



FedFin Client Report

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HFSC Task Force Favors Payment, Not Behavioral Data in Credit Scores

Client Report: **FCRA28**

Executive Summary

The HFSC Taskforce on Financial Technology's consideration of two draft bills today signals that Chairwoman Waters (D-CA) intends to treat the committee's FinTech and AI Task Forces as *de facto* subcommittees, quickly moving legislation to mark-up once formally introduced. Rep. Gottheimer's (D-NJ) bill is a modified version of legislation passed in the House last Congress that would allow rent and utility payments to be reported to the credit bureaus without preempting state law. Rep. Green's (D-TX) bill would reauthorize an FHA pilot program to permit borrowers to opt-in to credit-scoring models that incorporate alternative data in concert with a HUD study of demographics and borrower cost implications. Testifying to present a December 2018 report, a GAO official called on the CFPB and the banking agencies to provide joint guidance on the appropriate use of alternative data.

During the largely cordial hearing, Members expressed bipartisan support for alternative data expanding access to credit and agreed that certain behavioral data – e.g., certain social-media activity – should not influence credit decisions. However, questions remain regarding restrictions to address privacy and fair-lending concerns. Task Force Chairman Lynch (D-MA) favors a “fiduciary standard” on holders of consumer financial data to prevent it from being used contrary to consumer interests. He and Rep. Wexton (D-VA) also support requiring consumers to opt-in to alternative data use. Full Committee Ranking Member McHenry (R-NC) countered that allowing consumers to decide what data is reported would impair the accuracy of firms' credit decisions. While Rep. Scott (D-GA) pushed for greater visibility into the weightings of new factors in credit models to minimize disparate impacts, Task Force Ranking Member Hill (R-AR) argued that lending algorithms are already auditable since banks partnered with fintech firms are subject to fair-lending rules.

Federal Financial Analytics, Inc.
1255 23rd Street, NW – Suite 500, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

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Analysis

Opening Statements

Task Force Chairman Lynch suggested that oversight of alternative data needs to be harmonized so that financial-inclusion benefits are achieved without adverse fair-lending impact. He described alternative data on consumer utility and rent payments as similar to traditional methods of evaluating creditworthiness but is skeptical of using reading choices, educational levels, social media activity, and shopping behavior to evaluate credit-worthiness.

Task Force Ranking Member Hill said that fintech firms are using alternative data to significantly expand access to credit. While he acknowledged fair-lending concerns, he stressed that regulation should not stifle innovation and undermine access to credit. Echoing the Treasury fintech report ([see Client Report FINTECH21](#)), he advocated codifying the “valid-when-made” and “true lender” doctrines and allowing firms to test new credit models and data sources. He also urged implementing the report’s recommendations on third-party vendors. Without specifically referencing the OCC’s special-purpose charter ([see FSM Report FINTECH20](#)), he also seemed open to either approving non-traditional bank charters or harmonizing state regulations for fintech firms.

Full Committee Ranking Member McHenry applauded the use of bill-payment and rent data in credit scoring, saying that it will expand access to credit. He also stressed that the alternative data must not be discriminatory or undermine consumer privacy.

Describing alternative data as a “new frontier,” Rep. Scott emphasized the need to expand credit access to those not covered by traditional credit-scoring methods.

Testimony

Chi Chi Wu from the National Consumer Law Center pushed for requiring consumers to opt-in to alternative data. She favors heightened guardrails on the use of consumers’ bank data and said that payday lending data should be excluded from alternative data sets. She is opposed to the use of behavioral data and education data, saying that these can reinforce inequality, but favors applying FCRA to all third-party data used to assess credit-worthiness and requiring disclosure of how alternative data affect credit decisions.

Aaron Rieke from Upturn said payment histories and bank statements are promising because they help lenders assess a consumers’ ability-to-repay. In contrast, “fringe” data such as social connections, zip codes, and shopping habits were said to reproduce

stereotypes and not expand credit access. Mr. Rieke also supports applying FCRA and ECOA protections to the collection of alternative data, saying alternative data should not be used for employment or insurance purposes.

Kristen Johnson from Tulane University Law School said that alternative data's impact on credit access and affordability remains unclear, warning that it may allow predatory lenders to target marginalized communities. She also said that any entity holding sensitive consumer data needs to be held to high security standards. She pushed Congress to pass legislation outlining consumer data rights.

GAO Managing Director of Financial Markets & Community Investment Lawrence Evans presented GAO's report on alternative data use. While alternative data has the potential to expand credit access, he warned that it could also lead to disparate impacts and opacity in credit decisions. Citing the need for regulatory certainty, he pushed the CFPB and the banking agencies to provide joint guidance on the appropriate use of alternative data. As the report notes, the agencies agreed with this recommendation. Mr. Evans also said that the agencies should conduct knowledge building exercises with fintech firms using alternative data.

Dave Girouard, founder and CEO of Upstart, said that using alternative data with information from the credit bureaus is more accurate than using FICO scores and consumer income. He defended Upstart's use of education data, saying that it expands credit access and affordability. He also pushed legislation or rulemaking to allow firms, including banks, to test the use of alternative data in regulatory sandboxes.

Q&A

- **Alternative Data Fiduciary Standard:** Rep. Lynch also pushed a fiduciary standard for firms holding consumer financial data. This includes a duty to only use consumer financial data in the interest of the consumer and penalties for misusing or compromising consumer financial data.
- **Alternative Data Efficacy/Opacity:** Rep. Lawson (D-FL) favors allowing utility and rent payments to be used to assess credit-worthiness; Rep. McAdams (D-UT) is skeptical of using consumer shopping habits and social media activity. Rep. McHenry is also skeptical of using certain social media activity, comparing it to China's social credit system. Rep. Scott pressed making the weighting for each type of information in credit models more transparent. Rep. Hill asked if bank statements should be used to assess credit-worthiness. He also questioned whether loans originated using alternative data can weather an economic downturn.

- **Privacy:** Rep. Lynch worried that consumers would be forced to compromise their privacy to get access to credit or receive lower rates. Rep. Wexton suggested classifying alternative datasets as credit reports that are subject to privacy protections. Reps. Davidson (R-OH) and Gonzalez (R-TX) worried that the lack of a national privacy framework would hinder the use of alternative data, limiting access to credit.
- **Regulatory Guidance:** Reps. Hill and Luetkemeyer (R-MO) pushed the banking agencies to provide guidance on vendor management. Reps. Hill and Scott also applauded the GAO's recommendation for additional guidance on the appropriate use of alternative data.
- **Sandboxes/No-Action Letters:** Reps. McHenry, Hill, Davidson and Gonzalez all expressed support for regulatory sandboxes. Rep. Davidson stressed that the sandboxes should assess not only whether the models discriminate, but also whether they accurately predict ability to repay. He also suggested mandating sandboxes through legislation. Applauding the CFPB's no-action letter to Upstart, Rep. Hill supports additional no-action letters.
- **Industry Interest:** Rep. Gottheimer asked if lenders are interested in using credit models with alternative data. Ms. Wu said that the GSEs' exploration of alternative credit scoring is raising interest. Mr. Girouard stressed the need for regulatory certainty to attach bank interest.