

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 pertinent in making investment decisions.[35] 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.[36] 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.

[34] Financial Services Committee Hearing, *supra* note 6.
[35] *See* 15 U.S.C. § 78m(a).
[36] SEC, Form 10-K, General Instructions, *available at* https://www.sec.gov/about/forms/form10-k.pdf.

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. ____, the "Improving Credit Reporting for All Consumers Act" (Adams)

Summary: The bill would address burdens consumers experience when removing errors from their consumer reports, including by providing a new right to appeal the results of initial reviews about the accuracy or completeness of disputed items on the report. The bill requires the consumer reporting agencies (CRAs) to conduct additional training of their personnel to better handle and address consumer concerns throughout the dispute resolution process. The bill also requires all furnishers who regularly report negative information to CRAs to notify customers about this practice and alert customers when they first send derogatory information. The bill directs CRAs to provide consumers with meaningful and clear information about credit scoring products and credit monitoring services. The bill also promotes consumers' right to shop around for certain large-dollar loans without harming their credit standing by treating multiple inquiries for a mortgage, auto, or private education loan as a single inquiry. The Amendment in the Nature of a Substitute would make technical changes to the bill.

Background: Research and government findings[37] show that consumers continue to be burdened by inaccurate information on their consumer reports and are frequently confused by, and frustrated with, the flawed process to dispute credit reporting errors. Equifax, TransUnion, and Experian -- the three big nationwide CRAs in the United States -- maintain files for over 200 million consumers and prepare consumer reports that are commonly referred to as credit reports. CRAs often have not abided by their statutory obligation under the Federal Fair Credit Reporting Act (FCRA) to conduct reasonable investigations of consumers' disputes. A 2015 FTC survey[38] confirmed that even though over half of the consumers who tried to fix errors on reports still believed that their reports contained inaccurate information after the CRAs' investigations had been completed, a significant number of consumers gave up trying to correct these mistakes. In the winter 2017 "Supervisory Highlights Consumer Reporting Special Edition,"[39] released in March 2017, the Consumer Financial Protection Bureau (Consumer Bureau) found repeated compliance management deficiencies at nationwide CRAs and by furnishers of credit information that necessitated improvements in their data accuracy and dispute resolution practices. Credit reporting problems are consistently one of the top three types of consumer complaints submitted to the Consumer Bureau, and many of these complaints involve consumers' frustration about the burdensome and time-consuming process of trying to fix reporting mistakes.

In addition, CRAs frequently market consumer reporting products and services as "free" when they really are paid-subscription services that automatically convert after a trial period. Vulnerable consumers who have concerns about the security of their personal and financial information, deserve clear and transparent

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[37] Consumer Financial Protection Bureau, Supervisory Highlights Consumer Reporting Special Edition (2017), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.
[38] Beth A. Freeborn and Julie Miller, Report to Congress under Section 319 of the Fair and Accurate Credit Transactions act of 2003 (2015), *available at* https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf.
[39] See Supervisory Highlights Consumer Reporting Special Edition, *supra* note 1.

information about products and services available to them and the costs associated with such tools. Moreover, the Consumer Bureau found that consumers may choose not to review their reports for errors because of their mistaken fear that doing so may lower their credit scores.[40] While many credit scoring models treat multiple inquiries as a single inquiry when they occur within a certain time period, the time span varies from 14 to 45 days.[41] This could be insufficient for consumers buying a home or making another major purchase.

This legislation is substantially similar to Titles I and VII of the discussion draft entitled, "the Comprehensive Consumer Credit Reporting Reform Act of 2019" that was considered at a full committee hearing on February 26, 2019.[42]

H.R. ____, 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 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.[43]

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.[44]

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[40] Consumer Financial Protection Bureau, Consumer Voices on Credit Reports and Scores (2015), *available at* https://files.consumerfinance.gov/f/201502_cfpb_report_consumer-voices-on-credit-reports-and-scores.pdf.
[41] Fair Isaac Corporation, Credit Checks & Inquiries *available at* https://www.myfico.com/credit-education/credit-reports/credit-checks-and-inquiries.
[42] Financial Services Committee Hearing: Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System (2019). Hearing information *available at* https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402343.
[43] 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.
[44] Consumer Financial Protection Bureau, Data Point: Credit Invisibles (2015), *available at* https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

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."[45] 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.[46]

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.[47]

H.R. ____, 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 $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.[48] 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.

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[45] 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.
[46] 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.
[47] Financial Services Committee Hearing, supra note 6.
[48] 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.