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Bipartisan Opportunities to Legislate U.S. FinTech in the 21st Century

Jackson Mueller

MILKEN INSTITUTE

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EXECUTIVE SUMMARY

Technological advancements, especially over the last decade, have dramatically transformed the way we interact with financial products and services. New financial models are necessitating both a refresh of legacy structures and frameworks and a rethink of current approaches to solve for social and economic challenges. Financial technology (FinTech),[1] in and of itself, is not a panacea for all financial problems, but it is a tool that industry stakeholders, policymakers, and regulators can use to address several of these challenges.

The incessant pace of innovation in the financial services space driven by technological advancements has resulted in multiple points of friction between "new finance" and "old regulation." In the U.S., federal and state regulators have been at the forefront of these discussions, but the conversations and activity on how best to approach FinTechs have increasingly moved beyond the halls of regulators to the halls of Congress, as certain FinTech-related issues have surfaced that cannot be addressed solely by regulators themselves due to statutory or other limitations.

Beyond the headlines and highly partisan, big-ticket legislative items, lawmakers in the 115th Congress have been presented with multiple opportunities to come together to support bipartisan legislative bills that seek to address challenges faced by FinTech firms that could have a direct effect on the sustainability, development, and growth of not only FinTech, but also the provision of financial services and products more broadly.

FinTech experts at the Milken Institute have identified 71 FinTech-related bills introduced by lawmakers in the 114th and 115th Congresses between January 2015 and December 2017, more than

[1] For the purposes of this paper, the Milken Institute defines FinTech as "the use of technology in the provision of financial products and services." When we say "FinTech firms," for instance, we mean tech-driven platforms that may or may not have a physical presence and that deploy advanced data analytics, various algorithms, etc. to meet the needs of their customers. Such firms leverage advancements to the internet and mobile technology to digitally extend their products and services at the national or international level.

half of which carry bipartisan support. Based on legislative analysis, six FinTech topics have been highlighted as key areas where lawmakers from both sides of the aisle have come together to introduce bipartisan legislation in the 115th Congress. The six topic areas focus on "true lender" and "valid when made" litigation, mobile banking, cryptocurrencies, data standards, data reporting, and the use of alternative data to expand access to credit. The Institute believes that enough bipartisanship exists in each topic area to move related legislation beyond Congress to the president's desk for signature.

Each topic area provides lawmakers with an opportunity to support efforts that enable greater financial inclusion, increased access to capital, and transparency through digital means. Movement toward these efforts is essential, especially considering that the unit cost of financial intermediation in the U.S. over the past 130 years has remained around 2 percent—meaning efficiency gains from innovations in the financial services sector have not been passed down to the end user.[i] As lawmakers enter the second half of the legislative calendar, they have been presented with multiple bipartisan opportunities to move beyond just understanding FinTech developments, to promoting a flexible policy environment that could enhance the capabilities of digitally driven platforms in meeting the demands and realities of a 21st-century economy.

INTRODUCTION

During the launch of its FinTech program in October 2014, the Milken Institute unveiled a white paper that found that something is indeed different about today's FinTech.[ii] The paper called for new regulatory approaches and processes to address several disruptive characteristics inherent in today's FinTech that existing regulatory frameworks may not be able to adequately adjust to. The ability of FinTechs to cut across financial silos and leverage the internet of finance and advances in mobile technology to reach more users continues to challenge both traditional financial incumbents who have layered their services on top of decades-old financial infrastructures and a regulatory apparatus built from the depths of the Great Depression in the 1930s.

Given the pace of innovation, FinTech has run into legal and regulatory hurdles that in certain circumstances require congressional action to provide FinTechs, and the financial services industry at large, with the clarity, consistency, and certainty they need to continue to develop and grow their operations.

Legislative action on FinTech-related issues largely emerged in the 114th Congress and that momentum has spilled over into the 115th Congress. The level of bipartisanship—a central component to legislative success (i.e., passage)—and interest from lawmakers in FinTech-related issues has grown over the course of the two Congresses. As lawmakers entered the new year, there remain multiple bipartisan legislative opportunities to drive FinTech policy forward that address hurdles preventing startups and incumbents from harnessing the full potential of technology in delivering a more responsive, competitive, and efficient financial services system.

In the following pages, the Institute provides a review of congressional developments in the FinTech space over the past two

Congresses, followed by an in-depth analysis of the 71 FinTech-related bills identified for review. The Institute subsequently determined six topic areas where bipartisan legislation has been introduced in the 115th Congress and developed a detailed overview of each selected area, why legislation is needed, and recommendations that support the responsible development of FinTech.

Based on our analysis, the Institute has formed several policy recommendations for lawmakers that address some of the challenges posed to innovative models, products, and services. They are:

- **Provide certainty on "true lender" and "valid when made" issues to maintain a vibrant, competitive marketplace for credit.** Pitchforks and torches have been replaced with olive branches as partnerships between banks and nonbank platforms continue apace. While both sides benefit from this arrangement, the importance of these relationships is under direct threat from litigation that threatens the viability of long-standing financial norms and practices. Bipartisan bills that provide for clarity and certainty for both banks and nonbanks, protect established norms and practices, provide the end user with additional financial choices, and maintain a consistent, nationwide marketplace for nonbanks to operate in should be supported.

- **Harmonize inconsistent state-by-state regulations related to mobile banking to drive financial inclusion and access.** Existing and distinct state-by-state regulations governing the use of a state-issued driver's license or other personal identification information by financial services providers prevents users from being able to effectively leverage mobile technology for banking-related services. Legislation that provides for a uniform, national framework where users are able to open up accounts through their mobile device has the potential to promote financial access, particularly in areas that are increasingly unbanked or

or underbanked.

- **Update tax reporting guidelines regarding cryptocurrency transactions to protect against tax evasion and to promote a more transparent, responsible marketplace.** Additional guidance regarding tax reporting of cryptocurrency transactions is needed. The recent litigation battle between the Internal Revenue Service (IRS) and cryptocurrency exchange Coinbase exemplifies why further guidance is necessary. While the Milken Institute remains concerned about the potential for tax evasion through the utilization of cryptocurrency, we are equally troubled by the IRS's blanket request for user information. Lawmakers should support legislation that attempts to clarify reporting obligations to ensure proper compliance without resulting in undue burdens on cryptocurrency exchanges.

- **Enable the reporting of alternative data that can expand access to credit.** Millions of Americans face enormous challenges in accessing credit on a daily basis due, in part, to an insufficient or nonexistent credit profile. The proliferation of data and the use of advanced analytics has the potential to dramatically transform how consumers are scored, the information used to build a consumer's credit profile, and the accuracy of the score. Bipartisan legislation has been introduced that could result in more accurate credit scores and a more inclusive financial services sector.

- **Develop common reporting standards among U.S. financial regulators to foster a more transparent marketplace.** Distinct reporting standards among federal financial regulatory agencies and, in some cases, the lack of electronically searchable data, complicates the ability of regulators, and the broader public, from being able to find and assess potential risks to the financial system. Bipartisan legislative efforts to provide for common data standards where technological advancements could be deployed

to analyze and assess the data across regulatory agencies for risks to the financial system could lead to more effective oversight and should be supported.

- **Require the IRS to automate certain data collection and reporting processes that can help enhance the speed and efficacy of the underwriting process.** Application programming interfaces (APIs) could play an important role at federal agencies in providing for safer, more efficient means of transmitting data to third party platforms that could effectively utilize the information to assess the likelihood for fraud or build a more accurate credit profile, among other use cases. Legislative efforts to update federal agency infrastructures and processes through the use of APIs could drastically reduce response time and lead to a more efficient transmission of information.

METHODOLOGY

The Institute formed our recommendations based on prior work, external interviews, and an internal qualitative and quantitative analysis of the 71 FinTech-related bills introduced in the 114th and 115th Congress between January 2015 and December 2017. Of the identified bills, more than half were or are currently supported by lawmakers on both sides of the aisle. The 71 bills were selected by Milken Institute experts who gathered all information pertaining to each bill, including whether it was bipartisan, the number of Democrat and/or Republican cosponsors, a short description of each bill, and its current status.

To create an informative and coherent analysis of the 71 bills, we segmented certain bills according to 18 FinTech topic areas:

Innovation Offices	Cryptocurrency-Specific
Data Standards & Reporting	Law Enforcement/Anti-Money Laundering (AML)
True Lender	Equity Crowdfunding
Valid When Made	Private, Securities-Based Offerings (PrivSec Off): Registration and Reporting Requirements
Usury Rate	PrivSec Off: Micro-Offerings
Alternative Credit Reporting	PrivSec Off: Accredited Investor Definition
Mobile Banking	PrivSec Off: Emerging Growth Companies (EGC)
State Licensing/Oversight	VC/Angel: Qualifying VC Fund/Venture Exchange
Payments	VC/Angel: General Solicitation/Road Shows/Test the Waters/Resale

METHODOLOGY

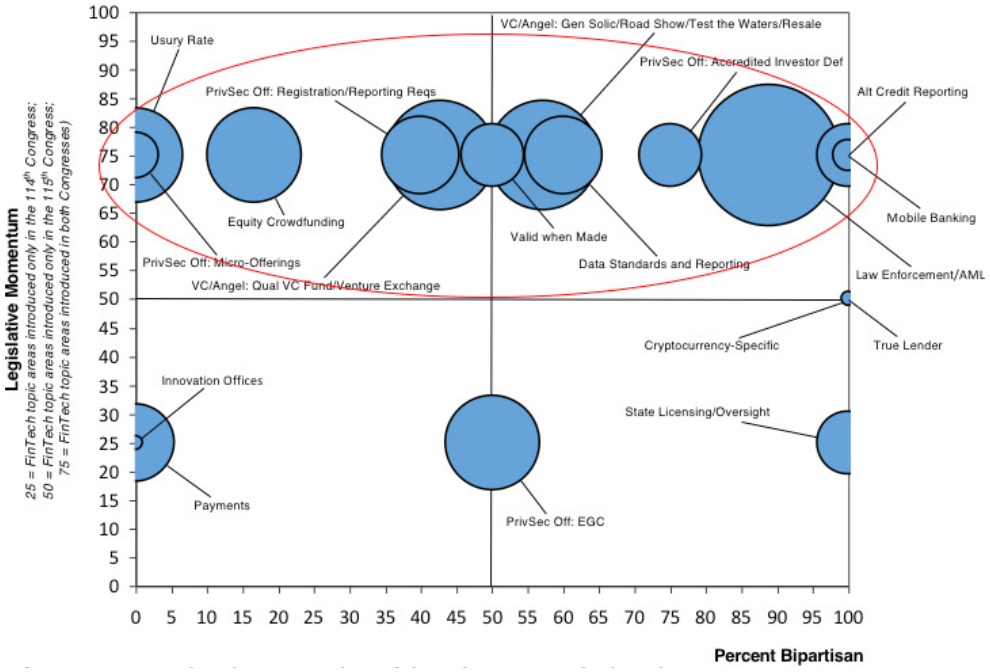
The Institute then conducted an analysis of FinTech-related legislation introduced in the 115th Congress to determine which topic areas contained bipartisan legislation. Based on that analysis, the Institute selected some, but not all, of the identified topic areas that were FinTech related.

Those six FinTech-related topic areas selected for further analysis are:[2]

True Lender	Cryptocurrency-Specific
Valid When Made	Data Standards & Reporting
Mobile Banking	Alternative Credit Reporting

The selections were determined based on their legislative momentum over the past two Congresses, (as shown in Chart 1), bipartisan support, level of congressional activity (letters, comments, hearings, etc.), and prior Institute work. Stemming from this analysis, the Milken Institute conducted an in-depth review of the issues and challenges affecting startups and/or incumbents offering innovative financial products and services. From there, recommendations were formed around these six areas prime for bipartisan support indicating that lawmakers should consider moving FinTech policy forward.

Chart 1. Legislation Momentum in the 114th and 115th Congresses



Source: Milken Institute.

Note: Bubble size is determined by the number of bills introduced.

[2] The FinTech-related topic area "data standards & reporting" includes legislation calling on the U.S. Treasury to develop common data reporting standards among certain U.S. financial regulators and separate legislation calling for the IRS to automate the reporting of tax return information. These issues are separate and are discussed in more depth in the analysis portion of this paper (starting on page 25), but for the purposes of segmenting each of the 71 bills appropriately, we brought these separate issues under one umbrella category: data standards and reporting.

FINTECH IN THE HALLS OF CONGRESS

The U.S. government's response to innovation within the financial services sector over the past few years has largely come from various federal regulatory agencies. As FinTech investment ballooned, particularly from 2010 to 2015, federal regulators began to scrutinize the space more closely. Arguably, the first real regulatory response to the dawning of this era of FinTech came in 2007 and 2008 when the Securities and Exchange Commission (SEC) classified the promissory notes offered to the general public by Prosper and Lending Club as unregistered securities. Both Lending Club and Prosper entered into so-called "quiet periods"[iii] to comply with the SEC, marking the regulator's entrance into the regulation of the peer-to-peer lending industry.[iv]

In 2012, the U.S. Consumer Financial Protection Bureau (CFPB) launched Project Catalyst in an effort to spur consumer-friendly innovation.[v] In 2014, the IRS classified virtual currencies as property for federal tax purposes subjecting payments made using virtual currency "to information reporting to the same extent as any other payment made in property."[vi] In 2015, the U.S. Treasury published a request for information[vii] on marketplace lenders, with a final report released roughly a year later providing an overview and recommendations from the comments submitted to Treasury.[viii] In 2016, the U.S. Office of the Comptroller of the Currency (OCC) released a white paper covering the agency's responsible innovation framework, which led to a follow-on release in December 2016 of its white paper covering special purpose national bank charters for FinTech firms. In 2017, the CFPB released requests for information on the impact of alternative data on credit access for consumers and information concerning the small-business lending market.[ix]

These are only examples of a more exhaustive list of regulatory and administrative actions undertaken in the U.S. over the past few years,

providing a brief overview of regulatory efforts in this space. Regulators have been able to address some of the regulatory frictions that have surfaced from the entrance of tech-driven platforms and innovations from within and outside the traditional financial services space by utilizing the various tools in their regulatory toolkit.[3]

However, not all frictions are able to be addressed by regulators and their toolkits due to statutory limitations, limited jurisdiction, or more macro issues (e.g., federalism[x]) and require lawmakers' attention.

Attention to FinTech in the halls of Congress only started to pick up in the 114th Congress, with that momentum spilling over into the 115th Congress.[4] Over the past few years, lawmakers have taken the preferred route of educating themselves on the seismic changes occurring in finance, which led to more informed policymaking beginning in 2016.

This route also led to the launch of a variety of caucuses focused on FinTech or advanced technologies incorporated by various FinTech platforms (Appendix 1). In addition, lawmakers in both chambers have held multiple hearings (Appendix 2) on FinTech-related topics, including developments in mobile payments, marketplace lending, and virtual currencies.

There are a couple of key takeaways from these developments:[5]

Caucuses[xi]

- Each of the caucuses is supported and represented by a bipartisan group of lawmakers. Ideas that emanate from each caucus will likely have bipartisan support, which is crucial in today's partisan environment on Capitol Hill.
- More than half of the listed caucuses were launched within the past two years, a testament to the ever-expanding term "FinTech" and the multitude of models, services, and products that continue to drive innovation within the financial sector.

[3] Proposed and final regulation, waivers, no-action and interpretive letters, exemptions, guidance in the form of press releases, prepared remarks or white papers, and enforcement actions, among other tools.

[4] The Institute is aware that lawmakers from both chambers have introduced several FinTech-related bills so far in 2018. Introduced in the House: H.R. 4752 (Rep. Ted Budd (R-N.C.)); H.R.4768 (Rep. David Kustoff (R-Tenn.)); H.R. 4943 (Rep. Doug Collins (R-Ga.)); H.R.4999 (Rep. Suzanne Bonamici (D-Ore.)); and H.R. 5036, (Rep. Ted Budd (R-N.C.)). In the Senate: S. 2347 (Sen. Thom Tillis (R-N.C.)); S. 2383 (Sen. Orrin Hatch (R-Utah)); and S.2417 (Sen. Jeff Merkley (D-Ore.)).

According to our classification scheme, there are now two more cryptocurrency-specific bills (one with bipartisan support), three more Law Enforcement/AML bills (all with bipartisan support); two more payments bills, and one VC/Angel: Gen Solic/Road Show/Test the Waters/Resale (with bipartisan support). As such, there are now 12 Law Enforcement/AML bills, 8 VC/Angel: Gen Solic/Road Show/Test the Waters/Resale bills, 7 Payments bills, and 3 Cryptocurrency-specific bills that have been introduced in the 114th and 115th Congress as of February 25, 2018. In the 115th Congress alone, of the 35 FinTech-related bills that have been introduced, 25 of them (or 71 percent) have bipartisan support.

[5] Despite our best efforts, we may have left off a few caucuses or hearings that focus on FinTech in some way, shape, or form. As such, the lists should not be viewed as comprehensive. We would also note that lawmakers have taken to other means to educate themselves, their colleagues, and the general public about FinTech developments. For instance, the U.S. Joint Economic Committee launched its first-ever podcast called Main Street Economics where Rep. David Schweikert (R-Ariz.) and Committee Chairman Pat Tiberi (R-Ohio) engaged in a discussion on the future of blockchain technology. Podcast available here: https://www.jec.senate.gov/public/index.cfm/republicans/podcasts.

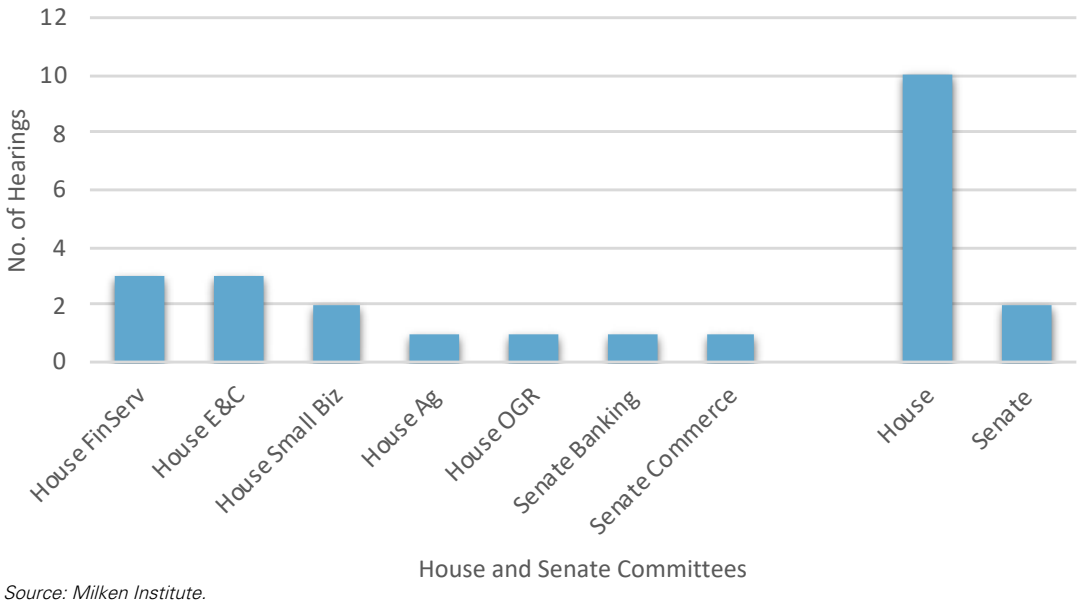
Hearings[xii]

- House lawmakers have held five times more hearings than their colleagues in the Senate, as seen in Chart 2. Senate hearings have taken place only within the last year, while the House has been active since at least 2015. There are both positive and negative takeaways from this. First, we clearly have a bifurcated legislative environment where interest in addressing FinTech-related issues largely resides in the House. While there is a heightened possibility that FinTech-related legislation could make its way through the House, its fate is uncertain once it reaches the Senate. Second, the Senate is now beginning to take notice and the two chambers could potentially become more aligned on efforts to address FinTech from a legislative lens in the near future.

- Until recently, most of the FinTech-related hearings that have taken place occurred outside of the House Financial Services Committee or Senate Banking Committee, despite the outsized effects of FinTech on the financial services industry. Only within the last year and a half have these committees become more active in publicly discussing today's tech-driven innovations.[6]

[6] The Milken Institute is also aware that both chambers have already held a few FinTech-related hearings in 2018. The House Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing on January 30 titled, "Examining Opportunities and Challenges in the Financial Technology ("Fintech") Marketplace." The Senate Banking Committee held a hearing on February 6 titled, "Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission." The House Science, Space, and Technology Subcommittees on Oversight and Research and Technology held a hearing on February 14 titled, "Beyond Bitcoin: Emerging Applications for Blockchain Technology." The Senate Agriculture Committee held a hearing on February 15 titled, "State of the CFTC: Examining Pending Rules, Cryptocurrency Regulation, and Cross-Border Agreements." When combined with the total number of FinTech-related hearings held in 2017, the 115th Congress has now equaled the 114th Congress in total number of FinTech hearings held. The second session of the 115th Congress, which began on January 3, 2018, ends on January 3, 2019.

Chart 2. FinTech-Related Hearings in the House and Senate (2015-2017)



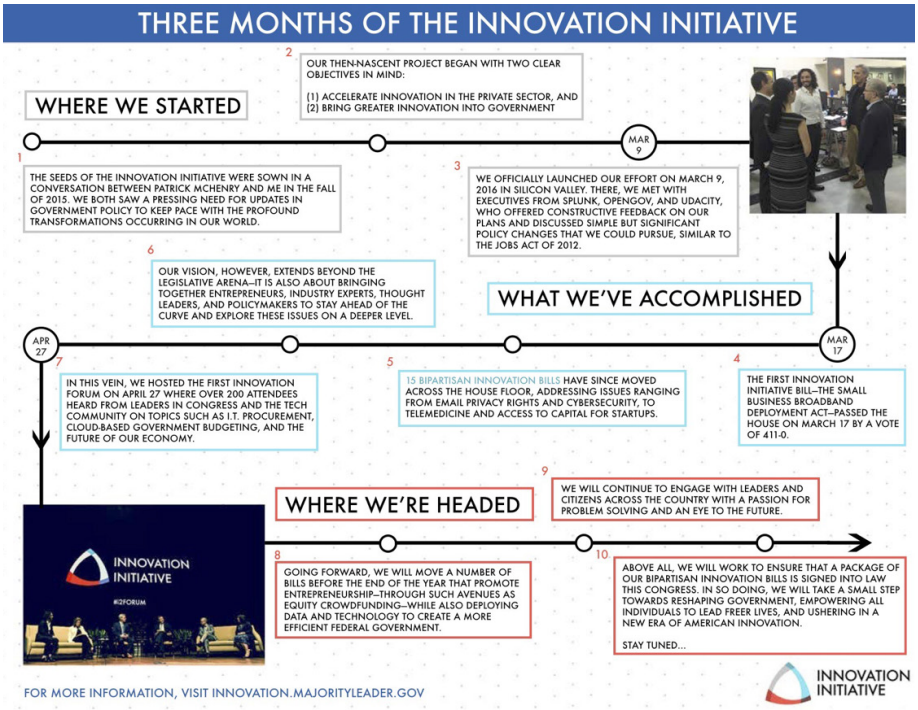
Source: Milken Institute.

FROM REACTIVE TO PROACTIVE

While legislative efforts have largely concentrated on understanding and coming to terms with FinTech through the formation of caucuses and scheduling of hearings, Congress has become more proactive in introducing FinTech-related legislation over the past two years. The 114th Congress, in particular, set the stage for lawmakers to come together to support and pass bipartisan legislation that enabled the growth and development of FinTech.

In March 2016, House Majority Leader Kevin McCarthy (R-Calif.) and Chief Deputy Whip Patrick McHenry (R-N.C.) launched the Innovation Initiative. The purpose of the initiative "is to advance policy solutions that will foster more private-sector innovation and job growth, by empowering entrepreneurs to pursue their dreams."[xiii] The initiative contains a portfolio of legislation designed to enhance capital access and entrepreneurship, streamline information sharing and reporting, open up access to data, and make government more efficient. While the legislative portfolio includes legislative items that do not pertain explicitly to FinTech, the initiative has helped to jumpstart legislative discussion as it relates to innovation.

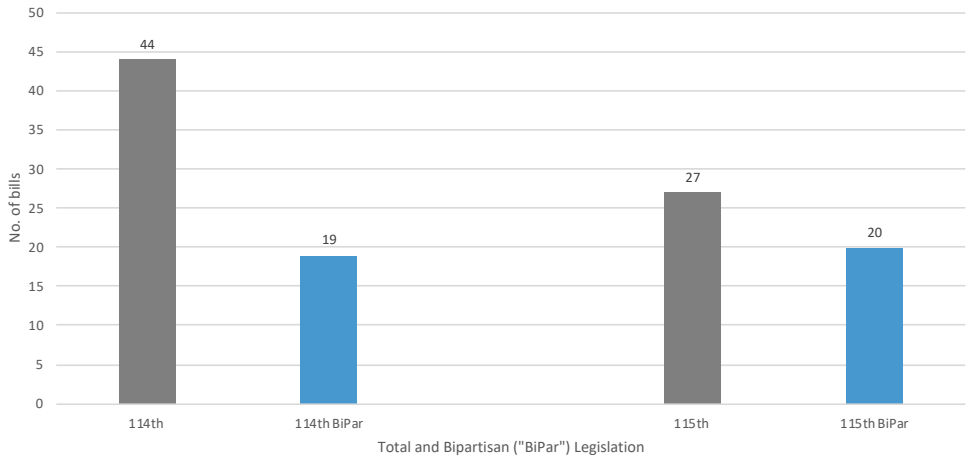
Figure 1. The Innovation Initiative



Source: House Majority Leader Kevin McCarthy (R-CA.), "The Innovation Initiative's Quarterly Report," June 10, 2016.

Beyond the launch of initiatives, policymakers have steadily introduced FinTech-related legislation over the past few years. Our analysis (Appendix 3) covers FinTech-related legislation introduced in the 114th and 115th Congresses between January 2015 and December 2017. Within that timeframe, the Institute uncovered 71 FinTech-related legislative bills,[7] more than half of which carry bipartisan support.[8] The following tables provide further insight and a breakdown of the 71 bills into select FinTech-related topics.[9,10]

Chart 3. FinTech-Related Legislation and Bipartisanship in the 114th and 115th Congresses



Source: Milken Institute.

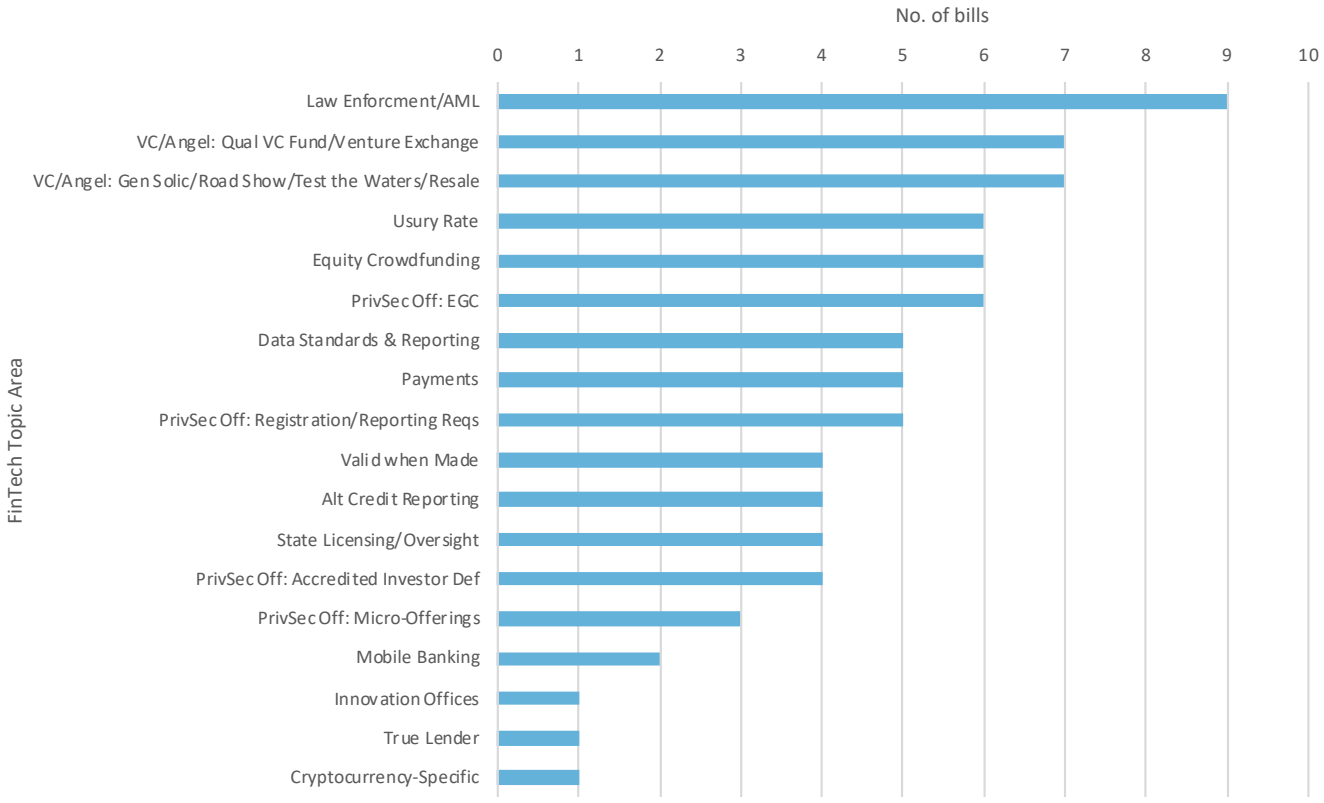
[7] This number does not include House Resolution 835, which was introduced by Reps. Adam Kinzinger (R-IL) and Tony Cárdenas (D-CA) and passed the House on September 12, 2016. Details on the resolution are available here: https://kinzinger.house.gov/news/documentsingle.aspx?DocumentID=399393.

[8] For the purposes of this paper, "bipartisan support" means lawmakers from both sides of the aisle signed on to legislation as cosponsor or sponsor, according to Congress.gov.

[9] In Charts 4, 5, and 6, "PrivSec Off" refers to legislation that pertains to private securities offerings/private marketplace. We would also note that the total number of bills for each FinTech topic area may add up to more than 71 bills due to the fact that some bills pertained to more than one FinTech topic area and, as such, were double counted. The totals in Chart 3 avoid double counting. Bills that were double counted are: H.R.10, the Financial CHOICE Act of 2017 (115th); H.R.6427, Creating Financial Prosperity for Businesses and Investors Act (114th); H.R.5983, the Financial CHOICE Act of 2016 (114th); and H.R.4852, the Private Placement Improvement Act of 2016 (114th).

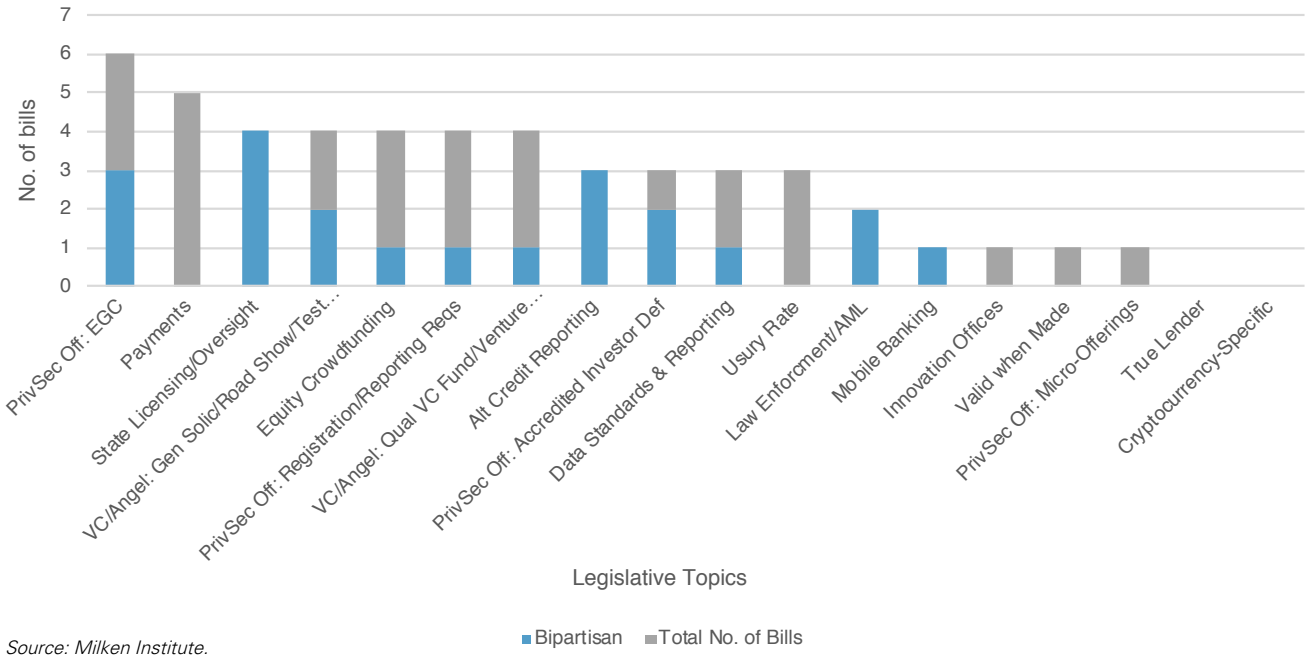
[10] The 115th U.S. Congress ends in January 2019. Lawmakers have already introduced several FinTech-related bills in the second half of the 115th Congress and the Milken Institute anticipates additional legislation to be introduced throughout the remainder of this year.

Chart 4. FinTech-Related Legislation by Topic Area in the 114th and 115th Congresses



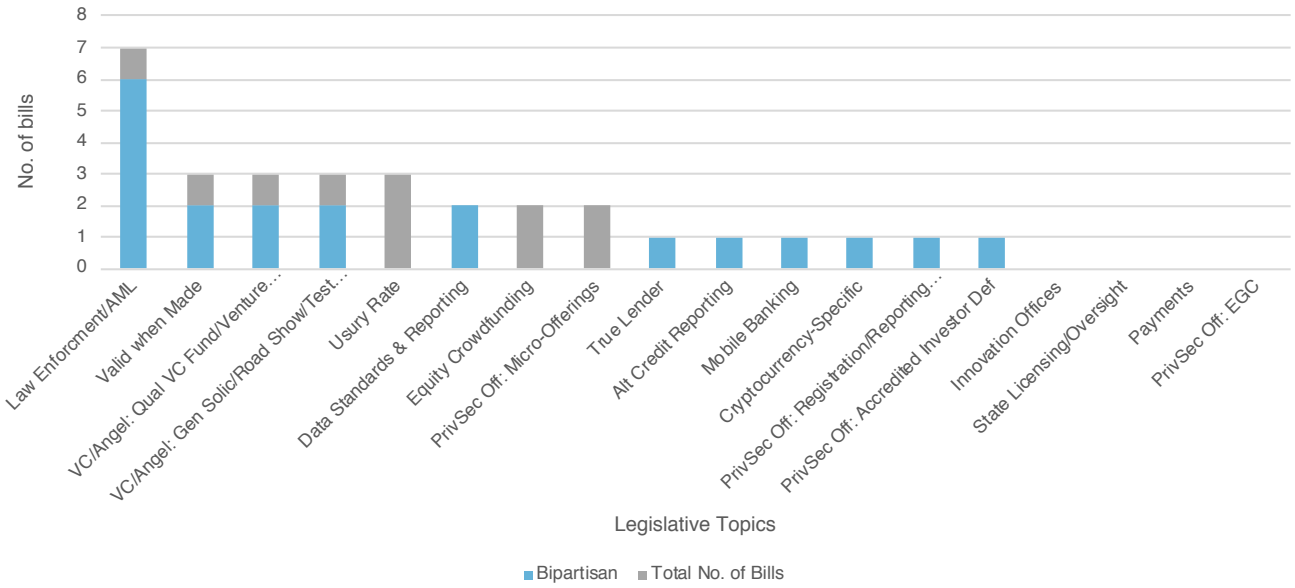
Source: Milken Institute.

Chart 5. FinTech-Related Legislation in the 114th Congress



Source: Milken Institute.

Chart 6. FinTech-Related Legislation in the 115th Congress
As of December 2017



Source: Milken Institute.

THE INHERENT DIFFICULTY OF PASSING LEGISLATION

This level of congressional activity may seem impressive, but simply introducing a bill does not guarantee legislative success. It can take an incredible amount of time for a bill to make its way through Congress and, more often than not, the final product can look drastically different than when it was first introduced. In our FinTech legislative analysis, we found that a number of bills languished, or continue to languish, in committee. Other pieces of legislation were incorporated into other, much broader, and more partisan legislation and left on the doorstep of the Senate. Other bills were or are simply too partisan to begin with to elicit any interest.

The arduous journey legislation takes must contend with a variety of actors and barriers that can ultimately determine the bill's final shape and resting place.

Building consensus when there are 535 Members of Congress can be difficult.

With 435 representatives in the House and 100 members of the Senate, pushing through legislation that requires significant

support in the House and Senate is an incredibly difficult task. Members often not only have to seek support at the committee level but also need to ensure the legislation has enough support to pass the House or Senate.

Similarly, gaining support may require certain tradeoffs. The end product, assuming the bill gets beyond committee, Congress, and to the president's desk, will often look completely different than what was originally introduced. Legislation goes through numerous revisions as a result of amendments introduced in committee or on the House or Senate floors.

Messaging is easy. Legislating is difficult.

It's important to note that the House of Representatives in the 114th Congress already voiced strong support for FinTech after passage of House Resolution 835. The resolution expressed "the sense of the House of Representatives that the United States should adopt a national policy for technology to promote consumers' access to financial tools and online commerce to promote economic growth and consumer empowerment." The 385-4 vote[xiv] on the resolution offered by Congressmen Tony Cárdenas (D-Calif.) and Adam Kinzinger (R-Ill.) marked the first FinTech resolution to be introduced and passed by the House of Representatives.[xv]

A laudable effort, and yet a House resolution does not carry the full weight of legislation. It's great for optics purposes but requires much less give-and-take and debate than legislation. As Rep. Patrick McHenry's (R-N.C.) bill, the Fix Crowdfunding Act, demonstrated, good policy can quickly turn into a glass half full.[xvi] The introduction of the bill in March 2016 and subsequent debate saw significant provisions of the act—which was designed to address concerns related to the SEC's implementation of Title III of the Jumpstart Our Business Startups (JOBS) Act of 2012—removed, weakening the legislation's impact on the equity crowdfunding space.

After legislation, there is implementation.

It took less than a year for the House and Senate to come together to pass the JOBS Act—a significant accomplishment given the partisan political environment and the importance of the provisions contained in the act. While some of the act's provisions went into effect immediately, other provisions relied on the SEC to pass rules for implementation. At the time, the SEC was juggling with a number of Wall Street reforms required under the Dodd-Frank Act. As such, the implementation of the equity crowdfunding provisions under Title III of the JOBS Act took the SEC more than three years to pass final rules and four years to take effect. That amount of time is an eternity in the FinTech space given the pace of innovation and movement across multiple financial services verticals. By the time the equity crowdfunding provisions took effect, the crowdfunding community was already calling for an update.

There are an increasing number of voices in the FinTech space.

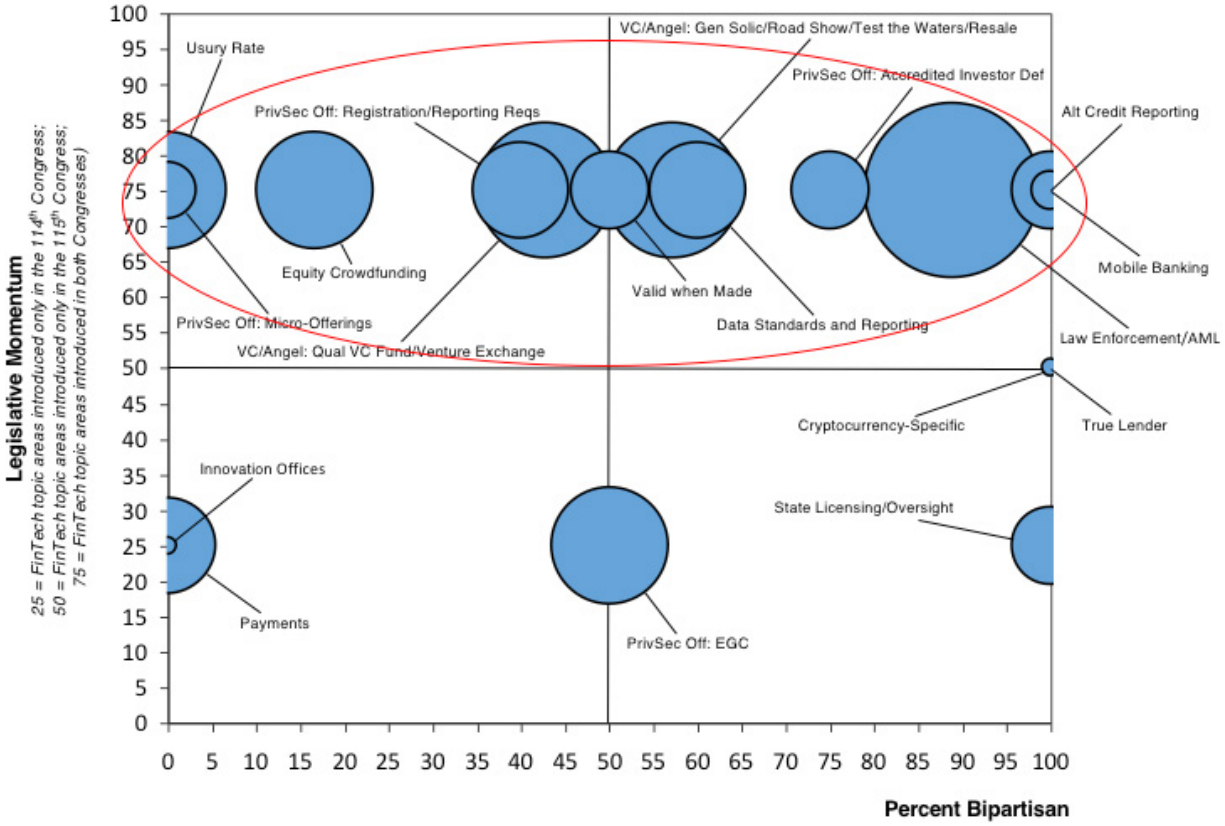
As FinTech investment has increased over the years, so too has the level of interest in FinTech in and around Washington, D.C. FinTech stakeholders have launched several advocacy groups including the Chamber of Digital Commerce, the Digital Currency Council, Coin Center, the Marketplace Lending Association, the Online Lenders Policy Institute, the Small Business Finance Association, the Innovative Lending Platform Association, Financial Innovation Now, and the Consumer Financial Data Rights group. Joining the increasing FinTech chorus on Capitol Hill are consumer, state, and traditional banking advocates concerned about competition, the comingling of banking and commerce, preemption, opaque algorithms, relaxed regulations and oversight of tech-driven platforms, safety and soundness, and protections for the end user, among other claims and concerns. The increasing number of actors in this space present both opportunities and challenges for lawmakers as they seek to navigate the legislative process and build support for or opposition against a FinTech bill.

DAUNTING, YET SURMOUNTABLE, OBSTACLES

Of the 71 bills identified for analysis for the purposes of this paper, more than half carry bipartisan sponsorship. This is critical amidst a partisan political environment and a testament to lawmakers' interest and support for tech-driven solutions that can promote financial inclusion, expand access to credit, and enhance transparency and compliance in the financial services sector.

As Chart 7 indicates, of the 18 FinTech topic-areas created, 12 of them (67 percent) contained legislation introduced in both the 114th and 115th Congresses. Of those, more than 80 percent contained bipartisan legislation.

Chart 7. Legislation Momentum in the 114th and 115th Congresses



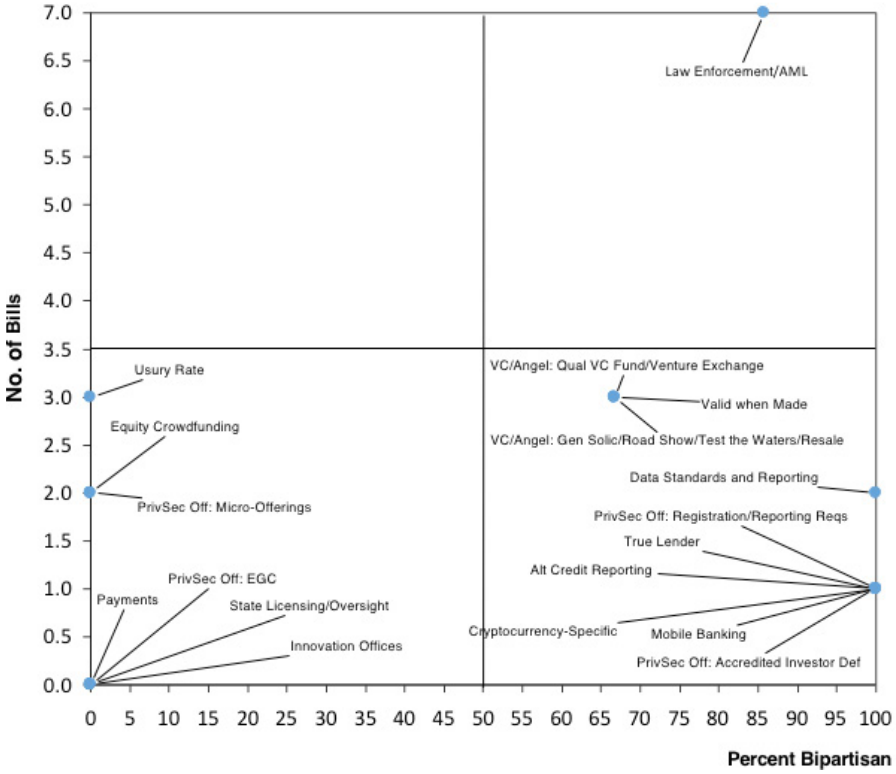
Source: Milken Institute.

Note: Bubble size is determined by the number of bills introduced.

Beyond looking at legislative momentum on FinTech, the Institute also separated out the current Congress' legislation (the 115th Congress) and the level of bipartisan bills associated with each FinTech-related topic area.

As Chart 8 shows, lawmakers in the 115th Congress have introduced seven bills associated with the law enforcement/AML topic area, with six bills registering support from lawmakers on both sides of the aisle. This topic area dwarfed all other FinTech-related topic areas in terms of number of bills introduced.

Chart 8. Up and Coming Legislation in the 115th Congress

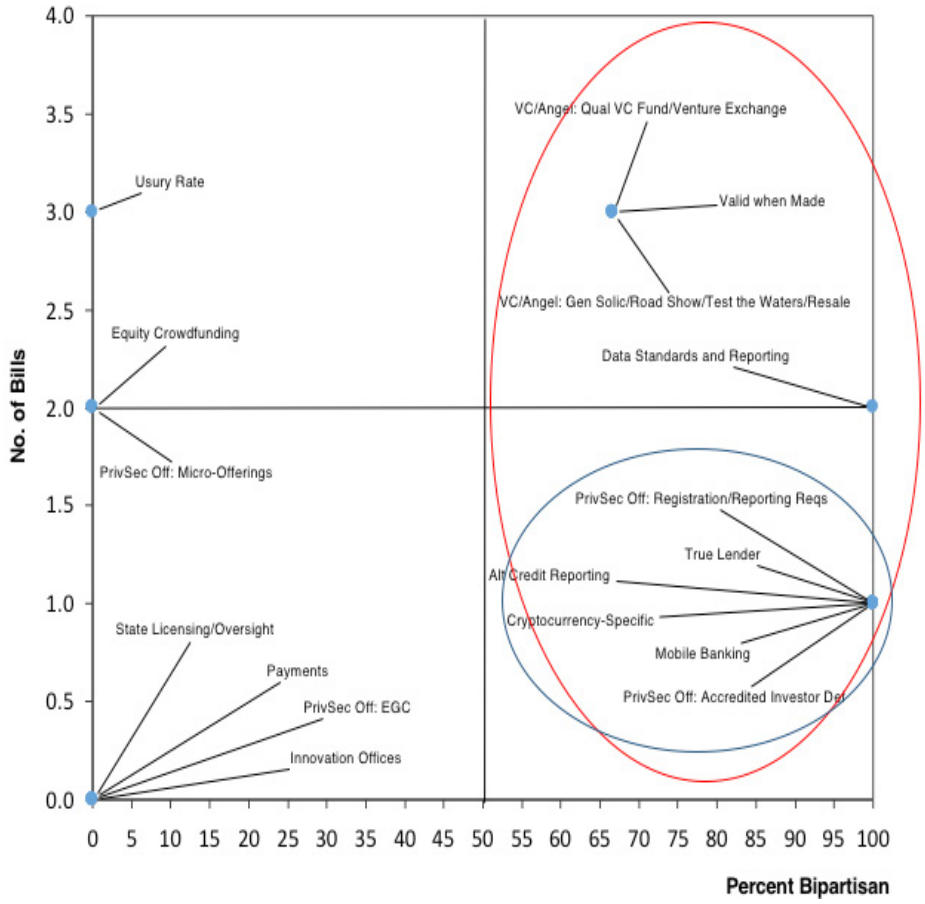


Source: Milken Institute.

The amount of bipartisan support and interest in legislation associated with that FinTech-related topic area led to Congress passing H.R. 3364, Countering America's Adversaries Through Sanctions Act. That act, which was signed into law on August 2, 2017, incorporates measures from several other law enforcement/AML bills and directs the U.S. Treasury to develop a national strategy to combat the financing of terrorism including holding discussions and obtaining data pertaining to the use of evolving forms of value transfer (e.g., cryptocurrencies) for illicit financing purposes. In short, strong bipartisan support found in FinTech-related topic areas can provide the momentum to carry legislation forward from the committee level to the president's desk.

In further analysis, the Institute uncovered several other FinTech-related topic areas where bipartisanship exists in the 115th Congress. When taking out "law enforcement/AML," Chart 9 shows that there are 10 other FinTech-related topic areas that contain bipartisan legislation. Even though the number of bills associated with each topic area pales in comparison to the amount of legislation under "law enforcement/AML," bipartisan support is propelling certain legislation forward.

Chart 9. Up and Coming Legislation in the 115th Congress



Source: Milken Institute.

In the 115th Congress, even though there are FinTech-related topic areas that contain only one bipartisan bill, significant legislative activity is taking place. For instance, in Chart 9 there are six FinTech-related topic areas that each contain only one legislative item. However, as Table 1 illustrates, legislation in four of the six FinTech-related topic areas (67 percent) have passed committee with strong bipartisan votes.

Table 1. Bipartisan Bills Already Voted on by Committee or House/Senate Floor

Bill	FinTech Topic Area	Committee	Bill Status
H.R.3299 Protecting Consumers' Access to Credit Act	Valid When Made	HFSC	Ordered to be reported (Yeas and Nays: 42-17) on November 15, 2017 House Floor: Bill agreed to (Yeas and Nays: 245-171) on February 14, 2018
H.R.435 The Credit Access and Inclusion Act of 2017	**Alternative Credit Reporting**	**HFSC**	**Ordered to be reported (Yeas and Nays: 60-0) on December 13, 2017**
H.R.1457 Making Online Banking Initiation Legal and Easy (MOBILE) Act of 2017	**Mobile Banking**	**HFSC**	**Ordered to be reported (Yeas and Nays: 60-0) on December 13, 2017 House Floor: Bill agreed to (Yeas and Nays: 397-8) on January 29, 2018.**
H.R.2864 Improving Access to Capital Act	**PrivSec Off: Registration/ Reporting Reqs**	**HFSC**	**Ordered to be reported (Yeas and Nays: 59-0) on July 25, 2017 House Floor: Bill agreed to (Yeas and Nays: 403-3) on September 5, 2017**
H.R.1585 Fair Investment Opportunities for Professional Experts Act	**PrivSec Off: Accredited Investor Def**	**HFSC**	**Ordered to be reported (Yeas and Nays: 58-2) on October 12, 2017 House Floor: Bill agreed to (Voice vote) on November 1, 2017**
H.R.1219 Supporting America's Innovators Act of 2017	VC/Angel: Qual VC Fund/ Venture Exchange	HFSC	Ordered to be reported (Yeas and Nays: 54-2) on March 9, 2017 House Floor: Bill agreed to (Yeas and Nays: 417-3) on April 6, 2017
S.444 Supporting America's Innovators Act of 2017	VC/Angel: Qual VC Fund/ Venture Exchange	SBC	Senate Floor: Bill agreed to (Unanimous consent) on September 11, 2017
H.R. 79 Helping Angels Lead Our Startups (HALOS) Act	VC/Angel: Gen Solic/Road Show/Test the Waters/ Resale	HFSC	House Floor: Bill agreed to (Yeas and Nays: 344-73) on January 10, 2017

Source: Milken Institute.

As heated as the political dialogue often gets on Capitol Hill, it is clear that there are a number of legislative items where lawmakers can find common ground. Bipartisanship is key to moving FinTech-related legislation forward and avoiding (or surmounting) the various obstacles that surface throughout the legislative process.

In the following pages, the Institute provides an in-depth look at some of the challenges faced by FinTech startups and incumbents that current legislation seeks to address and why these challenges need to be addressed in an effort to inform the policy debate and move FinTech policy forward.[11]

[11] In the following pages, the Milken Institute does not address every FinTech-related bill that has been introduced in the 115th Congress, but does focus on certain FinTech topic areas where bipartisanship already exists.

POLICY RECOMMENDATIONS

Provide certainty on "true lender" and "valid when made" issues to maintain a vibrant, competitive marketplace for credit

Over the years, the digital lending space has evolved from its peer-to-peer roots to marketplace platforms with the infusion of institutional investor interest and investment. Prior analysis conducted by the Institute identified and analyzed the digital platforms operating in the consumer and small-business lending markets in the U.S. and the differences in models and processes, as well as regulatory developments.[xvii] The peer-to-peer turned marketplace lending space saw a significant increase in overall growth particularly between the 2010 to 2015 timeframe, when new platforms were entering the marketplace and joining other platforms who were recording double if not triple-digit growth rates and expanding into other financial services verticals. There was such significant growth and interest that the largest consumer lender (Lending Club) and small business lender (OnDeck) went public.

Market unease in early 2016, rate hikes from large platforms operating in this space, an internal review that shook Lending Club (and the broader marketplace lending space) and increased regulatory scrutiny in the space led multiple platforms to shut down operations, lay off staff, shift focus, or review current models and operations in an increasingly crowded operating environment.[12]

Simply put, the narrative has changed. The post-crisis rhetoric where FinTechs viewed themselves as barbarians at the gates of incumbent financial services institutions has receded. In its place, FinTechs are instead offering olive branches to traditional financial services providers of all sizes.

Today, partnerships between online, nonbank platforms and traditional financial institutions are becoming more commonplace.[xviii]

[12] In KPMG's "Pulse of FinTech Q4 2016" report, the consultancy stated the following: "Payments and lending are losing luster in North America. In the more mature FinTech markets, particularly the US, investors are starting to question whether certain FinTech areas are becoming saturated. Investors have grown increasingly hesitant to invest in payments and lending platforms given the proliferation of such offerings over the past 24 months. Allegations of wrongful practices at a leading US lending company early in 2016 likely exacerbated investors' concerns. As a result, rather than consider new opportunities in these areas, many FinTech investors in the US have focused on improving business models and scaling the businesses of their existing portfolio companies." The report is available here: https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/02/pulse-of-fintech-q4-2016.pdf.

In fact, of the various models employed by online, nonbank lenders to serve consumers and/or small business borrowers, the bank partnership model is increasingly being utilized by FinTech lending platforms.

As described by the U.S. Treasury Department,[xix] under the bank partnership model, platform lenders partner with an issuing depository institution to originate loans and then purchase the loans for sale to investors as whole loans or by issuing securities such as member-dependent notes.

One of the big reasons behind platforms looking to partner with banks is that such partnerships provide for a consistent national market for credit. Historically, certain states have passed separate usury laws setting caps on the maximum rates of interest that can be charged to customers residing in the state. As a result, different states have established distinct usury caps, setting in place inconsistent, state-by-state usury rate regimes.

Recognizing the challenges posed by distinct, state-by-state usury regimes, Congress passed the National Bank Act[xx] and the Federal Deposit Insurance Act[xxi] to provide both national banks and state-chartered banks (among other financial institutions[xxii]) with the ability to charge customers located around the U.S. interest rates based on the laws of the state in which the bank, not the customer, is located.[13]

Both acts, however, do not pertain to nonbank FinTech platforms. As a result, FinTech platforms face competitive disadvantages relative to national or state-chartered banks in being able to leverage a consistent, national market for credit to provide customers with potentially more advantageous products and services.

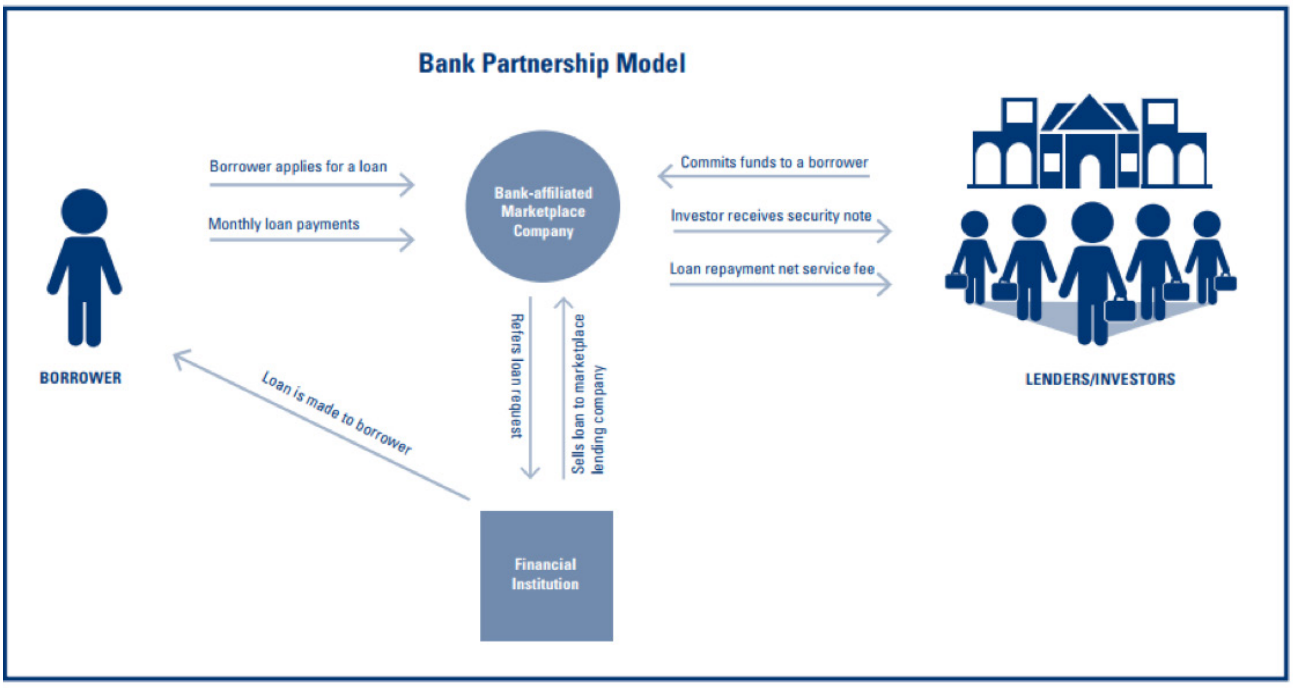
To overcome this challenge and meet the credit needs of consumers and small businesses nationwide, FinTech platforms are increasingly forming partnerships with traditional banks. This arrangement, as

[13] For the purposes of this paper, the Milken Institute has decided not to discuss litigation and historical developments related to the National Bank Act (NBA) or the Federal Deposit Insurance Act (FDIA). There are already a substantial number of reports and legal reviews that discuss the importance of the NBA and FDIA in creating a nationwide market for credit.

explained by the U.S. Federal Deposit Insurance Corporation (FDIC), is described as follows:

"In these cases, the bank-affiliated marketplace company collects borrower applications, assigns the credit grade, and solicits investor interest. However, from that point the bank-affiliated marketplace company refers the completed loan application packages to the partner bank that makes the loan to the borrower. The partner bank typically holds the loan on its books for 2-3 days before selling it to the bank-affiliated marketplace company. Once the bank-affiliated marketplace company purchases the loan from the partner bank, it issues security notes up to the purchase amount to its retail investors who pledged to fund the loan. By the end of the sequence of transactions, the borrower's repayment obligation transfers to the bank-affiliated marketplace company, and the security noteholder maintains an unsecured creditor status to the bank-affiliated marketplace company."[xxiii]

Figure 2. The Bank Partnership Model



Source: FDIC Supervisory Insights, Winter 2015.

One of the main advantages of the partnership is the ability for nonbank FinTech platforms to leverage a bank's interest rate export capability under the Federal Deposit Insurance Act. As a result, nonbank FinTech platforms are able to market their products and services nationwide using the partnered bank's home state interest rate.

Despite tacit approval from the FDIC and the Office of the Comptroller of the Currency, the bank partnership model is facing increased litigation risk and objections from consumer advocates and state regulatory authorities concerned that nonbanks are merely partnering with banks to avoid state usury caps to prey on consumers and small businesses as a result of the interest rate preemption provisions in federal law. There are two similar, yet distinct fronts to this debate:

- **"Valid When Made:"** If the loan is nonusurious when made, it remains nonusurious throughout the lifecycle of the loan. In other words, the interest rate given on a loan that partner banks originate—provided it's not higher than the usury cap in the state where the partner bank resides—will remain nonusurious throughout the lifecycle of the loan.

  Banks and nonbanks alike have relied upon this doctrine for some time. Nonbank online finance platforms have utilized this doctrine to great effect in partnerships with a national or state-chartered bank. This arrangement has allowed nonbank FinTech firms the ability to offer consistent prices nationwide without being subject to a patchwork of inconsistent, state-by-state usury limits.

  This longstanding principle of usury law, however, is under threat from recent litigation, including the *Madden v. Midland LLC* case.[xxiv] Despite the fact that courts have, in the past, upheld the principle of "valid when made," recent decisions find that a nonbank that purchases a loan from a bank (which is common

in the nonbank FinTech financing space) cannot charge the same interest rate on that loan that a bank could charge, assuming another bank purchased the debt, under Section 85 of the National Bank Act.

Clearly, not only is recent litigation threatening the longstanding principle, but recent decisions are potentially restricting the availability of credit, reducing competition, and ultimately threatening the viability of the bank partnership model.

- **"True Lender:"** That the partner bank, which originates the loan and then sells to the Fintech platform—which is common under the bank partnership model—is not the "true lender" given the very small amount of time the loan remains on the bank's book (at maximum, one to three days).

The courts remain divided on who the "true lender" really is with separate courts coming to different conclusions in recent cases. At issue is which entity in the arrangement has a "predominant economic interest" in the loan being offered, with recent litigation exposing risks to the current bank partnership model and the marketplace lending industry overall.[xxv] If a nonbank FinTech lender is found to be the "true lender," they would lose the exportation advantage that FinTech lenders currently rely on to market their products and services and could be subject to penalties for violating state usury laws. The uncertainty from recent litigation has resulted in certain platforms changing their models to protect against "true lender" concerns.[xxvi]

There are various reasons why the uncertainty surrounding valid when made and true lender doctrines must be addressed in order to preserve the bank partnership model and a competitive, nationwide credit marketplace.

1. Litigation is already having a negative impact on credit availability. Specifically, the decision rendered in the *Madden*

v. Midland case is already being felt in the jurisdiction of the Second Circuit. An August 2017 study by Colleen Honigsberg, Robert Jackson, Jr., and Richard Squire,[xxvii] found that loan volume to low-quality borrowers—those with FICO scores below 625—declined by 52 percent in New York and Connecticut (the jurisdiction of the Second Circuit Court of Appeals) while lending to similar borrowers outside of the Second Circuit grew by nearly 125 percent.

2. The *Madden v. Midland* decision could potentially have broader ramifications for the secondary marketplace. Evidence from the same August 2017 study found that the court's decision affected secondary market trading with investors discounting notes backed by above-usury loans to borrowers in Connecticut and New York. Separately, the Securities Industry and Financial Markets Association (SIFMA) stated in a comment letter to the Treasury[xxviii] that the *Madden* decision "could significantly interfere with banks' exercise of their federally granted lending authority because it would undermine the secondary market for loans – on which banks depend."

3. Recent litigation fails to account for the benefits that FinTech lenders have provided to U.S. consumers and small businesses in utilizing the bank partnership model. A recent report by the Federal Reserve Bank of Philadelphia[xxix] examined Lending Club's consumer lending portfolio and found that lending is penetrating areas that could benefit from additional credit supply. In fact, half of Lending Club's new consumer loans are in areas where there is little banking competition, and roughly 40 percent of loans were made to areas that experienced at least a 5 percent decline in the number of bank branches.

On the small-business front, roughly one-quarter of PayPal Working Capital (PPWC) loans disbursed between October 2014 and March 2015 went to the 3 percent of counties that have lost 10 or more banks since the financial crisis. In addition, more than

one-third of PPWC's portfolio went to low- and moderate-income businesses.[xxx]

4. The bank partnership model results in de facto regulation by the FDIC and OCC in regards to third-party guidance that banks must follow whenever partnering with a third-party platform (FinTech lenders in this case). The additional level of oversight applied to FinTech lenders by banks through regulatory guidance provides for another layer of protection.

5. Subjecting nonbank lenders to 50 different state usury laws is inconsistent with today's increasingly interconnected and digital global economy. In addition, failure to provide clarity regarding "valid when made" and "true lender" risks curtails the types and amounts of credit available to consumers and small businesses, while simultaneously creating an unlevel playing field between FinTechs and traditional financial institutions.

RECOMMENDATION:

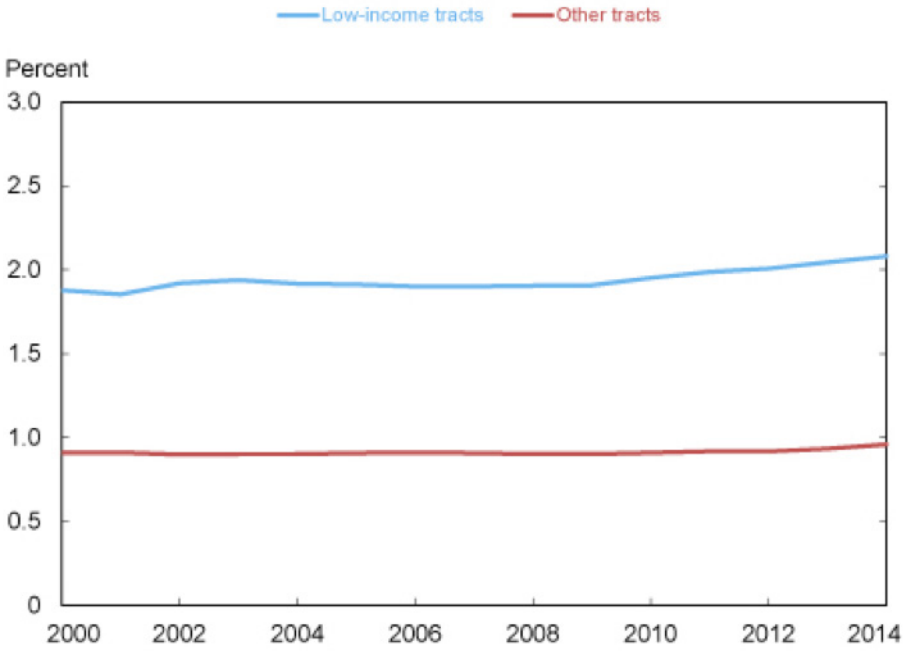
Litigation threatens the promise of the bank partnership model, a model that has seemingly been approved in updated third-party guidance provided by both the FDIC and OCC. Both nonbanks and banks continue to leverage the benefits of the partnership to full effect with promising results. Bipartisan legislation has been introduced that protects both longstanding precedent and an effective model where both banks and FinTechs are able to leverage each other's strengths to meet the credit needs of their customers. Efforts to maintain a uniform, national market for credit where both banks and nonbanks can exist in a dynamic, competitive marketplace should be supported.

Harmonize inconsistent state-by-state regulations related to mobile banking to drive financial inclusion and access

Since the financial crisis, American banks have shuttered more than 10,000 branches,[xxxi] leaving communities, especially those in rural America, without access to a local bank. Consolidation and increased merger and acquisition activity has furthered the decline in the number of banks and bank branches. Across the U.S., the number of so-called "banking deserts"[14] has increased markedly in the last several years, leaving customers in a state of financial paralysis.

[14] The Federal Reserve, in prior work, has classified banking deserts as "a census tract—a relatively homogeneous area or neighborhood containing about 4,000 people—with no branches within ten miles of the center of the tract."

Figure 3. Percent of Tract Population Living in Banking Deserts, by Income[xxxii]



Source: U.S. Census Bureau, Census 2000; Federal Deposit Insurance Corporation, Summary of Deposits.
Note: Low-income tracts are those in which the average income is in the bottom quartile for the U.S. population.

The numbers are particularly concerning when you consider the following data:

- In a report by the National Community Reinvestment Coalition, roughly one-quarter of rural bank closures were in majority-minority census tracts. In all, 86 new "banking deserts" appeared in rural areas between 2008 and 2016.[xxxiii]

- Research from the Federal Reserve Bank of St. Louis identified more than 1,100 banking deserts and more than 1,000 potential deserts—branches located outside the 10-mile range of other branches that if closed would create new banking deserts (Figure 4). Nearly 4 million people live in banking deserts and any desert expansion, as explained by the Fed, "would affect lower-income people more than higher-income people."[xxxiv]

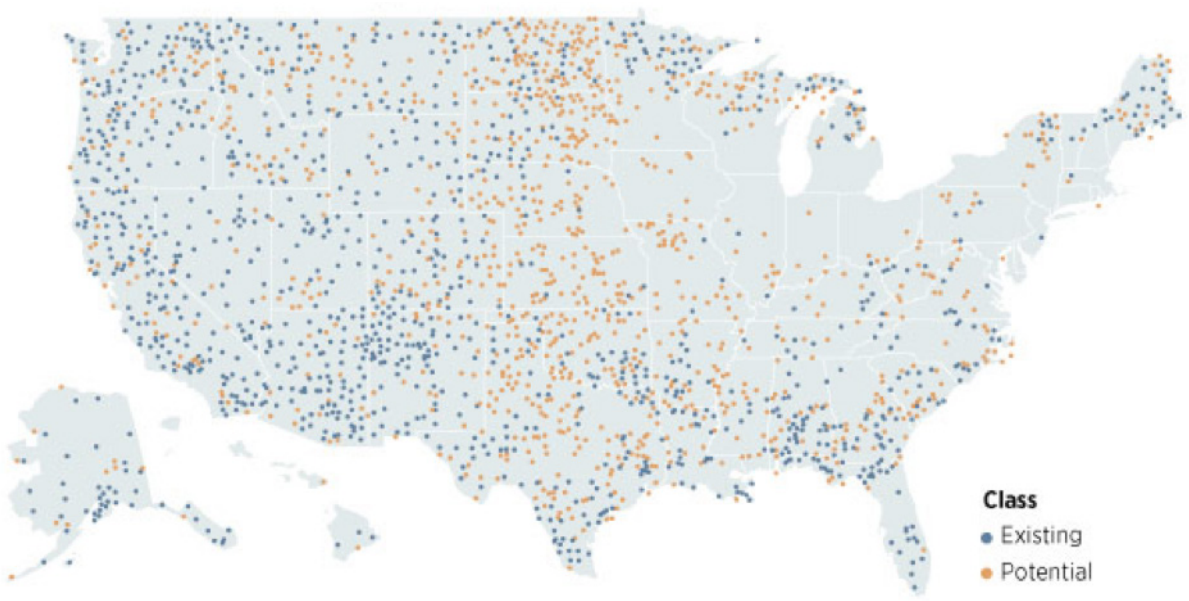
- Going more granular, a 2014 report by the Mississippi-based Hope Policy Institute found that more than half of all zip codes in the mid-South (Mississippi, Louisiana, and Arkansas) are "bank deserts" with one or zero bank branches.[xxxv]

- Data from the FDIC, as explained in a recent article in The Economist, found that "the top fifth of all postal codes by household income lost around 3 percent of their branches between 2009 and 2016. During this period, the bottom fifth saw their branch numbers decline 10 percent."[xxxvi]

- Recent research has found that bank closures "have a prolonged negative impact on credit supply to local small businesses, but only a temporary effect on local mortgage lending." The research also found that the decline in lending "is highly localized, dissipating eight miles out, and is concentrated in low-income and high-minority neighborhoods. These results show closings have large effects on local credit supply when lending is information intensive and lender-specific relationships are difficult to replace."[15]

[15] Hoai-Luu Nguyen. Do Bank Branches Still Matter? The Effect of Closings on Local Economic Outcomes. Massachusetts Institute of Technology. December 2014. Available here: http://economics.mit.edu/files/10143.

Figure 4. Location of Existing and Potential Banking Deserts



Source: U.S. Census Bureau, Census 2000; Federal Deposit Insurance Corporation, Summary of Deposits.

The proliferation and use of mobile technology, particularly for mobile banking purposes, has the potential to bring more people into the formal financial system, as well as maintain the relationship between the financial services provider and customer, even if that financial services provider no longer has a physical presence in the community. As more and more customers switch to mobile banking channels, and as bank branches continue to decline across the U.S., there is a growing demand for financial services firms to offer more choices through mobile channels.

State-by-state regulations, however, have not kept pace with the use cases of smartphones. Restrictions on how financial services firms can use state-issued forms of identification pose challenges to realizing the benefits of mobile banking. In particular, state laws governing the use of a driver's license or other personal identification form may not allow for the opening of financial accounts through the use of a mobile device. The inability to transmit over the phone a photograph of a driver's license or other personal identification prevents customers currently disconnected from a physical branch network from being able to open new

financial accounts. Instead of fostering inclusion, certain state laws that never envisioned this form of financial technology or its various use cases, may unintentionally be fostering exclusion.

RECOMMENDATION:

Bipartisan legislation has been introduced to provide for nationwide clarity regarding the opening of accounts through a mobile device, while ensuring robust privacy protections remain in place. Simply put, this is an opportunity for lawmakers, particularly those situated in rural areas, to provide certainty to financial services providers, thereby allowing them to leverage technological innovations to expand services and maintain relationships with their customers.

Update tax reporting guidelines regarding cryptocurrency transactions to protect against tax evasion and to promote a more transparent, responsible marketplace.

Since the IRS' landmark ruling on the tax treatment of virtual currencies in 2014, limited additional guidance has been provided on record keeping and reporting of virtual currency transactions. In September 2016, the Treasury Inspector General for Tax Administration (TIGTA) released a report[xxxvii] finding that the IRS "needs to ensure that it develops a strategic plan that includes management oversight as well as adequate internal controls for its virtual currency programs. Until a comprehensive virtual currency strategy is developed, the IRS is open to the risk that undetected noncompliance of virtual currency taxable transactions will result in an increase to the Tax Gap."

The TIGTA report was published roughly four months after the American Institute of CPAs stated the following in a comment letter to the IRS:[xxxviii]

"The treatment of convertible virtual currency as non-cash property means that any time virtual currency is used to acquire goods or services, a barter transaction takes place, and the parties need to know the fair market value (FMV) of the currency on that day. The party exchanging the virtual currency for the goods or services will need to also track the basis of all of his or her currency to determine if a gain or loss has occurred and whether it is a short-term or long-term transaction. This determination involves a significant amount of recordkeeping, even if the transaction is valued at under $10.

Currently, there are no alternative tracking methods provided for such transactions (other than for securities under Treas. Reg. § 1.1012-1(c)). Therefore, taxpayers are required to specifically identify which virtual currency lot was used for each transaction in order to properly determine the gain or loss for that particular transaction. In many cases, it is impossible for a taxpayer to track which specific virtual currency was used for a particular transaction."

Even so, and despite the lack of additional guidance, the IRS filed a petition with the U.S. District Court for the Northern District of California roughly two weeks after the TIGTA issued its report.[xxxix] The petition asked the court for permission to serve a "John Doe" summons on virtual currency exchange Coinbase to access U.S. taxpayer records held by the exchange who, "at any time during the period January 1, 2013, through December 31, 2015, conducted transactions in a convertible virtual currency as defined in IRS Notice 2014-21."

The summons set off a court battle between Coinbase and the IRS. Coinbase, in response to the summons,[xl] said it is "overly broad in that it seeks huge amounts of information that would be of little or no value to the IRS - but that is extraordinarily burdensome and expensive to produce." Coinbase further noted that the IRS, in previous cases, "had a targeted, specific reason to believe that John Does were part of a discrete and identifiable group of individuals

evading taxes.... Here, in contrast, that element is completely missing."

In December 2016, a Los Angeles attorney filed suit to quash the subpoena.[xli] The motion states:

"Despite the demonstrable need for clarifying virtual currency tax guidance, the IRS has opted not to issue a single word of virtual currency guidance since promulgating admittedly insufficient guidance more than two years ago. Having been unable, or unwilling, to issue such new guidance, it is hard to believe that the IRS has now issued the IRS Summons for a legitimate investigatory purpose.... Perhaps most importantly, the IRS's desire to obtain personal information unrelated to tax compliance from over one million America citizens who are Coinbase users clearly reflects bad faith and an abuse of process."

The back-and-forth arguments between Coinbase and the IRS regarding access to records of U.S. taxpayers reached Capitol Hill in May 2017. In a letter to the Commissioner of the IRS John Koskinen, Reps. Kevin Brady (R-Tex.), Vern Buchanan (R-Fla.), and Sen. Orrin Hatch (R-Utah) stated the following:[xlii]

"We strongly question whether the IRS has actually established a reasonable basis to support the mass production of records for half of a million people, the vast majority of whom appear to not be conducting the volume of transactions needed to report them to the IRS. Based on the information before us, this summons seems overly broad, extremely burdensome, and highly intrusive to a large population of individuals. The IRS's actions in this case also set a dangerous precedent for companies facilitating virtual currency transactions that could be subject to a similar summons."

In a separate letter to the commissioner of the IRS,[xliii] Reps. Jared Polis (D-Colo.) and David Schweikert (R-Ariz.) stated that while the IRS has taken steps to provide information and guidance to taxpayers related to the tax treatment of virtual currency "additional information and guidance could assist businesses that facilitate virtual currency transactions and purchases and individual taxpayers to increase reporting on income gained or loss on virtual currency transactions." Both lawmakers included the findings from the TIGTA report and encouraged the IRS "to engage with virtual currency exchanges to better understand their ability to engage in information reporting, including recordkeeping to track realized gain or loss and identify the amounts of virtual currency used in taxable transactions."

Recently, the IRS narrowed its request to focus on accounts "with at least the equivalent of $20,000 in any one transaction type (buy, sell, send, or receive) in any one year during the 2013-2015 period."[xliv] The court has only recently agreed to the narrowed IRS summons which means that Coinbase will now have to comply with the IRS request to access to 14,355 accounts accounting for roughly 9 million transactions between 2013 and 2015.[xlv]

RECOMMENDATION:

Had the IRS been proactive in clarifying or providing additional guidance, the current tug-of-war over customer accounts on the Coinbase exchange may never have surfaced. Should the IRS be worried about evasion from reporting of bitcoin gains? Of course, especially when the IRS previously stated that less than 1,000 U.S. taxpayers reported bitcoin gains between 2013 and 2015 through IRS Form-8949.[xlvi] Even so, a blanket request for information is not sound policy. As TIGTA, certain lawmakers, and other industry stakeholders have already made clear, the 2014 guidance is not enough to ensure U.S. taxpayers are properly reporting gains and losses on transactions involving virtual currencies. Legislative efforts to provide for a more effective and up-to-date framework for reporting

virtual currency transactions should be encouraged. In addition, the Institute would encourage the IRS to work closely with Coinbase and other virtual currency exchanges to develop a more effective and viable reporting regime to ensure U.S. taxpayers are complying with existing tax law.

Enable the reporting of alternative data that can expand access to credit.

The proliferation of data and advanced data analytics capabilities have the potential to create a more accurate borrower credit profile. There remain ample opportunities to leverage FinTech to derive a better understanding of the credit needs of a customer and garner deeper insight into the credit profile of an individual that traditional credit scoring models do not employ.

Of course, there are risks in the use of alternative data to provide borrowers with access to credit. The Institute explained these risks in a comment letter submitted to the CFPB in response to the bureau's request for information regarding the use of alternative data and modeling techniques in the credit process.[xlvii] Among the various risks include:

- Whether models that employ alternative data metrics to score a borrower can weather an economic downturn
- Whether the incorporation of alternative data will actually lead to greater exclusion, rather than inclusion
- Whether nonbank financing platforms in the consumer and small-business lending markets are adhering to current state and federal regulations

Despite the risks, there is a need for alternative data to build more representative and potentially more accurate credit profiles of individuals and small businesses when the following is considered:

- According to a recent CFPB analysis, more than 50 million U.S. consumers have no credit score or a credit history that is insufficient to produce a credit score.[xlviii] On the small-business front, more than 8,000 small businesses are declined from traditional financial institutions on a daily basis[xlix]—roughly 2 million a year—despite the fact that nearly one-third of those declines are actually considered creditworthy using currently available underwriting methodologies.[l]

- More than 4,800 community branches were closed between 2009 and 2014, equating to roughly 5 percent of all branches in the U.S. Mergers and acquisitions (M&A), particularly among small community banks, continue to grow and, as of last year, reached a seven-year high. A low interest rate environment and regulations following the most recent financial crisis are among the reasons that have contributed to the surge in M&A activity.[li] Relationship-oriented ways of assessing a customer's creditworthiness have been replaced by more automated methods of assessing credit that often fail to account for on-the-ground realities of local economies.

- Minorities face a widening credit gap in the wake of the financial crisis with more than half of African Americans and Hispanics net worth wiped out. Minority-owned small business owners lost their primary source of collateral—household equity—in the aftermath of the crisis and continue to face hardship in meeting the credit standards imposed by traditional financial services institutions, among a range of other challenges affecting access to credit.[16]

[16] The Milken Institute launched the Partnership for Lending in Underserved Markets (PLUM) initiative in late 2016. The PLUM initiative is a two-year pilot program focused on developing actionable solutions to address longstanding structural problems that inhibit minority-owned small businesses from accessing capital and growing their operations. The Milken Institute released a report on the findings from Phase I of the initiative, which can be viewed here: http://www.milkeninstitute.org/publications/view/879.

- Credit bureaus often receive information related to late payments on certain bills, but seldom, if ever, record payments made on time. Credit reports can often work against those who regularly pay their bills on time but happened to miss a payment. As such, individuals can be locked out from accessing credit.

RECOMMENDATION:

Given the proliferation of data and the use of advanced analytics that have the potential to draw a more accurate picture of a borrower's overall creditworthiness, bipartisan legislative efforts that encourage the reporting of alternative, positive payment information to credit bureaus should be supported.

Develop common reporting standards among U.S. financial regulators to foster a more transparent marketplace.

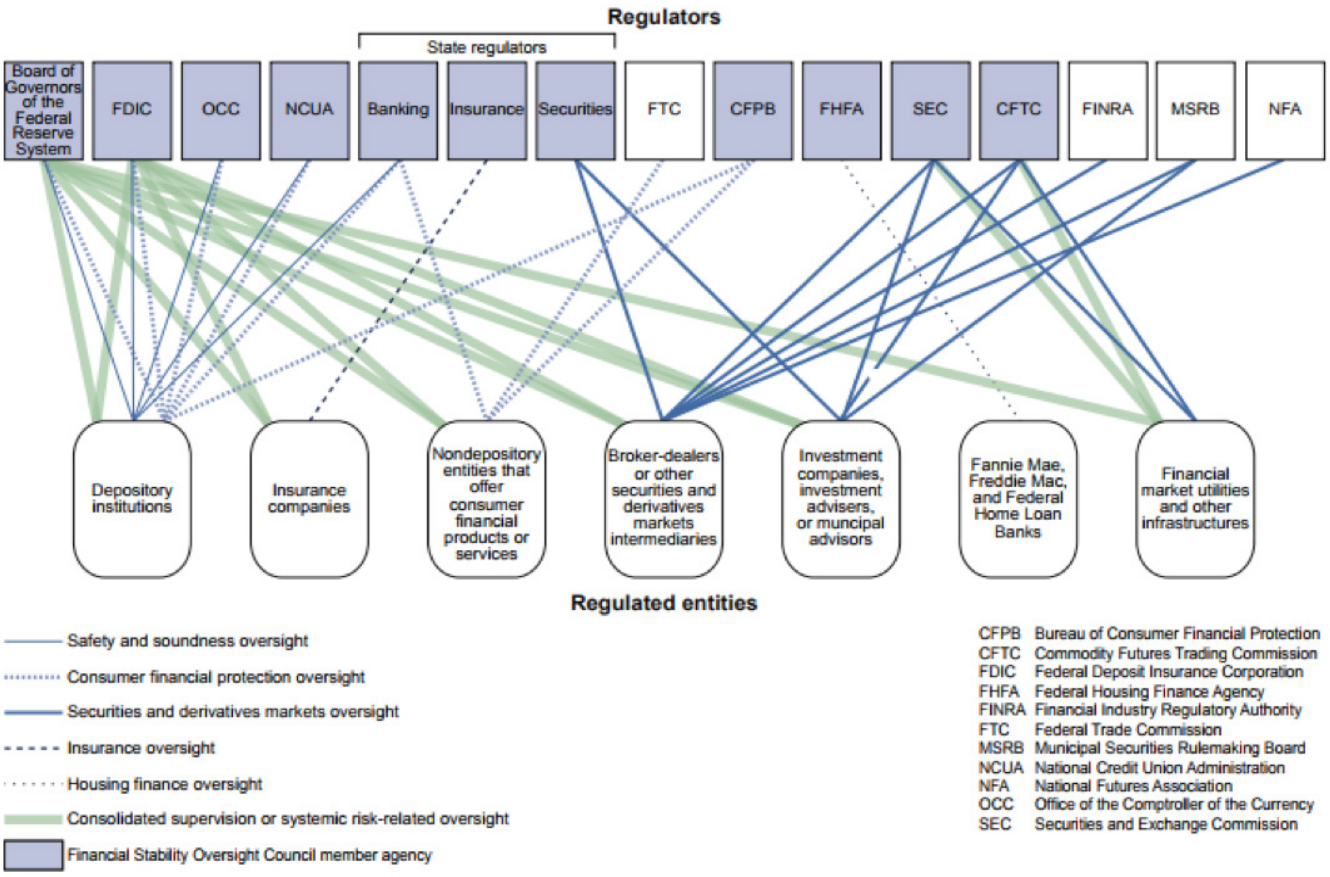
Despite the hype regarding big data, it is useless unless the person or organization receiving terabytes of information is able to effectively collect, sort, and disseminate it. The ability to glean insights based on the data collected can result in a more informed and responsive financial services provider and regulator.

The complexity of the current U.S. financial regulatory apparatus (see Figure 5) presents significant problems, including overlapping jurisdictions, separate requirements related to data reporting, and data presented in different formats. This becomes apparent in an institution's ability, or lack thereof, to conform to the data reporting requirements and the regulator's ability, or lack thereof, to review and compare data retrieved from multiple agencies in order to develop actionable insights to ensure the overall safety and soundness of the financial system.

As the U.S. Government Accountability Office (GAO) noted in a report released in early 2016:[lii]

"In particular, participants noted overlap between the Federal Reserve and OCC and CFPB and OCC. For example, they explained that the Federal Reserve's data requests can be very similar to OCC's requests and that often ***the two requests will ask for the same data but in different formats****. They said that providing data in multiple formats may be inefficient for an institution because often its information systems do not capture the data in the format requested, which can require staff to go to data files to create a dataset from scratch."*

Figure 5. U.S. Financial Regulatory Structure and Oversight



Source: GAO I GAO-16-175.

Recognizing the complexity of the current financial services system, President Donald Trump issued Executive Order 13772 on February 3, 2017.[liii] The order contained seven core principles for regulating the U.S. financial system. Among the set of principles included was making regulation more efficient, effective, and appropriately tailored. The executive order also tasked the U.S. Treasury Department with developing a series of reports providing recommendations to promote and support the core principles.

To date, Treasury has released three reports[liv] offering recommendations to streamline and reduce regulatory burdens that are reflective of the Trump administration's core principles for financial regulation. Interestingly, it was not until the third report that Treasury referenced reporting formats. Until the release of the third report, they'd focused largely on information sharing between regulatory agencies, the benefits and drawbacks of certain disclosures, and the types of data that should be included in certain reports, but provided no recommendations concerning the formats of the reports themselves.

According to Treasury:

"Among the more troubling aspects of reporting ***are multiple types of required reporting formats*** *that essentially request the same information, but in a slightly different manner or based on different timing, for example, when some reports are based on calendar year while others use fiscal year. The cumulative effect of these duplicative and onerous regulatory requirements serves to artificially inflate costs, which are passed on to the individual investor. Cost of reporting requirements also serve as barriers to entry for new competitors, thereby depriving investors of more choices."*[lv]

Even then, however, Treasury only recommended that duplicative forms be combined and unnecessary or inconsistent data collection be eliminated, and that regulators "continue to update reporting requirements to utilize structured data where appropriate."[lvi]

Treasury can and should go further.

Several bills have been introduced that would task Treasury with developing common data reporting formats that financial regulators would be required to adopt.[17] The standards, as promulgated by the secretary of the Treasury, must be fully searchable, machine readable, nonproprietary, inclusive of standards developed and maintained by voluntary consensus standards bodies, and consistent with applicable accounting and reporting principles.

[17] In this case, the federal financial regulators are the Department of the Treasury, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Bureau of Consumer Financial Protection, the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, and the Federal Housing Finance Agency.

Would this require a Herculean effort from financial regulatory agencies? Perhaps, but prior legislation enacted into law has already shown the U.S. government's willingness (and ability) to create standardized reporting formats to bring greater transparency, accountability, and oversight to the public. In 2014, President Barack Obama signed the Digital Accountability and Transparency (DATA) Act of 2014 into law. It established government-wide standards, promulgated by the Treasury Department and the White House Office of Management and Budget (OMB), covering agency spending information reported to Treasury, the General Services Administration, and the OMB. The law took effect on May 9, 2017, when federal agencies began to report spending data utilizing a standardized format developed by Treasury and the OMB.

That DATA Act also included a pilot program which required OMB "to explore whether the interoperability of financial data systems could dramatically improve the efficiency of the Federal government, and significantly reduce the financial reporting burden of grantees, contractors and other parties that partner with the government."[lvii] According to the findings from that program, the pilot "demonstrates that burden is reduced and efficiencies are achieved when data already provided to the Federal government is re-used. The procurement pilot results also demonstrate that reporting can be streamlined when technology standards are open."[lviii]

RECOMMENDATION:

Common reporting formats adopted by various financial regulatory authorities could reduce or remove the various reporting silos among regulated entities, reduce (if not eliminate) duplicative reporting, produce savings (time and money) to both the regulator and regulated entity, and result in a more open and transparent marketplace. As such, lawmakers from both sides of the aisle should support legislative efforts to require common reporting standards among U.S. financial regulatory agencies that could enable more effective regulatory oversight and reporting.

Require the IRS to automate certain data collection and reporting processes that can help enhance the speed and efficacy of the underwriting process.

Policymaking efforts to digitize certain agencies with respect to the collection and reporting of information should consider ways to adapt how the IRS responds to requests for tax return transcripts.

IRS Form 4506-T[lix] allows a user to request a copy of his or her tax return transcript. The form also allows the user to request that the transcript be mailed or faxed to a third party (FinTech firm, for the purposes of this discussion). This process, however, can take anywhere from a few days to a week, creating unnecessary delays for FinTech platforms in meeting the needs of their customers.

As Trevor Dryer, CEO and cofounder of Mirador, noted in an op-ed in *American Banker*:

"Once filled out, the form is typically faxed to the IRS for processing. Assuming the fax went through and reaches the appropriate IRS employee, the form is scrutinized, often rejected for missing items such as "LLC" or "Inc". The tax transcript is then returned in PDF format to a secure mailbox on the IRS website, where the lender can log in and download the form. The process is estimated to take about two days, but the IRS has noted that it could take longer. What is worse, the IRS could also reject the request for the tax transcript,

forcing the entire process to start over."[lx]

Development of an automated system capable of disclosing tax return information in real time, or near real time, can remove current obstacles that obstruct firms from being able to quickly evaluate a customer's credit and respond in quick fashion. However, given the fact that the information contained in Form 4506-T is sensitive material, the IRS needs to ensure that appropriate protections are built into any automated reporting service to safeguard the transfer of such information between the IRS and taxpayer and the third-party platform.

RECOMMENDATION:

Unnecessary delays in the underwriting process could result in small business owners opting for less attractive avenues for credit (personal credit cards, friends and family, etc.) due to time or budget constraints. Several bipartisan bills have been introduced that attempt to speed up the process by which small business owners can access capital through the use of an API. A direct, digital connection between the IRS and FinTech firms could ensure near real-time delivery, authorization, and verification, providing small business borrowers with quicker access to credit at reduced cost to the borrower due to a much more efficient, expedient process. Legislative efforts to upgrade certain agency reporting processes to the digital era should be supported.

POTENTIAL FINTECH POLICY ISSUES ON THE HORIZON

While the focus of this paper is on FinTech-related issues where strong bipartisanship already exists, the Institute would note that lawmakers have also voiced opinions on issues related to FinTech that have yet to, but could potentially, take the form of legislation in the near future. These issues relate to customers' financial data, regulatory sandboxes, FinTech charters, and the use of outdated credit scoring models in obtaining a mortgage. While the Institute, at this time, does not offer recommendations on these issues, we've nevertheless provided an overview of each issue and why there may be a legislative (or regulatory) need to address these issues sooner rather than later.

THIRD-PARTY ACCESS AND USE OF FINANCIAL DATA

The CFPB formerly waded into the debate surrounding third-party access to customer financial data in 2016. Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act states the following:

"Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data."

In November 2016, the CFPB released a request for information "seeking comments from the public about consumer access to such information, including access by entities acting with consumer permission, in connection with the provision of products or services that make use of that information."[lxi]

In prepared remarks at the time of the request for information (RFI) release, former CFPB director Richard Cordray stated:[lxii]

"If financial institutions that house digital financial records make it difficult or impossible for consumers to authorize access or share their information, that blocks opportunities for consumers to benefit from this information. The result could be to thwart new entrants from entering the market with consumer-friendly products and services, even those not currently being offered by the financial institutions themselves." He added, "Impeding access to digital financial records not only blocks innovation from new entrants, it also reduces the incentives for financial institutions to innovate. Without new companies introducing consumer-friendly products or services into the market, established companies are likely to feel less pressure to compete in this manner. And authorizing access to their financial records can make it easier for consumers to shop for an alternative provider with more favorable pricing, given the consumer's usage patterns. To be clear, it is unacceptable for financial institutions to block access to consumer information as a means of gaining a competitive advantage in the marketplace."

Roughly a year later, the CFPB published feedback on the RFI and a set of consumer protection principles governing data sharing and aggregation.[lxiii] The CFPB stated that it "will continue to closely monitor developments in this market and will also continue to assess how these principles may best be realized."

Prior to the release of the principles, but echoing the CFPB views expressed in the document, Rep. Ed Markey (D-Mass.) sent a letter[lxiv] to Cordray that acknowledged the valuable services third parties provide to consumers but urged the CFPB to ensure that third parties provide enough disclosures and notice to consumers regarding the use of their financial data. He added:

"Consumers also have a vested interest in knowing what happens to their data once it is transferred to third parties. Third parties need to

make consumers aware if and in what form their data will be resold or reused for other purposes. The CFPB ought to be encouraging such transparency as well as measures by which consumers can elect to prevent third parties from reselling their data."

In the lead up to the CFPB release, financial institutions such as Wells Fargo and JPMorgan Chase signed data exchange agreements with Intuit,[lxv,lxvi] Finicity,[lxvii] and other data aggregators. While these agreements represent a marked turnaround from accusations made in 2015 by certain data aggregators that financial institutions were deliberately slowing or denying access to customer financial data,[lxviii] these are, unfortunately, one-off agreements.

In a September 2017 article, two McKinsey & Company employees wrote that "the absence of a centralized US approach to data governance has given rise to a series of fintech innovators as well as a patchwork of one-off bank agreements (such as partnerships struck in the United States by Chase and Wells Fargo with Xero and Finicity)—a model that is not scalable in a market with roughly 12,000 financial institutions."[lxix]

Simply put, one-off agreements on how financial data is accessed and shared are not going to work in the U.S. What's unfortunate is that the CFPB only published principles designed to protect the consumer and did not offer a principles-based data sharing framework that both traditional financial services firms and FinTechs could respond to in developing a system where one-off, separate, and distinct agreements are no longer necessary. Government doesn't necessarily have to be the driver in developing a principles-based system, as industry could come together to develop a governance model for accessing and sharing customers' financial data, but someone needs to step forward to address this issue, especially when the CFPB's principles are already facing scrutiny.[lxx]

FORMATION OF INNOVATION OFFICES

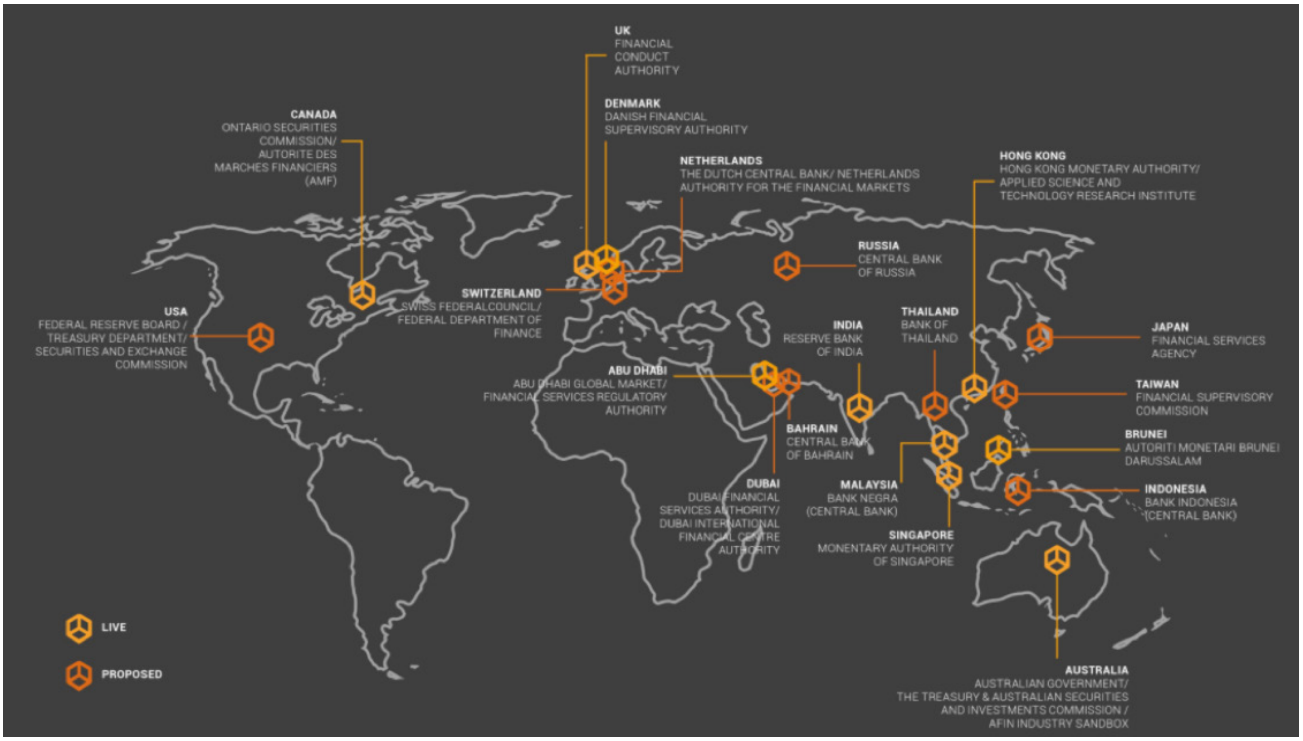
As part of the Innovation Initiative, Rep. Patrick McHenry (R-N.C.) introduced legislation in the 114th Congress—the Financial Services Innovation Act—that called for a dozen federal regulatory bodies and agencies to each form a Financial Services Innovation Office (FSIO) to promote the development of financial innovations. The 12 FSIOs would communicate and coordinate with each other through the establishment of a FSIO Liaison Committee, which would report to Congress every six months. The legislation also included directions on how FSIOs should respond to petitions from outside parties requesting "to enter into an enforceable compliance agreement containing a modification or waiver of an agency regulation or Federal statutory requirement under which the agency has supervisory or rulemaking authority with respect to the covered person or a financial innovation the covered person offers or intends to offer." As explained further in the press release, "companies may apply for an enforceable compliance agreement with the FSIOs that, if accepted, will allow them to provide an innovative product or service under an alternative compliance plan, which waives or modifies regulation that is out-of-date or unduly burdensome."[lxxi]

The legislation was an attempt to provide a solution to the complexity of the U.S. financial regulatory system that can act as a deterrent to financial innovation. By streamlining the process through which companies can petition an agency, the legislation sought to provide enough flexibility and certainty to companies looking to go to market with their innovative products and services.

The legislation comes at a time when regulatory agencies around the world continue to implement so-called "regulatory sandboxes." At present, there are more than 20 regulatory sandboxes that have been implemented or announced by various regulatory authorities, with the U.K.'s Financial Conduct Authority becoming the first regulator to launch a sandbox back in 2015 (Figure 6).[18]

[18] Not all regulatory sandboxes are the same. The Aspen Institute published an analysis in July 2017 covering the various sandboxes located around the world. The report and slide deck can be accessed here: https://www.aspeninstitute.org/publications/modernizing-digital-financial-regulation-evolving-role-reglabs-regulatory-stack/.

Figure 6. Regulatory Sandboxes Around the World



Source: industrysandbox.org.

While McHenry's bill did not receive backing from Democratic lawmakers,[19] there is bipartisan support on Capitol Hill behind the idea of an innovation office to act as a one-stop shop for firms offering innovative products and services. During a Senate Banking Committee hearing in September,[lxxii] Sens. Mike Crapo (R-Idaho), Thom Tillis (R-N.C.), Brian Schatz (D-Hawaii), and Mark Warner (D-Va.) were supportive of the idea, though how it is implemented will be the real challenge.

[19] According to Congress.gov.

There are potential benefits and drawbacks to regulatory sandboxes that lawmakers should take into consideration before introducing legislation.[lxxiii] However, any legislative effort to streamline the current financial regulatory apparatus and provide innovative firms (both startup and incumbent) with enough flexibility and clarity as to regulatory expectations and process should be commended.

SPNBs AND ILCs FOR FINTECHS

There is growing interest and concern on Capitol Hill regarding efforts by the Office of the Comptroller of the Currency to provide special purpose national bank (SPNB) charters for FinTech firms. The OCC faces an uphill climb, however, as the agency deals with opposition from state and consumer advocates. The OCC's effort has also recently come under fire from lawmakers, particularly from members of the House Financial Services Committee and Senate Banking Committee.

In January 2017, Sens. Sherrod Brown (D-Ohio) and Jeff Merkley (D-Ore.) submitted a letter[lxxiv] to the former comptroller of the currency, Thomas Curry, where they stated that the scope of the OCC's proposal to charter nonbank institutions "appears to have expanded beyond accommodating FinTech firms. The criteria for a charter presented thus far does not specify if a firm is required to create a new technology, nor does it limit the application of the charter to a FinTech firm."

In March 2017, Rep. Jeb Hensarling (R-Tex.) and more than 30 other Republican members of the House Financial Services Committee sent a letter to Curry[lxxv] urging the OCC to slow its efforts to finalize a FinTech charter. The authors stated that the OCC "should provide a full and fair opportunity for stakeholders to see the details of the special charter, solicit feedback, and allow the incoming Comptroller the opportunity to assess the special purpose charter." At the time, lawmakers were concerned that the coming expiration of Curry's five-year term would result in the OCC seeking to rush its work on special purpose charters for FinTech firms.

In an interview with *The Wall Street Journal*, Rep. Patrick McHenry (R-N.C.) reiterated this concern,[lxxvi] but also noted that what the OCC has done "is a step in the right direction." However, "in this instance, the speed by which they moved here means that these regs are incomplete and not as far-reaching as I believe they could be. Given the limited capacity in the approach they're taking, I don't

think it's going to be a viable option and have a meaningful impact. Absent that full effort for a stronger FinTech charter, I think you'll need congressional authority to establish this."

Beyond the OCC's efforts to create a national charter for FinTech firms, lawmakers have also raised concerns with efforts undertaken by certain FinTech firms to apply for an industrial loan charter (ILC) from the FDIC. In recent months, SoFi[lxxvii] and Square[lxxviii] both applied for an ILC, setting off a raucous debate over whether FinTechs should even be allowed to apply for an ILC and whether the applications are an attempt by FinTech companies to circumvent regulatory oversight.[20]

[20] On October 13, SoFi withdrew its application for an ILC after the departure of senior leadership, including the CEO, following multiple sexual harassment claims.

Rep. Maxine Waters (D-Calif.), ranking member on the House Financial Services Committee, submitted a letter[lxxix] to FDIC Chairman Martin Gruenberg calling on the FDIC to hold a public hearing on SoFi's application "to allow for a fuller vetting of the advantages and disadvantages of extending an outdated regulatory framework for ILCs to fintech companies, and the potential implications for the broader financial system." She added that a public hearing "could also shed more light on whether it may be more prudent for the FDIC to work with Congress to design a Federal regulatory framework for fintech companies."

Fears of regulatory arbitrage or reduced regulatory oversight, however, should be laid to rest. In both cases, whether a FinTech is considering a SPNB or an ILC, a FinTech is asking for more, not less, regulation. These regulatory structures also provide FinTechs with a primary federal regulator—the OCC or the FDIC—providing clarity for tech-driven platforms in search of regulatory guidance.

The Institute has submitted multiple comments to the OCC on its responsible innovation framework[lxxx] and white papers on SPNBs for FinTechs.[lxxxi,lxxxii] The Institute has also made clear of its opinion as it relates to FinTechs seeking to apply for ILCs.[lxxxiii] While efforts by both federal and state regulators remain a work in progress,

regulators have, nonetheless, started a sorely needed conversation on how to appropriately tailor regulation to digital, borderless platforms.

UPDATING LEGACY CREDIT SCORING METRICS TO SUPPORT HOMEOWNERSHIP

The Fair Isaac Corporation, or FICO, credit models are currently utilized by housing finance giants, Fannie Mae and Freddie Mac (and, in fact, by virtually the entire residential mortgage lending ecosystem). Despite numerous updates by FICO to its underlying credit scoring methodologies, Fannie and Freddie continue to rely on the former models (see Table 2). The mortgage giants also require all lenders submitting mortgage applications to them to abide by the same, decades-old credit scoring system.

Table 2. Credit Models Used by Fannie Mae and Freddie Mac[21]

Fannie Mae[lxxxiv]	Freddie Mac[lxxxv]
Equifax Beacon® 5.0 (Launch: 2004; Sample Dates: 1998-2000)	
Experian®/Fair Isaac Risk Model V2SM (Launch: 1998; Sample Dates: 1995-1997)	
TransUnion FICO® Risk Score, Classic 04 (Launch: 2004; Sample Dates: 1998-2000)	

Source: Milken Institute.

Given the proliferation of alternative data and advanced analytics over the years, there is potential for these updated or alternative credit models to yield more accurate and new ways to assess credit behavior scoring. This type of progress could open the door to actual homeownership for many would-be homebuyers, who lack a credit history or profile that meets the older FICO version's requirements and are therefore currently "unscorable" for purposes of obtaining mortgage credit. In fact, a recent study from VantageScore—a credit score developed by Experian, Equifax, and TransUnion, and FICO's main competitor—found that it's VantageScore 4.0, released in April 2017, could approximately score 35 million more U.S. consumers currently invisible to conventional credit scoring models.[lxxxvi]

[21] Launch dates for each credit scoring model were found at the following link: https://www.doctorofcredit.com/types-fico-scores/. Sample dates—the date range data was pulled to build each listed credit score—can be found in Footnote 2 of the VantageScore report, "New Credit Scoring Models: A smooth transition to more transparent mortgage capital markets," available here: https://www.vantagescore.com/resource/170/new-credit-scoring-models-smooth-transition-more-transparent.

As the recent report from VantageScore points out, while updated scoring models are "widely used" in most areas of consumer finance, "the mortgage industry remains frozen in time." As stated in the report:

"Fannie Mae and Freddie Mac still require the use of a credit scoring model built by FICO prior to the recession using data from the late 1990s. As such, FICO enjoys a government-sanctioned, de facto monopoly on this integral piece of the mortgage supply chain. Giving originators the choice to use newer models, with a reasonable sunset to the status quo, could lead to a market that more fairly and fully serves all creditworthy borrowers. Done right, this transition could be completed in a way that eliminates any potential disruption in the capital markets while setting a foundation for a higher level of transparency."[lxxxvii]

Only recently has the U.S. Federal Housing Finance Administration (FHFA)—the body that oversees Fannie Mae, Freddie Mac, and 12 federal home loan banks—moved to consider alternative credit scoring models. In 2015, then Secretary of the Department of Housing and Urban Development Julian Castro, stated the following:

"FHA's work alone will not solve all the industry's challenges, which is why I appreciate this focus today on out-of-the-box thinking. I know that new credit scoring models are being developed so that non-traditional factors can be considered when determining creditworthiness."[lxxxviii]

In its 2015 scorecard progress report,[22,lxxxix] the FHFA noted that the Enterprises assessed the feasibility of using updated or alternate credit score models in their own business operations.

"In 2015, FHFA and the Enterprises started a process to assess the feasibility of using updated or alternate credit score models in their business operations. As part of their work in 2014, the Enterprises

[22] The annual progress report summarizes the major activities of Fannie Mae and Freddie Mac over the course of the year that contributed to achieving FHFA's strategic objectives as conservator of the enterprises.

assessed relevant factors, including the operational and technological implications of any changes for the Enterprises and the broader housing finance industry. This involved data and business process analysis to assess the impact not only to the Enterprises, but also to consumers, sellers, investors, and vendors. This issue remains an ongoing priority for FHFA and is included again in the Enterprises' 2016 Scorecard. FHFA will continue to work with the Enterprises towards concluding this assessment during 2016."

In its 2016 scorecard progress report,[xc] the FHFA called on the Enterprises to continue to assess the feasibility of using updated or alternative credit score models in their business operations.

"FHFA continued to work with the Enterprises to study the costs and benefits of migrating to or implementing additional or alternative credit score models within the Enterprises' businesses. FHFA and the Enterprises also sought to understand the costs, operational implications, and potential impact on access to credit from the point of view of 2016 Scorecard Progress Report lenders, investors, trade associations, consumer groups and other industry stakeholders. FHFA will work to conclude its assessment in 2017. In addition, the Enterprises have considered other credit-score-related issues that can independently improve access to credit. As described above, this includes the Enterprises work."

In 2017, stakeholders began to hear more from FHFA Director Mel Watt on the status of the work being undertaken to assess the feasibility of the Enterprises adopting updated versions and/or alternative credit scoring models. In testimony before the House Financial Services Committee in October,[xci] Watt stated that the FHFA "is continuing to make progress on this project," but the process has yielded additional concerns and questions. Among them:

- How would we ensure that competing credit scores lead to improvements in accuracy and not to a race to the bottom with competitors competing for more and more customers?

- Could the organizational and ownership structure of companies in the credit score market impact competition?

In response to questions from Reps. Jim Himes (D-Conn.) and Brad Sherman (D-Calif.), Watt noted that the FHFA is "getting ready to go back out and ask a series of questions in a request for input to get additional information about some of the concerns that have come up as a result of this initial assessment."[23]

In the FHFA's analysis, Watt stated that Fannie and Freddie "are using a lot of information other than credit scores to increase access to credit," and that the Enterprises probably have "as much information about people's ability to pay as the two credit scoring company's competitors have and we just didn't find that there was significant difference in these credit scores from an access perspective."

Furthermore, Watt said the "notion that there would be substantially more people credit scored and that would increase access if we had competition is probably exaggerated."

We find this conclusion to be an unfortunate one. We acknowledge that any alternative credit scoring model faces an uphill battle against the currently utilized FICO model, to which virtually all residential mortgage pricing, credit enhancement and risk management models are calibrated. However, we believe that new technologies and analytical tools show too much promise—and that the need to address the significant numerical and demographic challenges of the FICO-unscorable population is too compelling—not to engage in a serious assessment of new credit models.

[23] On December 20, 2017, the FHFA released its request for input on credit scores. Available here: https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/CreditScore_RFI-2017.pdf.

Competition in other sectors has already led to new models, ideas, and the incorporation of new technology in assessing creditworthiness. Incorporating nontraditional sources of data pertaining to credit, income, employment, and other determinants, and then developing pilots to assess new models against traditional models in use, could yield substantial insight into whether these models should be replaced.

To its credit, the FHFA has taken its time on this issue for good reasons considering the following:

- The mortgage finance marketplace is massive, representing trillions of dollars and a significant contributor to the U.S. economy.

- Substantive review is needed to evaluate credit scoring models, including whether these models only serve certain segments of the population, and why certain segments of the population are currently unscorable under existing models.

- Simply saying more consumers can be reached by new models or new technology or techniques does not mean that such models are substantively adequate. There are, in fact, certain consumers who are not creditworthy, and care must be taken to avoid "shoehorning" such consumers into a "creditworthy" bucket by loosening credit analysis standards. Any credit scoring model must prove out its credit evaluation process through supportable data and analysis.

- There is an embedded level of trust—or at the very least, familiarity and calibration—among institutional stakeholders with the current models in place, and industry has conformed to these models operationally over the years. Efforts to replace with or add an entirely new model will take time and require potentially significant cost to industry. Also, newer models would require some level of comparative analysis

with respect to existing models in the event users find themselves working with hybrid data.

That said, what will it take to move the FHFA from viewing the alternative credit scoring issue as an "ongoing priority" to action and implementation? The FHFA has spent years analyzing alternative credit scoring models and methodologies and still believes it has "enough time and flexibility"[xcii] to receive additional input before considering the possibility of updating current credit scoring models or incorporating new ones into the GSE process. At this point, any possible changes to current scoring models are unlikely to come until 2019, at the earliest.[24, xciii]

The dynamics of the current housing market necessitate a speedier response from the FHFA that does not take the form of excessive analyses and deliberations, but the publication of an action plan detailing efforts to analyze alternative credit scoring models and whether they are suitable for—if not equivalent or superior to—existing credit scoring models.

[24] The FHFA received "overwhelming feedback" from industry that it would be a "serious mistake" to change current credit scoring models before mid-2019 when the Common Securitization Platform is fully operational and the Enterprises implement the Single Security. Prepared remarks from Mel Watt on August 1, 2017, available here: https://www.fhfa.gov/Media/PublicAffairs/Pages/Prepared-Remarks-of-Melvin-L-Watt-Director-of-FHFA-at-the-NAREB-70th-Annual-Convention.aspx.

CONCLUSION

Lawmakers have the unique opportunity in the new year to move the legislative needle forward on bipartisan legislation that address some of the challenges FinTech firms currently face in growing their operations and marketing their products and services. As shown in our analysis, there are legislative opportunities that lawmakers on both sides of the aisle can get behind and support that would provide startups and incumbents with greater legislative and regulatory certainty, consistency, and clarity.

The U.S. economy is a dynamic economy that's increasingly turning into a digital economy. As the economy adapts to technology, so too must the rules and regulations that govern and support a thriving, increasingly digital marketplace. Borderless platforms leveraging the internet of finance and mobile technology have the potential to drive greater financial inclusion, access to capital, and transparency, provided that policies and regulations are flexible enough to enable the proliferation and adoption of innovative platforms and services, without removing necessary protections on the back end.

Finding balance between enabling innovations and maintaining protections is incredibly difficult, yet necessary to ensure the responsible development and growth of FinTech in the United States. Lawmakers have spent the past few years educating themselves on many of the issues presented in this paper through the formation of caucuses and holding committee hearings. In this Congress, the variety of FinTech proposals introduced presents legislative opportunities for lawmakers on both sides of the aisle to come together to address the digital demands and challenges of a 21st-century economy.

APPENDICES

APPENDIX I: THE EMERGENCE OF CAUCUSES FOCUSED ON FINTECH

Caucus Name	Chairs/Co-Chairs	About	Notes
Artificial Intelligence (AI) Caucus Launched in May 2017	Rep. John Delaney (D-Md.), Rep. Pete Olson (R-Tex.)	The goal of the caucus is to inform policymakers of the technological, economic, and social impacts of advances in AI and to ensure that rapid innovation in AI and related fields benefits Americans as fully as possible.[xciv]	Initiatives include: congressional briefing hosted by IBM; op-ed by Rep. Delaney titled, "Time to get smart on artificial intelligence;"[xcv] co-chairs interviewed by NPR on AI.[xcvi]
Congressional Digital Trade Caucus Launched in May 2017	Rep. Suzan DelBene (D-Wash.), Rep. Erik Paulsen (R-Minn.)	Promotes a free and open internet, free cross-border data flows, eliminate data localization requirements, endure trading partners allow open online and cloud platforms by not requiring them to filter speech, eliminate requirements that businesses transfer technology, source code or encryption keys, and address customs and trade facilitation barriers for e-commerce.[xcvii]	
Congressional Blockchain Caucus Relaunched in February 2017	Rep. Jared Polis (D-Colo.), Rep. David Schweikert (R-Ariz.)	Seeks to educate, engage, and provide research to help policymakers implement smart regulatory approaches to the issues raised by blockchain-based technologies and networks.[xcviii]	Rep. David Schweikert (R-Ariz.) replaced former co-chair of the Blockchain Caucus, Rep. Mick Mulvaney (R-S.C.).[xcix] Initiatives include Congressional Blockchain Education Day.[c]
Congressional FinTech and Payments Caucus Rebranded in December 2016	Rep. Patrick McHenry (R-N.C.), Rep. Rand Ultgren (R-Ill.), Rep. Krysten Sinema (D-Ariz.), Rep. David Scott (D-Ga.)	An informal group of members dedicated to innovation, growth, and education in the emerging FinTech space. The caucus serves as a marketplace of ideas for members and their staff to learn and better understand how FinTech is revolutionizing the way consumers and businesses will receive financial services tomorrow.[ci]	Originally known as the Congressional Payments Technology Caucus which was founded in 2014.[cii]
Bipartisan Task Force to Combat Identity Theft and Fraud Launched in May 2016	David Young (R-Iowa), Rep. Kyrsten Sinema (D-Ariz.)	Seeks to develop and implement common sense solutions which prioritize individuals' personal security and increase penalties and punishment for those who break the law.[ciii]	
Senate Payments Innovation Caucus Launched in April 2015	Sen. Gary Peters, (D-Mich.), Sen. Mike Rounds (R-S.D.), Sen. Tom Carper (D-Del.), Sen. Johnny Isakson (R-Ga.)	Explores new and innovative technologies in the payments industry and addresses issues concerning data security, consumer protection, and electronic payments.[civ]	
Congressional Diversifying Tech Caucus Launched in January 2015	Sen. Amy Klobuchar (D-Minn.), Sen. Shelley Moore Capito (R-W. Va.), Sen. Tim Scott (R-S.C.), Rep. Cathy McMorris Rodgers (R-Wash.), Rep. Barbara Comstock (R-Va.), Rep. Tulsi Gabbard (D-Hawaii), Rep. Robin Kelly (D-Ill.), Rep. Ruben Gallego (D-Ariz.)	A true partnership between policymakers, industry, and academia to organize, advocate, and create awareness about underrepresented groups and develop strategies for improving access and engagement.[cv]	Initiatives include engagement with Congressional Black Caucus to promote diversity in Silicon Valley[cvi] and congressional briefings on the challenges in transitioning veterans to the tech sector.[cvii]
House Caucus on Innovation and Entrepreneurship Launched in 2013	Rep. Jared Polis (D-Colo.), Rep. Darrell (R-Calif.)	Promotes legislation that will help new and small businesses grow and create jobs to put America back to work. The caucus is educating Congress on the importance of innovation and the prominent role startup companies play in job creation.[cviii]	Initiatives include Startup Day Across America.[cix]
Congressional Black Caucus Established in 1971	Rep. Cedric Richmond (D-La.)	To ensure that African Americans and other marginalized communities in the U.S. have the opportunity to achieve the American dream.	CBC members have become increasingly interested in FinTech over the past two years, particularly in the online lending space for small businesses.

APPENDIX II: LIST OF FINTECH-RELATED HEARINGS 2015-2017

2017

Committee	Title	Testimony
House Small Business Committee October 26	Financing Through Fintech: Online Lending's Role in Improving Small Business Capital Access	Bill Phelan, PayNet, Inc.; Katherine Fisher, Hudson Cook; Trevor Dryer, Mirador
Senate Banking Committee September 12	Examining the Fintech Landscape	Lawrance Evans, GAO; Eric Turner, S&P Global Markets Intelligence; Frank Pasquale, University of Maryland School of Law
House Energy & Commerce Committee June 8	Disrupter Series: Improving Consumer's Financial Options with FinTech	Jeanne Hogarth, Center for Financial Services Innovation; Javier Saade, Fenway Summer Ventures; Christina Tetreault, Consumer Union; Peter Van Valkenburgh, Coin Center
House Financial Services Committee June 8	Virtual Currency: Financial Innovation and National Security Implications	Jerry Brito, Coin Center; Scott Dueweke, The Identity and Payments Association; Kathryn Haun, Stanford Law School; Jonathan Levin, Chainalysis; Luke Wilson, Elliptic

2016

Committee	Title	Testimony
Senate Commerce Committee November 30	The Dawn of Artificial Intelligence *First congressional hearing on artificial intelligence*	Dr. Eric Horvitz, Partnership on Artificial Intelligence; Microsoft Research Lab; Dr. Andrew Moore, Carnegie Mellon University; Dr. Andrew Futreal, University of Texas MD Anderson Cancer Center; Greg Brockman, OpenAI; Steve Chien, NASA Jet Propulsion Laboratory, California Institute of Technology
House Agriculture Committee July 13	Examining the CFTC's Proposed Rule: Regulation Automated Trading[25]	Greg Wood, FIA Market Access Committee; Richard Gorelick, RGM Advisors, LLC; Andrew Vrabel, CME Group; Michael Ryan, Trading Technologies International, Inc.
House Financial Services Committee July 12	Examining the Opportunities and Challenges with Financial Technology ("FinTech"): The Development of Online Marketplace Lending	Parris Sanz, CAN Capital, on behalf of the Electronic Transactions Association; Sachin Adarkar, Prosper Funding; Rob Nichols, American Bankers Association; Bimal Patel, O'Melveny & Myer; Gerron Levi, National Community Reinvestment Coalition
House Financial Services Committee April 14	The JOBS Act at Four: Examining Its Impact and Proposals to Further Enhance Capital Formation	Paul Atkins, Patomak Global Partners; William Beatty, Washington State Department of Financial Institutions, on behalf of the North American Securities Administrators Association; Nelson Griggs, NASDAQ; Raymond Keating, Small Business & Entrepreneurship Council; Kevin Laws, AngelList
House Energy & Commerce Committee March 16	Disrupter Series: Digital Currency and Blockchain Technology	John Beccia, Circle Internet Financial; Jerry Brito, Coin Center, Gennaro Cuomo, IBM; Matthew Roszak, Chamber of Digital Commerce; Paul Snow, Factom; Juan Suarez, Coinbase; Dana Syracuse, BuckleySandler LLP

2015

Committee	Title	Testimony
House Energy & Commerce Committee December 1	Disrupter Series: Mobile Payments	Sang Ahn, U.S. Samsung Pay; Jessica Deckinger, Merchant Customer Exchange; Sarah Hughes, Indiana University School of Law; John Mueller, PayPal, Inc.
House Oversight and Government Reform Committee September 22	The State of the Cloud	Mark Kneidinger, Department of Homeland Security; Mauli Agrawal, University of Texas; John Engates, Rackspace; Mark Ryland, Amazon Web Services; Alan Boissy, VMware vCloud Government Service
House Small Business Committee May 13	Bridging the Small Business Capital Gap: Peer-to-Peer Lending	Rajkamal Iyer, MIT Sloan School of Management; Sam Hodges, Funding Circle; Zachary Green, MN8 Foxfire; Peter Renton, Lend Academy

[25] For more information on why a hearing on RegAT and how it pertains to FinTech, please view the blog post, "The Regulation of Automated Trading and the Slippery Slope for FinTech." Available at: http://www.milkeninstitute.org/blog/view/1053.

APPENDIX III: FINTECH-RELATED LEGISLATION IN THE 114TH AND 115TH CONGRESSES (JANUARY 2015-DECEMBER 2017)[25]

FINTECH (GENERAL)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.Res.835	114	Yes	Adam Kinzinger (R-Ill.); two cosponsors (one Democrat)	Expressing the sense of the House of Representatives that the United States should adopt a national policy for technology to promote consumers' access to financial tools and online commerce to promote economic growth and consumer empowerment. "The first Financial Technology resolution to ever be introduced and passed by the U.S. House of Representatives."[cx] Kinzinger: "With greater speed, convenience, efficiency, and accessibility, FinTech is leading the charge in payment innovation and providing greater transparency and control for consumers to have over their financial information. I'd like to thank my colleague Rep. Cárdenas for joining me in this effort to ensure the U.S. is competitively positioned to leverage this next wave of technology for the economy and consumers' benefit."[cxi]	Introduced: July 14, 2016 Referred: House Energy and Commerce Committee House passed: 385-4 on September 12, 2016

INNOVATION OFFICE

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.6118 Financial Services Innovation Act of 2016	114	No	Patrick McHenry (R-N.C.)	Requires 12 agencies identified in the bill to identify three or more areas of existing regulation that may apply to financial innovation, establish a financial innovation office to promote financial innovation and assist covered firms, and provide testimony on the activities of the financial innovation office. The bill also requires the 12 agencies to create a Financial Innovation Liaison Committee, which will include a state banking regulator, and is tasked with facilitating cooperation between each agency's innovation office, holding public hearings, encouraging uniform principles and standards at each innovation office, and other tasks. McHenry: "The Financial Services Innovation Act represents a mindset shift in the way we address financial regulation. Rather than the command-and-control structure of the past, my bill establishes an evolved regulatory framework that encourages financial innovation, all while maintaining our regulators' commitment to the safety of consumers and our financial markets."[cxii]	Introduced: September 22, 2016 Referred: House Financial Services Committee and House Agriculture Committee

DATA STANDARDS & REPORTING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3860 IRS Data Verification Modernization Act of 2017	115	Yes	Patrick McHenry (R-N.C.); two cosponsors (two Democrats)	Legislation automates IRS Form 4506-T providing lenders with the ability to verify income of a taxpayer in near real time for consumer, SME lending decision-making. "Our commonsense bill simplifies the loan process for small businesses and entrepreneurs by providing lenders quicker access to financial records and data, while safeguarding private information. This bill will cut red tape and unreasonably lengthy waiting periods, making the process more efficient in getting much-needed capital into the hands of small businesses."[cxiii]	Introduced: September 28, 2017 Referred: House Ways and Means Committee
H.R.1530 Financial Transparency Act of 2017	115	Yes	Darrell Issa (R-Calif.); 29 cosponsors (seven Democrats)	To amend securities, commodities, and banking laws to make the information reported to financial regulatory agencies electronically searchable, to enable RegTech applications, and for other purposes. The Secretary of the Treasury shall, by rule, promulgate data standards for the information reported to member agencies by financial entities under the jurisdiction of the member agency and the data collected from member agencies on behalf of the Council.Bill includes provisions focused on data standards for the following departments and agencies: Department of the Treasury, Securities and Exchange Commission, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Bureau of Consumer Financial Protection, Federal Reserve System, Commodity Futures Trading Commission, National Credit Union Administration, and the Federal Housing Finance Agency. Issa: "Financial reporting often relies on cumbersome – and duplicative – paper or PDF reports that make it difficult for regulators, and the public, to track down the information they need. By updating the process to an open data standard for the information already reported to the nation's eight financial regulatory agencies, we'll be able to reduce regulatory burdens on businesses, give the public and investors better access to information, and boost our ability to find, and prevent, instances of fraud."[cxiv]	Introduced: March 15, 2017 Referred: House Financial Services Committee, Agriculture Committee
H.R.5725 IRS Data Verification Modernization Act of 2016	114	No	Patrick McHenry (R-N.C.); one cosponsor	This bill specifies requirements for IRS programs to disclose returns and return information to confirm a taxpayer's income for a legitimate business purpose. "Lenders may require applicants to fill out IRS form "4506-T," which gives the lender the right to access a summarized version of their tax transcript as part of the process to confirm certain data points on their application. According to industry reports, this manual process at the IRS takes two to eight days, creating unnecessary delays for Fintech companies and banks that rely on leveraging data and technology to make faster, informed decision for consumer and small business lending."[cxv]	Introduced: July 11, 2016 Referred: July 11, 2016 to the House Ways and Means Committee

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DATA STANDARDS & REPORTING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.2477 Financial Transparency Act of 2015	114	Yes	Darrell Issa (R-Calif.); 35 cosponsors (including 10 Democrats)	This bill directs the Office of Financial Research of the Department of the Treasury and the following financial regulatory agencies to adopt data standards for all information collected or received by them, including corporate financial data. The Financial Stability Act of 2010 is amended to direct the Office of Financial Research (OFR) to promulgate data standards, including common identifiers and data formats, for the information reported to member agencies or collected on behalf of the Financial Stability Oversight Council. The OFR must publish any public information (with specified exceptions) as open data, freely available for download in bulk, accessible via application programming interface where appropriate, and offered without any registration requirement or reuse restriction (open data publication).	Introduced: May 20, 2015 Referred: House Financial Services Committee, Agriculture Committee
S.445 Simplifying Access to Student Loan Information Act of 2015	114	No	Jeanne Shaheen (D-N.H.)	Amends the Truth in Lending Act to require private educational lenders to submit to the Secretary of Education information regarding each private education loan they make. Requires that such information: (1) be placed in the National Student Loan Data System (System), and (2) allow for the electronic exchange of data between the borrowers of those loans and the System. (The System currently contains information regarding loans made, insured, or guaranteed under the Federal Family Education Loan program and loans made under the William D. Ford Federal Direct Loan and Federal Perkins Loan programs.)	Introduced: February 10, 2015 Referred: Senate Banking Committee

MARKETPLACE LENDING ("TRUE LENDER")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.4439 Modernizing Credit Opportunities Act	115	Yes	Trey Hollingsworth (R-Ind.); four cosponsors (two Democrats)	"To amend the Revised Statutes, the Bank Service Company Act, the Federal Deposit Insurance Act, and the Home Owners' Loan Act to clarify that the role of the insured depository institution as lender and the location of an insured depository institution under applicable law are not affected by any contract between the institution and a third. party service provider, and to clarify that Federal preemption of State usury laws applies to any loan to which an insured depository institution is the party to which the debt is initially owed according to its terms, and for other purposes."	Introduced: November 16, 2017 Referred: House Financial Services Committee

MARKETPLACE LENDING ("VALID WHEN MADE")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3299 Protecting Consumers' Access to Credit Act of 2017	115	Yes	Patrick McHenry (R-N.C.); one cosponsor (one Democrat)	"A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary." McHenry: "By codifying long-standing legal precedent with the valid-when-made doctrine, we ensure that low and middle-income Americans can access our financial markets. But this bill does more than promote financial inclusion, it also increases stability in our capital markets which have been upended by the Second Circuit's unprecedented interpretation of our banking laws."	Introduced: July 19, 2017 Referred: House Financial Services Committee Ordered Reported by Committee (HFSC): 42-17 on November 15, 2017 Reported: January 30, 2018 Passed House: 245-171 on February 14, 2018 Received in Senate: February 15, 2018 Related: S. 1642, Protecting Consumers' Access to Credit Act of 2017
H.R.10 Financial CHOICE Act of 2017	115	No	Jeb Hensarling (R-Tex.); 40 cosponsors	Amends Section 5197 of 12 U.S.C. 85, the Home Owners' Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to include: "A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary." Committee Memorandum: "Rate of interest after transfer of loan. Amends various federal statutes to provide that a loan that is valid as to its maximum rate of interest when made remains valid if the loan is sold, assigned, or otherwise transferred to a third party."[cxvi]	Introduced: April 26, 2017 Referred: Committee on Financial Services, Committees on Agriculture, Ways and Means, the Judiciary, Oversight and Government Reform, Transportation and Infrastructure, Rules, the Budget, and Education and the Workforce Hearings Held: April 26, 2017 (House Financial Services Committee) Ordered Reported by Committee (HFSC): 34-26 on May 4, 2017 (amended) Reported: May 25, 2017 Passed House: 233-186 on June 8, 2017 Received in Senate: June 12, 2017 Related: 33 bills including H.R.79, HALOS Act; H.R.2201, Micro Offering Safe Harbor Act
S.1642 Protecting Consumers' Access to Credit Act of 2017	115	Yes	Mark Warner (D-Va.); three cosponsors (two Republicans)	To amend the Revised Statutes, the Home Owners' Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan, and for other purposes. "A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary."	Introduced: July 27, 2017 Referred: Senate Banking Committee Related: H.R. 3299, Protecting Consumers' Access to Credit Act of 2017

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MARKETPLACE LENDING ("VALID WHEN MADE")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.5724 Protecting Consumers' Access to Credit Act of 2016	114	No	Patrick McHenry (R-N.C.)	Amends the Revised Statutes and the Federal Deposit Insurance Act to include the following: "A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party." McHenry press release: "The Supreme Court recently declined to hear the case Madden v Midland. In Madden, the Second Circuit held that the National Bank Act, which preempts state usury laws regulating the interest a national bank may charge on a loan, does not have a preemptive effect after the national bank has sold or otherwise assigned the loan to another party. This reading of the National Bank Act was unprecedented and has created uncertainty for fintech companies, banks, and the credit markets."[cxvii]	Introduced: July 11, 2016 Referred: House Financial Services Committee

MARKETPLACE LENDING (USURY RATE)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3760 Protecting Consumers from Unreasonable Credit Rates Act of 2017	115	No	Matt Cartwright (D-Pa.); 16 cosponsors	Amends the Truth in Lending Act to establishing a national usury rate for consumer credit transactions." Notwithstanding any other provision of law, a creditor may not make an extension of credit to a consumer with respect to which the fee and interest rate… exceeds 36 percent." "Nothing in this section may be construed to preempt any provision of State law that provides greater protection to consumers than is provided in this section." "An action to enforce this section may be brought by the appropriate State attorney general in any United States district court or any other court of competent jurisdiction within 3 years from the date of the violation, and such attorney general may obtain injunctive relief." Press release: "This bill would establish a 36 percent annual interest rate cap for all consumer credit transactions, helping consumers dedicate more of their resources to buying American goods and services instead of padding the pockets of predatory lenders."[cxviii]	Introduced: September 13, 2017 Referred: House Financial Services Committee Related: S. 1659, Protecting Consumers from Unreasonable Credit Rates Act of 2017
S.1858 Empowering States' Rights to Protect Consumers Act of 2017	115	No	Sheldon Whitehouse (D-R.I.); four cosponsors	"Notwithstanding any other provision of law, the annual percentage rate applicable to any consumer credit transaction (other than a residential mortgage transaction), including any fees associated with such a transaction, may not exceed the maximum rate permitted by the laws of the State in which the consumer resides." Whitehouse press release: "The Senators' bill would amend the Truth in Lending Act of 1968 to clarify that consumer lenders—regardless of their location or legal structure—must abide by the interest rate limits of the states in which their customers reside."	Introduced: September 26, 2017 Referred: Senate Finance Committee

MARKETPLACE LENDING ("USURY RATE")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
S.1659 Protecting Consumers from Unreasonable Credit Rates Act of 2017	115	No	Dick Durbin (D-Ill.); six cosponsors	Amends the Truth in Lending Act to establish a national usury rate for consumer credit transactions. "Notwithstanding any other provision of law, no creditor may make an extension of credit to a consumer with respect to which the fee and interest rate... exceeds 36 percent." "Nothing in this section may be construed to preempt any provision of State law that provides greater protection to consumers than is provided in this section." "An action to enforce this section may be brought by the appropriate State attorney general in any United States district court or any other court of competent jurisdiction within 3 years from the date of the violation, and such attorney general may obtain injunctive relief." Durbin: "For some, payday lenders offer a quick way to make ends meet, but their outrageous interest rates and hidden fees can have crippling effects on the people who can least afford it. Capping interest rates and fees for consumers will help protect working families from these predatory lending practices—it's the right thing to do."[cxix]	Introduced: July 27, 2017 Referred: Senate Banking Committee Related: H.R.3760, Protecting Consumers from Unreasonable Credit Rates Act of 2017
H.R.1565 Protecting Consumers from Unreasonable Credit Rates Act of 2015	114	No	Matt Cartwright (D-Pa.); 26 cosponsors	Amends Truth in Lending Act to establish a national usury rate for consumer credit transactions. "Notwithstanding any other provision of law, no creditor may make an extension of credit to a consumer with respect to which the fee and interest rate… exceeds 36 percent." "An action to enforce this section may be brought by the appropriate State attorney general in any United States district court or any other court of competent jurisdiction within 3 years from the date of the violation, and such attorney general may obtain injunctive relief."	Introduced: March 24, 2015 Referred: House Financial Services Committee Related: S. 838, Protecting Consumers from Unreasonable Credit Rates Act of 2015
S.3321 Empowering States' Rights to Protect Consumers Act of 2016	114	No	Sheldon Whitehouse (D-R.I.); four cosponsors	Amends the Truth in Lending Act to empower the States to set the maximum annual percentage rates applicable to consumer credit transactions, and for other purposes. "Notwithstanding any other provision of law, the annual percentage rate applicable to any consumer credit transaction (other than a residential mortgage transaction), including any fees associated with such a transaction, may not exceed the maximum rate permitted by the laws of the State in which the consumer resides." Whitehouse: "When Wall Street banks and their credit card subsidiaries take advantage of consumers through astronomically high interest rates, states should be able to act. This bill will restore to states like Rhode Island the long-standing right to limit abusive interest rates and help protect families from runaway credit card debt."[cxx]	Introduced: September 14, 2016 Referred: Senate Banking Committee

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MARKETPLACE LENDING ("USURY RATE")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
S.838 Protecting Consumers from Unreasonable Credit Rates Act of 2015	114	No	Dick Durbin (D-Ill.); six cosponsors	Amends the Truth in Lending Act to prohibit a creditor from extending credit to a consumer under an open end consumer credit plan (credit card) for which the fee and interest rate exceeds 36%. Empowers state Attorneys General to enforce this Act.Requires inclusion of the fee and interest rate, displayed as "FAIR," instead of the total finance charge expressed as an annual percentage rate (APR). Durbin press release: The bill creates "an interest rate and fee cap of 36% for all consumer credit transactions, putting an end to the excessive rates which can top 300%. The 36% cap is similar to usury laws already enacted in many states and is the same as the cap already in place for military personnel and their families."[cxxi]	Introduced: March 23, 2015 Referred: Senate Banking Committee Related: H.R.1565, Protecting Consumers from Unreasonable Credit Rates Act of 2015

MARKETPLACE LENDING ("ALTERNATIVE CREDIT REPORTING")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.435 The Credit Access and Inclusion Act of 2017	115	Yes	Keith Ellison (D-Minn.); 22 cosponsors (nine Republicans)	Amends the Fair Credit Reporting Act to clarify Federal law with respect to reporting certain positive consumer credit information to consumer reporting agencies, and for other purposes. The Act amends Section 623 of the Fair Credit Reporting Act to state that a person or the Secretary of Housing and Urban Development may furnish to a consumer reporting agency information related to the performance of a consumer in making payments under a lease agreement and pursuant to a contract for a utility or telecommunications service. Ellison press release: "Millions of Americans lack credit scores or have scores that are too low to gain access to affordable credit. The problem disproportionately affects young people, African-Americans, Latinos and immigrants, many of whom can't establish a credit score without taking on debt. Congress should give companies permission to thicken credit reports with predictive alternative data, like payments on gas, water, electric, heating oil, cable TV, broadband, wireless cellphone bills and rent payments."[cxxii]	Introduced: January 11, 2017 Referred: House Financial Services Committee
H.R.4172 Credit Access and Inclusion Act of 2015	114	Yes	Keith Ellison (D-Minn.); 34 cosponsors (11 Republicans)	Amends the Fair Credit Reporting Act to clarify Federal law with respect to reporting certain positive consumer credit information to consumer reporting agencies, and for other purposes. Authorizes a person or the Department of Housing and Urban Development (HUD) to furnish to a consumer reporting agency information relating to the performance of a consumer in making payments: (1) under a lease agreement for a dwelling, including a lease in which HUD provides subsidized payments; or (2) pursuant to a contract for a utility or telecommunications service.	Introduced: December 3, 2015 Referred: House Financial Services Committee Hearings Held: September 27, 2016 Related: H.R.3035, Credit Access and Inclusion Act of 2015; S.2355, Credit Access and Inclusion Act of 2015

MARKETPLACE LENDING ("ALTERNATIVE CREDIT REPORTING")

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3035 Credit Access and Inclusion Act of 2015	114	Yes	Keith Ellison (D-Minn.); 16 cosponsors (seven Republicans)	Amends the Fair Credit Reporting Act to clarify Federal law with respect to reporting certain positive consumer credit information to consumer reporting agencies, and for other purposes. Authorizes a person or the Department of Housing and Urban Development (HUD) to furnish to a consumer reporting agency information relating to the performance of a consumer in making payments: (1) under a lease agreement for a dwelling, including a lease in which HUD provides subsidized payments; or (2) pursuant to a contract for a utility or telecommunications service. Ellison: "Congress should give companies permission to thicken credit reports with predictive alternative data, like payments on gas, water, electric, heating oil, cable TV, broadband, wireless cellphone bills and rent payments."[cxxiii]	Introduced: July 13, 2015 Referred: House Financial Services Committee Related: H.R.4172, Credit Access and Inclusion Act of 2015; S.2355, Credit Access and Inclusion Act of 2015
S.2355 Credit Access and Inclusion Act of 2015	114	Yes	Mark Kirk (R-Ill.); one cosponsor (one Democrat)	Amends the Fair Credit Reporting Act to clarify Federal law with respect to reporting certain positive consumer credit information to consumer reporting agencies, and for other purposes. Authorizes a person or the Department of Housing and Urban Development (HUD) to furnish to a consumer reporting agency information relating to the performance of a consumer in making payments: (1) under a lease agreement for a dwelling, including a lease in which HUD provides subsidized payments; or (2) pursuant to a contract for a utility or telecommunications service. Kirk: "1.4 million men and women in Illinois are unable to build a credit score, making it very difficult to get a loan, mortgage or credit cards. My bipartisan bill with Senator Manchin levels the playing field for those who want to build a credit score."[cxxiv]	Introduced: December 3, 2015 Referred: Senate Banking Committee Related: H.R.3035, Credit Access and Inclusion Act of 2015; H.R.4172, Credit Access and Inclusion Act of 2015

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MOBILE BANKING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.1457 Making Online Banking Initiation Legal and Easy (MOBILE) Act of 2017	115	Yes	Scott Tipton (R-Colo.); 21 cosponsors (including five Democrats)	To establish requirements for use of a driver's license or personal identification card by certain financial institutions for opening an account or obtaining a financial product or service, and for other purposes. "The provisions of this Act shall preempt and supersede any State law that conflicts with a provision of this Act, but only to the extent of such conflict." Tipton: "Today, most people are walking around with their own personal bank in their purse or pocket. The MOBILE Act allows our families to use smartphone technology to its fullest potential, while having the assurance that their private information is secure."[cxxv]	Introduced: March 9, 2017 Referred: House Financial Services Committee Hearings: July 12, 2017 Ordered reported by Committee (HFSC): 60-0 (amended) on December 13, 2017 Reported: January 22, 2018 Placed on House calendar: January 22, 2018 House Passed: 397-8 on January 29, 2018 Received in Senate: January 30, 2018
H.R.6287 Making Online Banking Initiation Legal and Easy (MOBILE) Act of 2016	114	Yes	Scott Tipton (R-Colo.); five cosponsors (one Democrat)	To establish requirements for use of a driver's license or personal identification card by certain financial institutions for opening an account or obtaining a financial product or service, and for other purposes. "The provisions of this Act shall preempt and supersede any State law that conflicts with a provision of this Act, but only to the extent of such conflict." Tipton: "There are many families in rural communities across the country who are struggling to achieve financial security because they can't easily get to a bank to open checking or savings accounts. Smartphones can change this, but we need our laws to catch up to the technology."[cxxvi]	Introduced: September 28, 2016 Referred: September 28, 2016 to the House Financial Services Committee

STATE LICENSING/OVERSIGHT

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.2643 State Licensing Efficiency Act of 2015	114	Yes	Roger Williams (R-Tex.); 42 cosponsors (11 Democrats)	Amends the S.A.F.E. Mortgage Licensing Act of 2008 to direct the Attorney General to provide appropriate state officials responsible for regulating financial service providers (in addition to state officials responsible for regulating state-licensed loan originators) with access to criminal history information to the extent that criminal history background checks are required under state law for the licensing of such parties. "By authorizing NMLS to receive criminal background data for financial services beyond the mortgage industry, this legislation enhances consumer protection, reduces regulatory burden and ensures state regulators have the tools we need for effective supervision." – Charles Cooper, Banking Commissioner, Texas Department of Banking and CSBS Chairman-Elect.[cxxvii]	Introduced: June 6, 2015 Referred: House Financial Services Committee; House Judiciary Committee Hearings Held: June 11, 2015 Ordered Reported by Committee (HFSC): 57-0 on July 29, 2015 Reported: October 28, 2015 Placed on House calendar: October 28, 2015 House passed: Voice vote on October 28, 2015 Received in Senate: October 29, 2015 Related: S. 1957, State Licensing Efficiency Act of 2015

STATE LICENSING/OVERSIGHT

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.1480 SAFE Act Confidentiality and Privilege Enhancement Act	114	Yes	Robert Dold (R-Ill.); four cosponsors (one Democrat)	Amends the S.A.F.E. Mortgage Licensing Act of 2008 to extend to state and federal regulatory officials having financial services oversight authority (currently only those having mortgage oversight authority) access to any information provided to the Nationwide Mortgage Licensing System and Registry (or any system established by the Director of the Consumer Financial Protection Bureau without the loss of privilege or confidentiality protections provided by federal and state laws.	Introduced: March 19, 2015 Referred: House Financial Services Committee Ordered Reported by Committee: 58-0 on March 26, 2015 Reported: April 13, 2015 Placed on House calendar: April 13, 2015 Passed House: 401-0 on April 13, 2015 Received in Senate: April 14, 2015 Related: S.372, SAFE Act Confidentiality and Privilege Enhancement Act; S.1910, Financial Services and General Government Appropriations Act, 2016
S.1957 State Licensing Efficiency Act of 2015	114	Yes	Dianne Feinstein (D-Calif.); eight cosponsors (six Republicans)	This bill amends the S.A.F.E. Mortgage Licensing Act of 2008 to direct the Attorney General to provide appropriate state officials responsible for regulating financial service providers (in addition to state officials responsible for regulating state-licensed loan originators) with access to criminal history information to the extent that criminal history background checks are required under state law for the licensing of such parties. Feinstein press release: "Today, states have authorized the use of NMLS for licensing additional financial service providers. However, the FBI is only authorized to provide background check information to the NMLS for mortgage loan originators. The State Licensing Efficiency Act of 2015 clarifies that the FBI is authorized to provide the same information for other financial service providers. With this change, financial service providers could request only one federal background check through NMLS, instead of for each state where they are seeking a license, as required by current law."[cxxviii]	Introduced: August 5, 2015 Referred: Senate Banking Committee Related: H.R.2643, State Licensing Efficiency Act of 2015
S.372 SAFE Act Confidentiality and Privilege Enhancement Act	114	Yes	Shelley Moore Capito (R-W. Va); five cosponsors (three Democrats)	Amends the S.A.F.E. Mortgage Licensing Act of 2008 to extend to state and federal regulatory officials having financial services oversight authority (currently only those having mortgage oversight authority) access to any information provided to the Nationwide Mortgage Licensing System and Registry (or any system established by the Director of the Consumer Financial Protection Bureau), without the loss of privilege or confidentiality protections provided by federal and state laws. Capito: "My legislation simply clarifies that information that is shared with state regulators receives the same privileged and confidential treatment as [information shared with federal regulators]"[cxxix]	Introduced: February 4, 2015 Referred: Senate Banking Committee Related: H.R.1480, SAFE Act Confidentiality and Privilege Enhancement Act; S.1910, Financial Services and General Government Appropriations Act, 2016

PAYMENTS

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.6162 Protect Prepaid Accounts Act of 2016	114	No	Scott Tipton (R-Colo.)	To amend the Federal Deposit Insurance Act to ensure that prepaid funds deposited in an insured depository institution satisfy the requirements of the primary purpose exclusion to the definition of deposit broker, and for other purposes. Tipton: "As a result of a 2014 revision to deposit broker regulations, the FDIC has determined the "primary purpose exception" applies only infrequently to prepaid products and typically requires a specific request for determination by the FDIC. Unfortunately, the practical impact of this conclusion is an increase in deposit insurance costs to any depository institution that operates a prepaid program. Inevitably, this also leads to an increase in costs and less choices for consumers as banks commit additional resources to compliance rather than to their customers.... Mistakenly classifying prepaid accounts as brokered deposits may force depository institutions to drop their programs, impacting students, workers, and government benefit recipients that all rely on prepaid products to access the financial system."[cxxx,cxxxi]	Introduced: September 22, 2016 Referred: House Financial Services Committee Hearings held: September 27, 2016
H.R.5023 SAFE Lending Act of 2016	114	No	Suzanne Bonamici (D-Ore.); 12 cosponsors	This bill amends the Electronic Fund Transfer Act (EFTA) to declare that a remotely created check may only be issued by a person specifically designated in writing by the consumer to the insured depository institution at which the consumer maintains the account from which the check is drawn. The bill prohibits issuance of any payment order in response to a consumer's exercise of federal consumer financial rights. Any voluntary electronic fund transfer to repay a small-dollar consumer credit transaction shall be treated as preauthorized under the Truth in Lending Act (TILA). The TILA is amended to require registration with the Consumer Financial Protection Bureau (CFPB) by any small-dollar lender that facilitates, brokers, arranges, or gathers applications for small-dollar consumer credit (of up to $5,000, adjusted for inflation) extended pursuant to an open-end, non-open-end, or other CFPB-determined credit plan meeting specified criteria. The TILA is further amended to prohibit a person from certain activities, including distributing sensitive personal financial information, in connection with a small-dollar consumer credit transaction, if that person ("lead generator") does not itself grant the credit directly to the consumer. The Government Accountability Office (GAO) shall study: (1) the availability of capital on Indian reservations, and (2) the impact on tribal economic opportunity and wealth of small-dollar consumer credit extensions to tribal members through internet and non-internet means. Bonamici press release: "The bill allows consumers to stop automatic bank withdrawals from payday lenders, requires that lenders abide by the laws of the state in which they are lending, and bans third party "lead generators" that collect applications and auction them to payday lenders."[cxxxii]	Introduced: April 21, 2016 Referred: House Financial Services Committee Related: S.2760, SAFE Lending Act of 2016

PAYMENTS

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
S.2760 SAFE Lending Act of 2016	114	No	Jeff Merkley (D-Ore.); 13 cosponsors	This bill amends the Electronic Fund Transfer Act (EFTA) to declare that a remotely created check may only be issued by a person specifically designated in writing by the consumer to the insured depository institution at which the consumer maintains the account from which the check is drawn. The bill prohibits issuance of any payment order in response to a consumer's exercise of federal consumer financial rights. Any voluntary electronic fund transfer to repay a small-dollar consumer credit transaction shall be treated as preauthorized under the Truth in Lending Act (TILA). The TILA is amended to require registration with the Consumer Financial Protection Bureau (CFPB) by any small-dollar lender that facilitates, brokers, arranges, or gathers applications for small-dollar consumer credit (of up to $5,000, adjusted for inflation) extended pursuant to an open-end, non-open-end, or other CFPB-determined credit plan meeting specified criteria. The TILA is further amended to prohibit a person from certain activities, including distributing sensitive personal financial information, in connection with a small-dollar consumer credit transaction, if that person ("lead generator") does not itself grant the credit directly to the consumer. The Government Accountability Office (GAO) shall study: (1) the availability of capital on Indian reservations, and (2) the impact on tribal economic opportunity and wealth of small-dollar consumer credit extensions to tribal members through internet and non-internet means. Merkley: "Payday lenders' innovation in finding new ways to gouge vulnerable families is deplorable but, sadly, all too predictable. In a rapidly evolving market, it's critical that our laws and regulations keep up with new and predatory threats to consumers' pocketbooks. It's up to us to help keep working families from being caught in a vortex of debt, and I encourage both Congress and the Consumer Financial Protection Bureau to block unscrupulous lenders from preying on hardworking families."[cxxxiii]	Introduced: April 7, 2016 Referred: Senate Banking Committee Related: H.R.5023, SAFE Lending Act of 2016

PAYMENTS

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
S.2315 Prepaid Card and Mobile Account Consumer Protection Act of 2015	114	No	Robert Menendez (D-N.J.); three cosponsors	Amends the Electronic Fund Transfer Act to extend its coverage to spending accounts (deposit accounts) established by a consumer at an insured depository institution or credit union. Requires spending accounts to be structured to provide and maintain separate deposit insurance coverage for the funds of each consumer under Federal Deposit Insurance Corporation or National Credit Union Administration regulations. No person may offer or provide a spending account that has a credit feature or that can be linked to a credit account that is automatically repaid from the spending account. The CFPB shall establish an implementation plan and timeline for a prepaid card research study to determine if any differences exist for both the short- and long-term economic well-being of consumers at different income levels who use spending accounts versus those who use traditional bank accounts for their primary means of making financial transactions. The Expedited Funds Availability Act is amended to declare that funds deposited in an account by the transmission of an image of a check using a mobile device or computer shall be available on the same schedule as a check deposited at an ATM.Menendez: "For years, as the prepaid card industry has exploded, financial companies have marketed them to consumers just like debit cards or checking accounts. But they aren't. With fees and information hidden in fine print that make it impossible to comparison shop, prepaid cards they lack the same guaranteed federal protections consumers deserve. And that's why I have been sounding the alarm and calling for the kind of common sense safeguards the CFPB finally announced today."[cxxxiv]	Introduced: November 19, 2015 Referred: Senate Banking Committee
S.79 Remittance Status Verification Act of 2015	114	No	David Vitter (R-La.)	Amends the Electronic Fund Transfer Act to require a remittance transfer provider, before initiating a transfer, to request from the sender of a remittance whose recipient is located in a country other than the United States proof of the sender's status under U.S. immigration laws. Cites admissible documentation attesting to the sender's status, including a state-issued driver's license or federal passport. Directs a remittance transfer provider to impose, upon any sender unable to provide such proof of status, a fine equal to 7% of the U.S. dollar amount to be transferred. Requires submission to the Consumer Financial Protection Bureau of all fines imposed and collected by a remittance transfer provider in order to pay the administrative and enforcement costs of implementing this Act. Requires the Comptroller General to study the effects of the enactment of this Act.	Introduced: January 7, 2015 Referred: Senate Banking Committee

APPENDICES

CRYPTOCURRENCY-SPECIFIC

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3708 To amend the Internal Revenue Code of 1986 to exclude from gross income de minimis gains from certain sales or exchanges of virtual currency, and for other purposes	115	Yes	David Schweikert (R-Ariz.); two cosponsors (one Democrat)	Amends the Internal Revenue Code of 1986 to exclude from gross income de minimis gains from certain sales or exchanges of virtual currency, and for other purposes. The amount of gain excluded from gross income … with respect to a sale or exchange shall not exceed $600.Amendments made by this section shall apply with respect to transactions entered into after December 31, 2017. Schweikert press release: "In 2014, the IRS classified digital currency as property. The outdated guidance classifies even the smallest of cryptocurrency transactions the same as buying or selling stock, which dis-incentivizes consumers from using virtual currencies to pay for goods and services. The bipartisan legislation creates a structure for taxing purchases made with cryptocurrency. Similar to foreign currency transactions, it allows consumers to make small purchases with cryptocurrency up to $600 without burdensome reporting requirements."[cxxxv] Polis: "To keep up with modern technology, we need to remove outdated restrictions on cryptocurrencies, like Bitcoin, and other methods of digital payment. By cutting red tape and eliminating onerous reporting requirements, it will allow cryptocurrencies to further benefit consumers and help create good jobs."	Introduced: September 7, 2017 Referred: House Ways and Means Committee

LAW ENFORCEMENT/ANTI-MONEY LAUNDERING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.4373 AML and CTF Modernization Act	115	Yes	Ed Royce (R-Calif.); one cosponsor (one Democrat)	Modernize and strengthen the United States anti-money laundering and counter-terrorism financing regime. Section 7: Report Within 1 year of the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Federal banking agencies (as such term is defined under Section 3 of the Federal Deposit Insurance Act) and other agencies, as applicable, shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (1) the potential for artificial intelligence, machine learning, and other technologies to help detect and prevent money laundering and terrorist financing. "Financial criminals and terrorists have evolved in the decades since our anti-money laundering regime was built but our regulatory structure hasn't kept pace. By some estimates, nearly 70 percent of spending on AML compliance is focused on inputs over outcomes. This does little to thwart criminal syndicates, rogue nations, and terrorist networks but it strips away resources that could be better spent on new technologies and other innovations to support national security. The AML and CTF Modernization Act will refocus our regime on quality over quantity, providing new tools to assist law enforcement."[cxxxvi]	Introduced: November 13, 2017 Referred: House Financial Services Committee

LAW ENFORCEMENT/ANTI-MONEY LAUNDERING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3364 Countering America's Adversaries Through Sanctions Act	115	Yes	Ed Royce (R-Calif.); five cosponsors (three Democrats)	Countering Iran's Destabilizing Activities Act of 2017 Countering Russian Influence in Europe and Eurasia Act of 2017 Korean Interdiction and Modernization of Sanctions Act "The bill: (1) directs the Department of the Treasury to develop a national strategy for combating the financing of terrorism, and (2) includes the Secretary of the Treasury on the National Security Council." Sec. 262—Contents of a National Strategy: "A discussion of and data regarding trends in illicit finance, including evolving forms of value transfer such as so-called cryptocurrencies, other methods that are computer, telecommunications, or Internet-based, cyber crime, or any other threats that the Secretary may choose to identify."	Introduced: July 24, 2017 Referred: Committee on Foreign Affairs, and in addition to the Committees on Intelligence (Permanent Select), the Judiciary, Oversight and Government Reform, Armed Services, Financial Services, Rules, Ways and Means, and Transportation and Infrastructure House passed: 419-3 on July 25, 2017 Received in Senate: July 26, 2017 Passed Senate: 98-2 on July 27, 2017 Signed by the President: August 2, 2017 (Public Law No: 115-44) Related: H.R. 3100, to require the president to develop a national strategy for combating the financing of terrorism and related forms of illicit finance, and for other purposes. Includes language from H.R. 3321, H.R. 3100
H.R.3321 National Strategy for Combating Terrorist, Underground, and Other Illicit Financing Act	115	Yes	Ted Budd (R-N.C.); two cosponsors (one Democrat)	To require the President to develop a national strategy for combating the financing of terrorism and related forms of illicit finance, and for other purposes. "Methods of concealing the movement of illicit funding change quickly in a globalized economy, and rapid technological changes and financial innovation pose new risks that may be increasingly difficult for governments to stay abreast of without an agile, constantly adjusted strategy to spot, disrupt, and prevent the financing of terrorism and related forms of illicit finance." "A discussion of and data regarding trends in illicit finance, including evolving forms of value transfer such as so-called cryptocurrencies, other methods that are computer, telecommunications, or Internet-based, cyber crime, or any other threats that the Secretary may choose to identify." Budd: "I am proud of the bipartisan language in the bill which would create a national strategy for combatting terrorism and illicit finance.... A national strategy should seek to enhance intergovernmental cooperation and to identify illicit financing trends and to encourage federal agencies to work with the private financial sector to do the same. This bill does these things and would go a long way to making sure we are keeping pace with the ever changing terror finance landscape."[cxxxvii]	Introduced: July 20, 2017 Referred: House Financial Services Committee Related: H.R.3364, Countering America's Adversaries Through Sanctions Act; S.722 Countering Iran's Destabilizing Activities Act of 2017 Language rolled into H.R. 3364, Countering America's Adversaries Through Sanctions Act, which became Public Law No: 115-44 on August 2, 2017

LAW ENFORCEMENT/ANTI-MONEY LAUNDERING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.3100 To require the President to develop a national strategy for combating the financing of terrorism and related forms of illicit finance, and for other purposes.	115	Yes	Kyrsten Sinema (D-Ariz.); 24 cosponsors (six Republicans)	To require the President to develop a national strategy for combating the financing of terrorism and related forms of illicit finance, and for other purposes. "A discussion of and data regarding trends in illicit finance, including evolving forms of value transfer such as so-called cryptocurrencies, other methods that are computer, telecommunications, or Internet-based, cyber crime, or any other threats that the Secretary may choose to identify." Budd: "A goal without a plan is just a wish. Our goal is to eradicate the international illicit financing networks that are the lynchpin of any terrorist group's, criminal organization's, or rogue state's operations, but we don't have a unified national plan. This bill directs the Secretary of the Treasury to provide that plan, a vital first step towards addressing the threat posed by the growing sophistication of illicit financing networks."[cxxxviii]	Introduced: June 28, 2017 Referred: House Financial Services Committee Related: H.R.3364, Countering America's Adversaries Through Sanctions Act; S.722 Countering Iran's Destabilizing Activities Act of 2017 Language rolled into H.R. 3364, Countering America's Adversaries Through Sanctions Act, which became Public Law No: 115-44 on August 2, 2017
H.R.2622 Countering Terrorist Financing Act of 2017	115	Yes	Stephen Lynch (D-Mass.); four cosponsors (one Republican)	Amends title 31, United States Code, to authorize the Secretary of the Treasury to include all funds when issuing certain geographic targeting orders, and for other purposes. Lynch press release: "The legislation authorizes the Secretary of the Treasury to include all funds when issuing certain [Geographic Targeting Orders (GTOs)], including funds involved in an electronic fund transfer. GTOs impose additional reporting requirements on one or more domestic financial institutions or nonfinancial businesses in a geographic area to ensure compliance with the Bank Secrecy Act."[cxxxix]	Introduced: May 24, 2017 Referred: House Financial Services Committee Related: H.R. 1751, Counteracting Russian Hostilities Act of 2017; S. 94, Counteracting Russian Hostilities Act of 2017
S.1757 Building America's Trust Act	115	No	John Cornyn (R-Tex.); eight cosponsors	SEC. 409—Criminal Proceeds Laundered Through Prepaid Access Devices, Digital Currencies, or Other Similar Instruments. Prepaid access device: "'means an electronic device or vehicle, such as a card, plate, code, number, electronic serial number, mobile identification number, personal identification number, or other instrument that provides a portal to funds or the value of funds that have been paid in advance and can be retrievable and transferable at some point in the future." GAO to submit a report no later than 18 months after the date of enactment of this Ace describing the impact of amendments made in the Section on law enforcement, the prepaid access device industry, and consumers; and the implementation and enforcement by the Department of the Treasury of the final rule relating to the Bank Secrecy Act Regulations - Definitions and Other Regulations Relating to Prepaid Access." Cornyn Press Release: "For too long law enforcement on the front lines haven't had the tools they need to stop the flow of illegal immigration, and this bill will provide both the resources and plan to finally secure the border. This legislation requires DHS to work together with the communities they serve, and helps boost the flow of commerce through our ports so trade can continue to flourish."[cxl]	Introduced: August 3, 2017 Placed on Senate Calendar: September 5, 2017 Related: H.R. 400, Stop Dangerous Sanctuary Cities Act; H.R. 425, FTO Passport Revocation Act of 2017; H.R. 505, Border Security Technology Accountability Act of 2017; H.R. 2626, Strong Visa Integrity Secures America Act; H.R. 3548, Border Security for America Act of 2017; S. 87, Stop Dangerous Sanctuary Cities Act

LAW ENFORCEMENT/ANTI-MONEY LAUNDERING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
S.1241 Combatting Money Laundering, Terrorist Financing, and Counterfeiting Act of 2017	115	Yes	Chuck Grassley (R-Iowa); five cosponsors (three Democrats)	Sec. 13—Prepaid access devices, digital currencies, or similar instruments. 18 months after enactment of this Act, GAO will issue a report covering the impact on law enforcement, the prepaid access industry, and consumers from the added amendments. 18 months after enactment of this Act, Homeland Security, in consultation with the Commissioner of U.S. Customs and Border Protection, will submit a report detailing a strategy to interdict and detect prepaid access devices, digital currencies, or similar instruments, at the border crossings and ports of entry into the U.S. The report will also include an assessment of the infrastructure needed to carry out an effective strategy to interdict and detect such products or instruments. Grassley: "We must continue to fight [terrorist organizations, drug cartels, and other criminals] on every front, and that includes going after the profits of crime that are also used to fuel the ongoing activity of these diabolical enterprises. Our bill updates our money laundering laws for the 21st Century." Grassley press release: "Perpetrators use a variety of methods to conceal and move funds across borders and through the global financial system in an effort to evade law enforcement. These techniques include longstanding unofficial money transferring systems, such as hawalas, and more modern tools, like prepaid access cards and digital currencies.The Senators' legislation modernizes criminal money laundering laws, updates counterfeiting statutes to prohibit state of the art counterfeiting methods, enhances tools to crack down on smugglers and tax cheats, and promotes transparency in the U.S. financial system."[cxii]	Introduced: May 25, 2017 Referred: Senate Judiciary Committee
H.R.5607 Enhancing Treasury's Anti-Terror Tools Act	114	Yes	Robert Pittenger (R-N.C.); 11 cosponsors (six Democrats)	"The bill revises Treasury's authority to issue an order imposing recordkeeping and reporting requirements upon financial institutions and nonfinancial trade or business groups in certain geographic areas regarding transactions for the payment, receipt, or transfer of U.S. coins or currency (or other monetary instruments as Treasury may describe). Such an order may include all funds, not just U.S. coins or currency, involved in such transactions." Pittenger: "This bill will allow Treasury to report to Congress on its role in various countries throughout the world and, subsequently, the need to expand that role. It also will provide to Congress its advisability and the implications of turning the Treasury's Office of Terrorism and Financial Intelligence–which includes FinCEN and OFAC–sanctions enforcement unit into a stand-alone bureau, similar to the FBI."[cxiii]	Introduced: June 28, 2016 Referred: Committee on Financial Services, and in addition to the Committees on Foreign Affairs, Ways and Means, Armed Services, and Intelligence (Permanent Select) Passed House: July 11, 2016, 362-45 Received in Senate: July 12, 2016
H.R.5594 National Strategy for Combating Terrorist, Underground, and Other Illicit Financing Act	114	Yes	Michael Fitzpatrick (R-Pa.); 23 cosponsors (12 Democrats)	A comprehensive, research-based, long-range, quantifiable discussion of threats, goals, objectives, and priorities for disrupting, preventing and reducing the number, dollar value, and effects of illicit finance in the United States and foreign countries that impact the security of the United States. "A discussion of terrorist financing and other forms of illicit finance that involve cyber attacks, evolving forms of value transfer, including so-called "crypto currencies", and other methods that are computer, telecommunications, or Internet-based." "An analysis of current and developing ways to leverage technology to improve the effectiveness of the fight against the financing of terror and other forms of illicit finance, including the use of "big data" analytics, the merging of publicly sourced data with Bank Secrecy Act data and with other forms of secure Government data to increase such effectiveness, and ways to enhance the role of the private sector in combating illicit finance."	Introduced: June 28, 2016 Referred: House Financial Services Committee House Passed: Voice voteReceived in Senate: July 12, 2016

EQUITY CROWDFUNDING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.10 Financial CHOICE Act of 2017	115	No	Jeb Hensarling (R-Tex.); 40 cosponsors	Subtitle P—Fix Crowdfunding Sec. 476—The bill lessens restrictions related to the SEC registration exemption for securities offerings involving crowdfunding. Sec. 477—With respect to that exemption, the bill excludes crowdfunding investors from the cap on shareholders. Sec. 479—The bill exempts crowdfunding intermediaries known as "funding portals" from certain reporting requirements. McHenry: "The Financial CHOICE Act actually addresses the plight of small businesses by cleaning up these messy regulations... and encouraging the use of innovative new forms of capital formation that help businesses grow and prosper."[cxliii]	Introduced: April 26, 2017 Referred: Committee on Financial Services, Committees on Agriculture, Ways and Means, the Judiciary, Oversight and Government Reform, Transportation and Infrastructure, Rules, the Budget, and Education and the Workforce Hearings held: April 26, 2017 (House Financial Services Committee) Ordered Reported by Committee (HFSC): 34-26 on May 4, 2017 (amended) Reported: May 25, 2017 Passed House: 233-186 on June 8, 2017 Received in Senate: June 12, 2017 Related: 33 bills including H.R.79, HALOS Act; H.R.2201, Micro Offering Safe Harbor Act
S.1031 Crowdfunding Ehancement Act	115	No	Steve Daines (R-Mont.)	To amend provisions in the securities laws relating to regulation crowdfunding to raise the dollar amount limit and to clarify certain requirements and exclusions for funding portals established by such Act. Daines in a letter to SEC Commissioner Jay Clayton (May 2, 2017): "Last Congress, I introduced the Crowdfunding Enhancement Act, legislation that would allow a crowdfunding issuer to raise funds with more ease and reduce financial requirements for mandatory public filing. I encourage you to review the Crowdfunding Rule for opportunities to encourage entrepreneurship and job creation, and I look forward to introducing this legislation again this Congress."[cxliv]	Introduced: May 3, 2017 Referred: Senate Banking Committee
H.R.6427 Creating Financial Prosperity for Businesses and Investors Act	114	Yes	Scott Garrett (R-N.J.); 10 cosponsors (two Democrats)	Amends the Securities Act of 1933 and the Investment Company Act of 1940 to allow crowdfunding issuers to sell shares through a special purpose entity known as a crowdfunding vehicle. Defines a crowdfunding vehicle. Holders of crowdfunded shares shall not count toward the shareholder threshold if the issuer has: (1) a public float of less than $75 million, and (2) annual revenues of less than $50 million.	Introduced: June 28, 2016 Referred: House Financial Services Committee House Passed: Voice vote Received in Senate: July 12, 2016

EQUITY CROWDFUNDING

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.5983 Financial CHOICE Act of 2016	114	No	Jeb Hensarling (R-Tex.); five cosponsors	Subtitle P—Fix Crowdfunding re: amending the Investment Company Act of 1940 to include the term "crowdfunding vehicle" and exemptions from registration.	Introduced: September 9, 2016 Referred: Multiple Committees including House Financial Services Committee Ordered reported by Committee (HFSC): 30-26 (amended) on September 13, 2016 Reported: December 20, 2016 (amended) Placed on House Calendar: December 20, 2016 Related: 76 bills including: H.R.4498, Helping Angels Lead Our Startups Act or the HALOS Act; H.R.4638, Main Street Growth Act; H.R.4850, Micro Offering Safe Harbor Act; H.R.4852, Private Placement Improvement Act of 2016; H.R.4855, Fix Crowdfunding Act; H.R.6427, Creating Financial Prosperity for Businesses and Investors Act; S.3453, Crowdfunding Enhancement Act
H.R.4855 Fix Crowdfunding Act	114	No	Patrick McHenry (R-N.C.); one cosponsor	Amends the Securities Act of 1933 to allow a crowdfunding issuer to sell shares through a crowdfunding vehicle. Defines a crowdfunding vehicle. Amends the Securities Exchange Act of 1934 to allow holders of crowdfunded shares shall not count toward the shareholder threshold if the issuer has: (1) a public float of less than $75 million, and (2) annual revenues of less than $50 million. McHenry: "This bill allows us to expand what you're able to do through investment crowdfunding.... In the JOBS Act, and investment crowdfunding part of that bill, out of that the Securities and Exchange Commission wrote poor regulation," including problems with 12(g) - subjecting very low fundraising to economically costly disclosures - and not permitting single purpose funds. "These two very important provisions... if we fix these things, we'll provide more economic opportunity, we'll have better investment advice, and we'll be able to expand, and make real, the utility of crowdfunding."[cxlv]	Introduced: March 23, 2016 Referred: House Financial Services Committee Hearings held: April 14, 2016 Ordered reported: 57-2 (amended) on June 16, 2016 Reported: July 5, 2016 Placed on House calendar: June 5, 2016 Passed House: 394-4 (amended) on July 5, 2016 Received in Senate: July 6, 2016 Related: H.R.6427, Creating Financial Prosperity for Businesses and Investors Act; H.R.5983, Financial CHOICE Act of 2016; S.3453, Crowdfunding Enhancement ActLegislation incorporated into H.R.6427, Creating Financial Prosperity for Businesses
S.3453 Crowdfunding Enhancement Act	114	No	Steve Daines (R-Mont.)	This bill amends the Securities Act of 1933 to allow a crowdfunding issuer to sell shares through a crowdfunding vehicle.The bill amends the Securities Exchange Act of 1934 to revise the conditions upon which the Securities and Exchange Commission (SEC) shall exempt securities issued in crowdfunding transactions from SEC registration requirements. Daines: "Startups shouldn't be penalized with costly paperwork by growing too fast. This bill makes sure startups do not fall victims to their success by reaching the current crowdfunding limits too quickly. This bill is a win for Montana and all our entrepreneurs. Enhanced crowdfunding can better give Montanans the tools they need to create more good-paying jobs and allow them to pursue their entrepreneurial dreams."[cxlvi]	Introduced: September 28, 2016 Referred: Senate Banking Committee Related: H.R. 6427, Creating Financial Prosperity for Businesses and Investors Act; H.R. 5983, Financial CHOICE Act of 2016; H.R. 4855, Fix Crowdfunding Act

PRIVATE, SECURITIES-BASED OFFERINGS (REGISTRATION/REPORTING REQUIREMENTS)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.2864 Improving Access to Capital Act	115	Yes	Kyrsten Sinema (D-Ariz.); five cosponsors (four Republicans)	To direct the Securities and Exchange Commission to allow certain issuers to be exempt from registration requirements, and for other purposes. "Directs the SEC to amend Regulation A to permit Exchange Act reporting companies who otherwise meet all of the requirements under Regulation A to issue securities under Regulation A. Currently, Regulation A only applies to non-reporting companies."[cxlvii] Sinema: Amendments to Regulation A under the JOBS Act "excludes certain potential issuers, including Exchange Act reporting companies. As a result, [certain issuers] that already meet the SEC's high disclosure requirements are ineligible to use Regulation A+ to cost effectively raise the funds they need to grow and hire employees. And that's why I've introduced this legislation... to allow SEC-reporting companies access to Regulation A+."[cxlviii]	Introduced: June 8, 2017 Referred: House Financial Services Committee Ordered Reported: 59-0 (amended) on July 25, 2017 Placed on House calendar: September 5, 2017 House passed: 403-3 on September 5, 2017 Received in Senate: September 6, 2017
H.R.4852 Private Placement Improvement Act of 2016	114	No	Scott Garrett (R-N.J.); one cosponsor	Directs the Securities and Exchange Commission (SEC) to revise the filing requirements of Regulation D (which provides exemptions from securities registration requirements) to require an issuer that offers or sells securities in reliance upon a certain exemption from registration (for limited offers and sales without regard to the dollar amount of the offering [Rule 506]) to file, no earlier than 15 days after the date of first sale of such securities, a single notice of sales containing the information required by Form D (used to file a notice of an exempt offering of securities under Regulation D) for each new offering of securities. The SEC shall revise a specified rule, regarding a Rule 506 offering of a private fund, to characterize as an accredited investor a "knowledgeable employee" of that private fund or the fund's investment adviser. HFSC press release: "Title II of the JOBS Act removed the ban on general solicitation or advertising for SEC Regulation D offerings. Unfortunately, the SEC proposed rules that would have a chilling effect on the changes made by the JOBS Act. The bill directs the SEC to revise Regulation D in six meaningful ways to facilitate capital formation in Regulation D offerings."[cxlix]	Introduced: March 23, 2016 Referred: House Financial Services Committee Hearings held: April 14, 2016 Reported by Committee: 33-26 on June 16, 2016 Place on House calendar: September 6, 2016 Related: H.R. 2357, Accelerating Access to Capital Act of 2016; H.R. 5983, Financial Choice Act of 2016
H.R.2357 Accelerating Access to Capital Act of 2016	114	No	Ann Wagner (R-Mo.)	This bill directs the Securities and Exchange Commission (SEC) to revise Form S-3 (a simplified securities registration form for companies that have already met other reporting requirements) so as to permit securities to be registered pursuant to General Instruction I.B.1. of the form if: (1) the aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant is $75 million or more, or (2) the registrant has at least one class of common equity securities listed and registered on a national securities exchange. The Securities Act of 1933 is amended to exempt from specified prohibitions against the sale or delivery after sale of unregistered securities, among other things, transactions involving the sale of securities by an issuer of micro-offerings. The SEC must revise the filing requirements of Regulation D (which provides exemptions from securities registration requirements) to require an issuer that offers or sells securities in reliance upon a certain exemption from registration (for limited offers and sales without regard to the dollar amount of the offering [Rule 506]) to file, no earlier than 15 days after the date of first sale of such securities, a single notice of sales containing the information required by Form D (used to file a notice of an exempt offering of securities under Regulation D) for each new offering of securities. Wagner: "This legislation builds upon other efforts by this Committee to provide simplified disclosure and reduce burdens for smaller companies in order to lower the cost of capital. Specifically, this would extend to smaller reporting companies the ability to utilize Form S-3 - a much more simplified registration for companies that have already met prior reporting requirements with the SEC. Allowing small companies to use this Form would provide significant benefits with its shorter length, allowing forward incorporation by reference, and the ability to offer securities off the shelf, which are all things that larger companies are currently able to enjoy."[cl]	Hearings Held: May 13, 2015 Introduced: May 15, 2015 Referred: House Financial Services Committee Ordered reported: 33-24 on May 20, 2015 Reported by Committee: April 19, 2016 Placed on House Calendar: April 19, 2016 Passed House: 236-178 on September 8, 2016 Received in Senate: September 12, 2016 Related: H.R. 4850, Micro Offering Safe Harbor Act; H.R. 4852, Private Placement Improvement Act of 2016; H.R. 5983, Financial CHOICE Act of 2016Legislation incorporated into H.R. 5983, Financial CHOICE Act of 2016 (Subtitle F)

PRIVATE, SECURITIES-BASED OFFERINGS (REGISTRATION/REPORTING REQUIREMENTS)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.1723 Small Company Simple Registration Act of 2015	114	Yes	Ann Wagner (R-Mo.); one cosponsor (one Democrat)	Directs the Securities and Exchange Commission (SEC) to revise Form S-1 so that a smaller reporting company may incorporate by reference in a registration statement filed on that form any documents it files with the SEC after the registration statement's effective date. Wagner: "I have introduced legislation... which would streamline how small businesses file additional registration documents in order to continue offering securities to willing investors. This commonsense idea was originally proposed by the SEC's own working group on capital formation."[cli]	Introduced: March 26, 2015 Referred: House Financial Services Committee Ordered reported: 60-0 on May 20, 2015 Reported by Committee: July 14, 2015 Placed on House calendar: July 14, 2015 House passed: 426-0 on July 14, 2015 Received in Senate: July 15, 2015 Related: H.R. 22, FAST Act
H.R.1525 Disclosure Modernization and Simplification Act of 2015	114	No	Scott Garrett (R-N.J.)	Directs the Securities and Exchange Commission (SEC) to issue regulations permitting issuers to submit a summary page on annual and transition report form 10-K if each item on that page cross-references electronically or otherwise the material contained in form 10-K to which the item relates. Requires the SEC to revise regulation S-K (Standard Instructions for Filing Forms under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Energy Policy and Conservation Act of 1975). Directs the SEC to study ways to: (1) modernize and simplify requirements in regulation S-K, and (2) evaluate information delivery and presentation methods as well as explore methods to discourage repetition and disclosure of immaterial information. Requires the SEC to issue a proposed rule to implement any recommendations it makes to Congress based upon the study.	Introduced: March 23, 2015 Referred: House Financial Services Committee Hearings held: April 29, 2015 Ordered reported: 60-0 on May 20, 2015 Reported by Committee: October 6, 2015 Placed on House calendar: October 6, 2015 Passed House: Voice vote on October 6, 2015 Received in Senate: October 7, 2015 Related: H.R. 22, FAST Act; H.R. 37, Promoting Job Creation and Reducing Small Business Burdens Act

PRIVATE, SECURITIES-BASED OFFERINGS (MICRO-OFFERINGS)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.2201 To amend the Securities Act of 1933 to codify certain qualifications of individuals as accredited investors for purposes of the securities laws.	115	No	Tom Emmer (R-Minn.); five cosponsors	Amends the Securities Act of 1933 to exempt certain micro-offerings from: (1) state regulation of securities offerings, and (2) federal prohibitions related to interstate solicitation.	Introduced: April 27, 2017 Referred: House Financial Services Committee Related: H.R.10, Financial CHOICE Act of 2017 Language incorporated into H.R.10, Financial CHOICE Act (Subtitle 10), which passed the House by a 233-186 vote on June 8, 2017
H.R.10 Financial CHOICE Act of 2017	115	No	Jeb Hensarling (R-Tex.); 40 cosponsors	Subtitle M—Micro Offering Safe Harbor Sec. 461—The bill exempts certain micro-offerings from: (1) state regulation of securities offerings, and (2) federal prohibitions related to interstate solicitation.	Introduced: April 26, 2017 Referred: Committee on Financial Services, Committees on Agriculture, Ways and Means, the Judiciary, Oversight and Government Reform, Transportation and Infrastructure, Rules, the Budget, and Education and the Workforce Hearings held: April 26, 2017 (House Financial Services Committee) Ordered Reported by Committee (HFSC): 34-26 on May 4, 2017 (amended) Reported: May 25, 2017 Passed House: 233-186 on June 8, 2017 Received in Senate: June 12, 2017 Related: 33 bills including Micro Offering Safe Harbor Act
H.R.4850 Micro Offering Safe Harbor Act	114	No	Tom Emmer (R-Minn.); seven cosponsors	This bill amends the Securities Act of 1933 to exempt from specified prohibitions against the sale or delivery after sale of unregistered securities, among other things, transactions involving the sale of securities by an issuer of micro-offerings.	Introduced: March 23, 2016 Referred: House Financial Services Committee Hearings Held: April 14, 2016 Reported by Committee: 34-25 on June 16, 2016 (amended) Placed on House calendar: September 6, 2016 Related: H.R. 2375, Accelerating Access to Capital Act of 2016; H.R. 5983, Financial CHOICE Act of 2016

PRIVATE, SECURITIES-BASED OFFERINGS (ACCREDITED INVESTOR DEFINITION)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.1585 To amend the Securities Act of 1933 to codify certain qualifications of individuals as accredited investors for purposes of the securities laws.	115	Yes	David Schweikert (R-Ariz.); 10 cosponsors (four Democrats)	Includes: Any natural person whose individual (or joint net worth) exceeds $1 million, not including the value of the person's primary residence; income over $200,000 in each of the two recent years (joint income: $300,000), holds a current financial services-related license issued by a State; whatever the Commission determines, by regulation, "to have to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by the Financial Industry Regulatory Authority."	Introduced: March 16, 2017 Referred: House Financial Services Committee
H.R.6427 Creating Financial Prosperity for Businesses and Investors Act	114	Yes	Scott Garrett (R-N.J.); 10 cosponsors (two Democrats)	Amends the Securities Act of 1933 to qualify as accredited investors four categories of natural persons.	Introduced: December 2, 2016 Referred: December 2, 2016 to the House Financial Services Committee Passed House: 391-2 Received in Senate: December 6, 2016 Legislation combined 6 previous House-passed bills: H.R. 3784, the SEC Small Business Advocate Act (Rep. John Carney Jr., D-DE)—passed the House by voice vote on February 1, 2016; H.R. 4854, the Supporting America's Innovators Act (Rep. Patrick McHenry, R-NC)—passed the House by a vote of 388 to 9 on July 5, 2016; H.R. 4855, the Fix Crowdfunding Act (Rep. Patrick McHenry, R-NC)—passed the House by a vote of 394 to 4 on July 5, 2016; H.R. 4168, the Small Business Capital Formation Enhancement Act (Rep. Bruce Poliquin, R-ME)—passed the House by a vote of 390 to 1 on February 1, 2016; H.R. 2187, the Fair Investment Opportunities for Professional Experts Act (Rep. David Schweikert, R-AZ)—passed the House by a vote of 347 to 8 on February 1, 2016; H.R. 5322, the U.S. Territories Investor Protection Act (Rep. Nydia Velazquez, D-NY)—passed by voice vote on July 11, 2016.
H.R.4852 Private Placement Improvement Act of 2016	114	No	Scott Garrett (R-N.J.); one cosponsor	Directs the Securities and Exchange Commission (SEC) to revise the filing requirements of Regulation D (which provides exemptions from securities registration requirements) to require an issuer that offers or sells securities in reliance upon a certain exemption from registration (for limited offers and sales without regard to the dollar amount of the offering [Rule 506]) to file, no earlier than 15 days after the date of first sale of such securities, a single notice of sales containing the information required by Form D (used to file a notice of an exempt offering of securities under Regulation D) for each new offering of securities. The SEC shall revise a specified rule, regarding a Rule 506 offering of a private fund, to characterize as an accredited investor a "knowledgeable employee" of that private fund or the fund's investment adviser. HFSC press release: "Title II of the JOBS Act removed the ban on general solicitation or advertising for SEC Regulation D offerings. Unfortunately, the SEC proposed rules that would have a chilling effect on the changes made by the JOBS Act. The bill directs the SEC to revise Regulation D in six meaningful ways to facilitate capital formation in Regulation D offerings."[clii]	Introduced: March 23, 2016 Referred: House Financial Services Committee Hearings held: April 14, 2016 Ordered reported: 33-26 (amended) on June 16, 2016 Reported by Committee: September 6, 2016 (amended) Place on House calendar: September 6, 2016 Related: H.R. 2357, Accelerating Access to Capital Act of 2016; H.R. 5983, Financial Choice Act of 2016

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PRIVATE, SECURITIES-BASED OFFERINGS (ACCREDITED INVESTOR DEFINITION)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.2187 Fair Investment Opportunities for Professional Experts Act	114	Yes	David Schweikert (R-Ariz.); one cosponsor (one Democrat)	Amends the definition of accredited investor under the Securities Act of 1933 to include individuals whose individual net worth, including their spouse's, exceeds $1 million; income is greater than $200,000 individually, or $300,000 jointly; has a current securities-related license; or has demonstrated education or job experience to qualify as having professional subject matter knowledge as determined by the SEC and verified by the Financial Industry Regulatory Authority.[cliii]	Introduced: April 30, 2015 Referred: House Financial Services Committee Hearings held: June 16, 2015 Ordered reported: 54-2 (amended) on December 9, 2015 Reported by Committee: February 1, 2016 (amended) Placed on House Calendar: February 1, 2016 Passed House: 347-8 on February 1, 2016 Received in Senate: February 2, 2016 Related: H.R. 5983, Financial CHOICE Act, H.R. 6427, Creating Financial Prosperity for Businesses and Investors Act Legislation incorporated into H.R. 5983, Financial CHOICE Act of 2016 (Subtitle B)

VC/ANGEL (QUALIFYING VENTURE CAPITAL FUND/VENTURE EXCHANGES)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.1219 Supporting America's Innovators Act of 2017	115	Yes	Patrick McHenry (R-N.C.); four cosponsors (three Democrats)	Amends the Investment Company Act of 1940 to exempt from the definition of an "investment company," for purposes of specified limitations applicable to such a company under the Act, a qualifying venture capital fund that has no more than 250 investors. Specifically, the bill applies to a venture capital fund that has less than $10 million in aggregate capital contributions and uncalled committed capital. Under current law, a venture capital fund is considered to be an investment company if it has more than 100 investors. McHenry: "We know that 78 percent of venture capital goes to just three states.... The rest of the country, whether you're in an urban area or rural area - they're starved for capital. We raise the cap on angel investing, thereby allowing more people to participate at a lower threshold dollar amount, while still including important investor protections."[cliv]	Introduced: February 27, 2017 Referred: House Financial Services Committee Ordered Reported: 54-2 on March 9, 2017 Reported by Committee: March 29, 2017 Placed on House Calendar: March 29, 2017 Passed House: 417-3 on April 6, 2017 Received in Senate: April 6, 2017 Related: S. 444, Supporting America's Innovators Act of 2017 (identical)

VC/ANGEL (QUALIFYING VENTURE CAPITAL FUND/VENTURE EXCHANGES)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.10 Financial CHOICE Act of 2017	115	No	Jeb Hensarling (R-Tex.); 40 cosponsors	Subtitle L—Main Street Growth Sec. 456—A national securities exchange that meets specified requirements may elect to be treated as a "venture exchange" and accordingly be exempt from: (1) state regulation of securities offerings, and (2) certain SEC regulations Subtitle O—Supporting America's Innovators Sec. 471—The bill exempts from the definition of an "investment company," for purposes of certain limitations applicable to such a company, a qualifying venture capital fund that has no more than 500 investors. Specifically, the bill applies to a venture capital fund that has less than $50 million in aggregate capital contributions and uncalled committed capital. Under current law, a venture capital fund is considered to be an investment company if it has more than 100 investors.	Introduced: April 26, 2017 Referred: Committee on Financial Services, Committees on Agriculture, Ways and Means, the Judiciary, Oversight and Government Reform, Transportation and Infrastructure, Rules, the Budget, and Education and the Workforce Hearings held: April 26, 2017 (House Financial Services Committee) Ordered Reported by Committee (HFSC): 34-26 on May 4, 2017 (amended) Reported: May 25, 2017 Passed House: 233-186 on June 8, 2017 Received in Senate: June 12, 2017 Related: 33 bills including H.R.79, HALOS Act; H.R.2201, Micro Offering Safe Harbor Act
S.444 Supporting America's Innovators Act of 2017	115	Yes	Heidi Heitkamp (D-N.D.); two cosponsors (one Republican)	This bill amends the Investment Company Act of 1940 to exempt from the definition of an "investment company," … a qualifying venture capital fund that has no more than 250 investors. Specifically, the bill applies to a venture capital fund that has less than $10 million in aggregate capital contributions and uncalled committed capital. Heitkamp press release: "The bill would increase the U.S. Securities and Exchange Commission's (SEC) limit of accredited investors before a fund is required to spend the time and money registering with the agency from 100 to 250, so more venture capital funds can expand their footprint in areas like North Dakota."[clv]	Introduced: February 27, 2017 Referred: Senate Banking Committee Placed on Senate calendar: March 13, 2017 Hearings held: April 26, 2017 Passed Senate: Unanimous consent on September 11, 2017 Received in House: September 12, 2017 Related: H.R.1219, Supporting America's Innovators Act of 2017 (identical)
H.R.6427 Creating Financial Prosperity for Businesses and Investors Act	114	Yes	Scott Garrett (R-N.J.); 10 cosponsors (two Democrats)	Amends the Investment Company Act of 1940 to increase from 100 to 250 the limit on the number of people who may own securities in certain venture capital funds before the issuer is required to register as an investment company.	Introduced: December 2, 2016 Referred: December 2, 2016 to the House Financial Services Committee Passed House: 391-2 Received in Senate: December 6, 2016 Legislation combined 6 previous House-passed bills: H.R. 3784, the SEC Small Business Advocate Act (Rep. John Carney Jr., D-DE)—passed the House by voice vote on February 1, 2016; H.R. 4854, the Supporting America's Innovators Act (Rep. Patrick McHenry, R-NC)—passed the House by a vote of 388 to 9 on July 5, 2016; H.R. 4855, the Fix Crowdfunding Act (Rep. Patrick McHenry, R-NC)—passed the House by a vote of 394 to 4 on July 5, 2016; H.R. 4168, the Small Business Capital Formation Enhancement Act (Rep. Bruce Poliquin, R-ME)—passed the House by a vote of 390 to 1 on February 1, 2016; H.R. 2187, the Fair Investment Opportunities for Professional Experts Act (Rep. David Schweikert, R-AZ)—passed the House by a vote of 347 to 8 on February 1, 2016; H.R. 5322, the U.S. Territories Investor Protection Act (Rep. Nydia Velazquez, D-NY)—passed by voice vote on July 11, 2016.

VC/ANGEL (QUALIFYING VENTURE CAPITAL FUND/VENTURE EXCHANGES)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.5983 Financial CHOICE Act of 2016	114	No	Jeb Hensarling (R-Tex.); five cosponsors	Subtitle L—Main Street Growth re: venture exchanges Subtitle O—Supporting America's Innovators re: qualified venture capital funds	Introduced: September 9, 2016 Referred: Multiple Committees including House Financial Services Committee Ordered reported by Committee (HFSC): 30-26 (amended) on September 13, 2016 Reported: December 20, 2016 (amended) Placed on House Calendar: December 20, 2016 Related: 76 bills including: H.R.4498, Helping Angels Lead Our Startups Act or the HALOS Act; H.R.4638, Main Street Growth Act; H.R.4850, Micro Offering Safe Harbor Act; H.R.4852, Private Placement Improvement Act of 2016; H.R.4855, Fix Crowdfunding Act; H.R.6427, Creating Financial Prosperity for Businesses and Investors Act; S.3453, Crowdfunding Enhancement Act
H.R.4854 Supporting America's Innovators Act of 2016	114	No	Patrick McHenry (R-N.C.); one cosponsor	This bill amends the Investment Company Act of 1940 to exempt from its coverage any issuer whose outstanding securities with respect to a qualifying venture capital fund (other than short-term paper) are beneficially owned by not more than 250 persons. The bill defines "qualifying venture capital fund" as one with no more than $10 million (annually adjusted for inflation) in invested capital. "There are pockets of the country that are capital deserts and we're trying to make sure they're able to access capital to create new jobs.... Addressing the challenges related to angel investing is a great first step.... While the JOBS Act lifted the shareholder threshold limit to 2,000 for privately held firms, it left in place the 99 investor limit for angel investing funds. As a result, many investors who want to become angels are excluded from investing and many early stage companies fail to acquire the capital they need to get off the ground." The bill "amends the Investment Company Act of 1940 by increasing the investor limitation from 100 to 250 for accredited investors applying only to qualified venture funds narrowly tailored to early-stage investing."[clvi]	Introduced: March 23, 2016 Referred: House Financial Services Committee Passed House: 388-9 on July 5, 2016 Received in Senate: July 6, 2016 Related: H.R. 5983, Financial CHOICE Act of 2016; H.R. 6427, Creating Financial Prosperity for Businesses and Investors Act Legislation incorporated into H.R. 5983, Financial CHOICE Act of 2016 (Subtitle O)
H.R.4638 Main Street Growth Act	114	No	Scott Garrett (R-N.J.); one cosponsor	Amends the Securities Exchange Act of 1934 to permit a national securities exchange, for itself or for one of its listing tiers, to elect treatment as a venture exchange by notifying the Securities and Exchange Commission (SEC) of such an election either at the time it applies for registration or after registering as a national securities exchange. The Securities Act of 1933 is amended to exempt venture securities from state and local government regulation. HSBC press release: "H.R. 4638, the Main Street Growth Act, builds on some of the successes from the Jumpstart Our Business Startups ("JOBS") Act of 2012 by better tailoring venture exchange opportunities for newer, small businesses."[clvii]	Introduced: February 26, 2016 Referred: House Financial Services Committee Ordered reported: 32-25 (amended) on March 2, 2016 Reported by Committee: June 8, 2016 (amended) Placed on House calendar: June 8, 2016 Related: H.R. 5983, Financial CHOICE Act of 2016Legislation incorporated into H.R. 5983, Financial CHOICE Act of 2016 (Subtitle L)

VC/ANGEL (GENERAL SOLICITATION/ROAD SHOWS/TEST THE WATERS/RESALE)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.79 Helping Angels Lead Our Startups (HALOS) Act	115	Yes	Steve Chabot (R-Ohio); 15 cosponsors (five Democrats)	Directs the Securities and Exchange Commission (SEC) to revise Regulation D, which exempts certain offerings from SEC registration requirements but prohibits general solicitation or general advertising with respect to such offerings. Specifically, this prohibition shall not apply to events with specified kinds of sponsors—including "angel investor groups" unconnected to broker-dealers or investment advisers. Chabot press release: "This bill builds on a provision of the 2012 JOBS Act by allowing angel investor groups established by local governments, non-profits, universities and other organizations to host events designed to let entrepreneurs showcase their work and connect with potential backers."[clviii]	Introduced: January 3, 2017 Referred: House Financial Services Committee Passed House: January 10, 2017 Received in Senate: January 11, 2017 Related: H.R. 10, Financial CHOICE Act of 2017; H.R. 3280, Financial Services and General Government Appropriations Act, 2018Language incorporated into H.R. 10, Financial CHOICE Act (Subtitle K), which passed the House by a 233-186 vote on June 8, 2017
H.R.10 Financial CHOICE Act of 2017	115	No	Jeb Hensarling (R-Tex.); 40 cosponsors	Subtitle K—Helping Angels Lead Our Startups Sec. 452—The SEC must revise Regulation D, which exempts certain offerings from SEC registration requirements but prohibits general solicitation or general advertising with respect to such offerings. Specifically, this prohibition shall not apply to events with specified kinds of sponsors, including "angel investor groups" that are unconnected to broker-dealers or investment advisers, if specified requirements are met. Subtitle V—Encouraging Public Offerings Sec. 499—The bill allows an issuer to: (1) communicate with qualified institutional buyers or accredited investors to ascertain interest in a contemplated securities offering (i.e., "test the waters"), either before or after the date of filing of a registration statement; and (2) confidentially submit a draft registration statement to the SEC for nonpublic review prior to public filing. Under current law, only emerging growth companies are permitted to do so.	Introduced: April 26, 2017 Referred: Committee on Financial Services, Committees on Agriculture, Ways and Means, the Judiciary, Oversight and Government Reform, Transportation and Infrastructure, Rules, the Budget, and Education and the Workforce Hearings held: April 26, 2017 (House Financial Services Committee) Ordered Reported by Committee (HFSC): 34-26 on May 4, 2017 (amended) Reported: May 25, 2017 Passed House: 233-186 on June 8, 2017 Received in Senate: June 12, 2017 Related: 33 bills including H.R.79, HALOS Act; H.R.2201, Micro Offering Safe Harbor Act
S.588 Helping Angels Lead Our Startups (HALOS) Act	115	Yes	Christopher Murphy (D-Conn.); five cosponsors (three Republicans)	To require the Securities and Exchange Commission to clarify what constitutes a general solicitation under the Federal securities laws, and for other purposes. Murphy press release: "It is estimated that angel investors provide 90 percent of outside equity to help grow these young businesses. Unfortunately, recent regulations now require excessive hurdles for angel investors, deterring them from participating in demo days. The HALOS Act would preserve important investor vetting processes without forcing startups to jump through unnecessary hoops to get the investments they need to grow and create new jobs."[clix]	Introduced: March 9, 2017 Referred: Senate Banking Committee

VC/ANGEL (GENERAL SOLICITATION/ROAD SHOWS/TEST THE WATERS/RESALE)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.5983 Financial CHOICE Act of 2016	114	No	Jeb Hensarling (R-Tex.); five cosponsors	Subtitle K—Helping Angels Lead Our Startups re: definition of an angel investor group and general solicitation clarifications	Introduced: September 9, 2016 Referred: Multiple Committees including House Financial Services Committee Ordered reported by Committee (HFSC): 30-26 (amended) on September 13, 2016 Reported: December 20, 2016 (amended) Placed on House Calendar: December 20, 2016 Related: 76 bills including: H.R.4498, Helping Angels Lead Our Startups Act or the HALOS Act; H.R.4638, Main Street Growth Act; H.R.4850, Micro Offering Safe Harbor Act; H.R.4852, Private Placement Improvement Act of 2016; H.R.4855, Fix Crowdfunding Act; H.R.6427, Creating Financial Prosperity for Businesses and Investors Act; S.3453, Crowdfunding Enhancement Act
H.R.4498 Helping Angels Lead Our Startups Act (HALOS) Act	114	Yes	Steve Chabot (R-Ohio); 11 cosponsors (four Democrats)	This bill directs the Securities and Exchange Commission (SEC) to amend Regulation D (governing the limited offer and sale of securities without registration under the Securities Act of 1933) to make the prohibition against general solicitation or general advertising inapplicable to events with specified kinds of sponsors (including angel investor groups not connected to broker-dealers or investment advisers).This bill may only be construed as requiring the SEC to amend Regulation D with respect to presentations and communications, and not with respect to purchases or sales. House policy committee: "In implementing the JOBS Act, the SEC classified events held by angel investors as general solicitations, thus requiring entrepreneurs and startups to verify everyone in attendance during such events is an accredited investor. H.R. 4498 establishes the definition of an "angel investor group" for purposes of the Federal Securities laws and exempts these demo days and related events from being considered a general solicitation under Regulation D to protect startups from inadvertently violating this rule."[clx]	Hearings held: December 2, 2015 Introduced: February 9, 2016 Referred: House Financial Services Committee Ordered reported: 44-13 on March 2, 2016 Reported by Committee: April 19, 2016 Passed the House: 325-89 on April 27, 2016 Received in Senate: April 28, 2016 Related: H.R. 5983, Financial CHOICE Act of 2016, S. 978 HALOS ActLegislation incorporated into H.R. 5983, Financial CHOICE Act of 2016 (Subtitle K)
H.R.1839 Reforming Access for Investments in Startup Enterprises Act of 2015 or the RAISE Act of 2015	114	No	Patrick McHenry (R-N.C.); one cosponsor	The Securities Act of 1933 is amended to exempt from security registration requirements, and related prohibitions against using interstate commerce and the mails for the sale or delivery of securities after sale, any transaction… Securities acquired in such exempt transactions shall be deemed to: (1) have been acquired in a transaction not involving any public offering, (2) not be a distribution involving an underwriter, and (2) be restricted securities not subject to certain transaction requirements. All transactions under this Act shall be exempt from state regulation of securities offerings. McHenry press release: "Currently, a holder of securities issued in a private placement may resell the securities on a public trading market, after a holding period, pursuant to Rule 144. However, there is not a similar codified law for private resale of restricted securities. Accordingly, this bill codifies a clear and established legal framework for these transactions to facilitate private company capital formation." [clxi]	Introduced: April 16, 2015 Referred: House Financial Services Committee Hearings held: April 29, 2016 Ordered reported: 58-0 (amended) on July 29, 2015 Reported by Committee: October 6, 2015 (amended) Placed on House calendar: October 6, 2015 Passed House: 404-0 on October 6, 2015 Received in Senate: October 7, 2015 Related: H.R. 22, FAST Act

APPENDICES

VC/ANGEL (GENERAL SOLICITATION/ROAD SHOWS/TEST THE WATERS/RESALE)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
S.978 HALOS Act	114	Yes	Christopher Murphy (D-Conn); four cosponsors (two Republicans)	Directs the Securities and Exchange Commission to amend Regulation D (governing the limited offer and sale of securities without registration under the Securities Act of 1933) to make the prohibition against general solicitation or general advertising inapplicable to events with specified kinds of sponsors (including angel investor groups not connected to broker-dealers or investment advisers). Murphy press release: "It is estimated that angel investors provide 90 percent of outside equity to help grow these young businesses, and in 2010, companies in their first year created an average of 3 million jobs. But new Securities and Exchange Commission (SEC) regulations, initiated by the JOBS Act, have put angel investors participating in demo days at risk of being forced to turn over extensive personal financial details to an onerous third-party vetting process. This invasion of privacy deters many investors from backing startups at a time when new businesses need support the most. The HALOS Act would lift this regulation and instead preserve the same investor vetting process that angel investors have been using at demo days for years."	Introduced: April 16, 2015 Referred: Senate Banking Committee Related: H.R.4498, Helping Angels Lead Our Startups Act or the HALOS Act

PRIVATE, SECURITIES-BASED OFFERINGS (EMERGING GROWTH COMPANIES)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.2064 Improving Access to Capital for Emerging Growth Companies Act	114	Yes	Stephen Fincher (R-Tenn.)	Amends the Securities Act of 1933 to reduce from 21 to 15 the number of days before a "road show" that an emerging growth company (EGC), before its initial public offering (IPO) date, may publicly file a draft registration statement for confidential nonpublic review by the SEC. Amends the Jumpstart Our Business Startups Act to direct the SEC to prescribe conditions under which a registration statement filed (or submitted for confidential review) by an issuer before its IPO may omit financial disclosure information for historical periods otherwise required.	Introduced: April 28, 2015 Referred: House Financial Services Committee Hearings held: April 29, 2015 Ordered reported: 57-0 (amended) on May 20, 2015 Reported by Committee: July 14, 2015 (amended) Passed in House: Agreed to by voice vote on July 14, 2015 Received in Senate: July 15, 2015 Related: H.R. 22, FAST Act; H.R. 37, Promoting Job Creation and Reducing Small Business Burdens; H.R. 1659, Improving Access to Capital for Emerging Growth Companies Act
H.R.1965 Small Company Disclosure Simplification Act	114	No	Robert Hurt (R-Va.)	Exempts emerging growth companies and issuers with total annual gross revenues of less than $250 million from the requirement to use Extensible Business Reporting Language (XBRL) for financial statements and other mandatory periodic reporting filed with the Securities and Exchange Commission (SEC). Such companies, however, may elect to use XBRL for such reporting. The SEC shall: (1) analyze the costs and benefits to such issuers of the requirement to use XBRL for financial statements and other mandatory periodic reporting; and (2) report to certain congressional committees on the results of such analysis as well as on progress in implementing XBRL reporting within the SEC and use of XBRL data by the SEC and by investors.	Introduced: April 22, 2015 Referred: House Financial Services Committee Hearings Held: April 29, 2015 Ordered reported: 44-11 on May 20, 2015 Reported by Committee: January 28, 2016 Placed on House calendar: January 28, 2016 Related: H.R. 37, Promoting Job Creation and Reducing Small Business Burdens Act; H.R. 1675, Capital Markets Improvement Act of 2016; H.R. 1912, Small Company Disclosure Simplification Act; H.R. 5983, Financial CHOICE Act of 2016Legislation incorporated into H.R. 5983, Financial CHOICE Act of 2016 (Subtitle C)Legislation incorporated into H.R.1675, Capital Markets Improvement Act of 2016 (Title IV)

PRIVATE, SECURITIES-BASED OFFERINGS (EMERGING GROWTH COMPANIES)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.1912 Small Company Disclosure Simplification Act	114	No	Robert Hurt (R-Va.)	Exempts emerging growth companies and issuers with total annual gross revenues of less than $250 million from the requirements to use Extensible Business Reporting Language (XBRL) for financial statements and other mandatory periodic reporting filed with the Securities and Exchange Commission (SEC). Allows such companies, however, to elect to use XBRL for such reporting. Directs the SEC to: (1) analyze the costs and benefits to such issuers of the requirements to use XBRL for financial statements and other mandatory periodic reporting; and (2) report to certain congressional committees on the results of such analysis as well as on progress in implementing XBRL reporting within the SEC and use of XBRL data by the SEC and by investors.	Introduced: April 21, 2015 Referred: House Financial Services Committee Related: H.R. 37, Promoting Job Creation and Reducing Small Business Burdens Act; H.R.1675, Capital Markets Improvement Act of 2016; H.R.1965, Small Company Disclosure Simplification Act
H.R.1675 Capital Markets Improvement Act of 2016	114	Yes	Randy Hultgren (R-Ill.); eight cosponsors (five Democrats)	(Sec. 401) The bill exempts emerging growth companies and issuers with total annual gross revenues of less than $250 million from the requirement to use Extensible Business Reporting Language (XBRL) for financial statements and other mandatory periodic reporting filed with the SEC. Such companies, however, may elect to use XBRL for such reporting.	Introduced: March 26, 2015 Referred: House Financial Services Committee Hearings held: April 29, 2015 Ordered reported: 45-15 on May 20, 2015 Reported by Committee: January 28, 2016 Placed on House Calendar: January 28, 2016 Passed House: 265-159 on February 3, 2016 Received in Senate: February 4, 2016 Related: 13 bills including: H.R. 37, Promoting Job Creation and Reducing Small Business Burdens Act; H.R. 1912, Small Company Disclosure Simplification Act; H.R. 1965, Small Company Disclosure Simplification Act; H.R. 5983, Financial CHOICE Act of 2016; S. 1910, Financial Services and General Government Appropriations Act of 2016; S. 2132, An Act Making Appropriations to Stop Regulatory Excess and for Other Purposes, 2016
H.R.1659 Improving Access to Capital for Emerging Growth Companies Act	114	Yes	Stephen Fincher (R-Tenn.); one cosponsor (one Democrat)	Amends the Securities Act of 1933 (Act) to reduce from 21 to 15 the number of days before a "road show" that an emerging growth company (EGC), before its initial public offering (IPO) date, may publicly file a draft registration statement for confidential nonpublic review by Securities and Exchange Commission (SEC) staff. Prescribes a grace period during which an issuer that was an EGC at the time it filed a confidential registration statement for confidential SEC review, but is no longer one, shall continue to be treated as one. Authorizes an EGC, within one year of its IPO, to submit confidentially to the SEC a draft registration statement for any securities to be issued subsequent to its IPO (follow-on offerings) for confidential nonpublic review by SEC staff before publicly filing a registration statement, if the initial confidential submission, including amendments, is publicly filed with the SEC within two days before it issues those follow-on offerings. Amends the Jumpstart Our Business Startups Act to direct the SEC to revise its general instructions on Form S-1 to prescribe conditions under which a registration statement that is filed by an issuer (or submitted for confidential review) before its IPO may omit financial disclosure information for historical periods otherwise required.	Introduced: March 26, 2015 Referred: House Financial Services Committee Related: H.R. 37, Promoting Job Creation and Reducing Small Business Burdens Act; H.R. 2064, Improving Access to Capital for Emerging Growth Companies Act

PRIVATE, SECURITIES-BASED OFFERINGS (EMERGING GROWTH COMPANIES)

Bill Number	Congress	Bipartisan?	Sponsored	Description	Status
H.R.37 Promoting Job Creation and Reducing Small Business Burdens Act	114	No	Michael Fitzpatrick (R-Pa.); eight cosponsors	Section on Emerging Growth Companies re: simplified disclosure requirements and grace period. Section on simplifying small company disclosures re: exemptions from XBRL reporting.	Introduced: January 6, 2015 Referred: House Financial Services Committee; Agriculture Committee House passed: 271-154 on January 14, 2015 Received in Senate: January 16, 2015 Related: 17 bills including: H.R.1659, Improving Access to Capital for Emerging Growth Companies Act; H.R.2064, Improving Access to Capital for Emerging Growth Companies Act; H.R.1912, Small Company Disclosure Simplification Act; H.R.1965, Small Company Disclosure Simplification Act

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ABOUT THE AUTHOR

Jackson Mueller is an associate director at the Milken Institute's Center for Financial Markets. He focuses on fintech, capital formation policy and financial markets education initiatives. Prior to joining the Institute, Mueller was an assistant vice president at the Securities Industry and Financial Markets Association (SIFMA), where he focused on a broad range of financial services-related policies, provided legislative and regulatory updates to executive-level government relations staff, and conducted analysis of key issues relevant to SIFMA's members. He received his bachelor's degree in political science from the University of Richmond and a master's degree in public policy from American University. He works at the Institute's Washington, D.C. office.

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