Debt Collection
Notice of Proposed Rulemaking

Combined Advisory Committee Roundtable | June 6th 2019

Consumer Financial Protection Bureau

Background

- The Dodd-Frank Act (DFA) amended the Fair Debt Collection Practices Act (FDCPA) to provide the Bureau authority to "prescribe rules with respect to the collection of debts by debt collectors."
- The DFA also empowers the Bureau to issue regulations prohibiting covered persons from engaging in unfair, deceptive, or abusive acts or practices and to require disclosures to permit consumers to understand the costs, benefits, and risks associated with consumer financial products and services, including debt collection.
- The proposal applies to the debt collection activities of "debt collectors," as that term is defined in the FDCPA.
- The proposal focuses on debt collection communications and disclosures and also addresses related practices by debt collectors.

Background

- The Bureau has been working on a debt collection rulemaking for a number of years.
- The Bureau has conducted a wide range of outreach on the scope and substance of this proposed rule since 2013, including:
  - Field hearings
  - Joint roundtables with the Federal Trade Commission
  - Advance Notice of Proposed Rulemaking in November 2013
  - Small Business Review Panel in August 2016
  - Meetings with stakeholders
  - Comments in response to Requests for Information in March 2018
  - General outreach, including speaking at consumer advocacy group and industry events and visiting consumer organizations and industry stakeholders.

NPRM: High-Level Points

1. The proposed rule's coverage would be limited to debt collectors who are covered by the FDCPA.

2. The proposal focuses primarily on debt collection communications and disclosures, but also includes certain other provisions.

3. The proposal is primarily an FDCPA-based proposal, but a few interventions are also proposed pursuant to DFA authority.

4. The Bureau is proposing to restate the language and interpret certain sections of the FDCPA.

NPRM: Communications

If finalized, the NPRM would:

- Provide a bright-line rule that would prohibit, with certain exceptions, a collector from placing more than seven unanswered telephone calls to a person within a seven-day period about a particular debt, and from calling a person within seven days after the collector has engaged the person in a telephone conversation.
- Provide that a voicemail or text message that contains only specified required and optional content is not a communication under the FDCPA.
- Clarify that consumers may designate a time or place as inconvenient for communication.
- Clarify that consumers may request that a collector not use a specific medium (e.g., email, phone calls, or phone calls to a particular telephone number) for communication; further communication using that medium (with some exceptions) would be prohibited.

NPRM: Communications

The NPRM would also:

- Clarify that calls to mobile telephones and electronic communications, such as texts and emails, are subject to the FDCPA's prohibition on communicating at unusual and inconvenient times and places.
- Require collectors to include in all electronic communications instructions for opting out of further such communications to a particular email address or telephone number.
- Prohibit collectors from (with some exceptions) using an email address that the collector knows or should know is provided by the consumer's employer and from contacting consumers using public-facing social media platforms.

NPRM: Communications

The NPRM would propose to identify procedures that, when followed, would provide a safe harbor from liability for collectors who, when communicating with a consumer by email or text message, unintentionally communicate with third parties about a debt.

A collector would be entitled to the safe harbor if, among other things, it communicated with the consumer electronically using:

- An email address or telephone number that the consumer recently used to contact the collector for purposes other than opting out of electronic communications;
- A non-work email address or non-work telephone number if the consumer first received notice and an opportunity to opt out of electronic communications to that address or number but did not opt out; or
- A non-work email address or non-work telephone number obtained by the creditor or a prior collector from the consumer and recently used by the creditor or a prior collector to communicate about the debt, as long as the consumer did not ask the creditor or prior collector to stop using that email address or telephone number.

NPRM: Consumer disclosures

The NPRM, if finalized, would provide for certain required and optional content for validation notices.

- Collectors would be required to include:
  - Certain information about the debt (e.g., account number, itemization of the debt)
  - Certain information about consumer protections (e.g., information about the right to dispute a debt or request original creditor information)
  - A consumer response form that consumers could use to take certain actions (e.g., submitting a dispute or requesting original creditor information)
- Collectors would be permitted to include:
  - A payment request
  - A statement about disclosures required by applicable law
  - Information about electronic communication options
  - Disclosures about the consumer's ability to request a Spanish-language translation of the validation notice

NPRM: Consumer disclosures

The NPRM includes a model validation notice that would provide a safe harbor to collectors who use it when providing validation notices.

Collectors also could send validation notices accurately translated into any language if they also send an English-language validation notice in the same communication or have already sent an English-language notice.

NPRM: Electronic Delivery of Required Notices

The NPRM would require collectors who provide certain required disclosures in writing or electronically to do so in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later.

To meet the general standard, collectors who provide required disclosures electronically would need to meet several general deliverability requirements described in the NPRM and comply with either:

- The E-Sign Act, after obtaining affirmative consent from the consumer; or
- Alternative procedures described in the NPRM.

NPRM: Electronic Delivery of Required Notices

The alternative procedures would require collectors to:

- Send the disclosure to an email address or a telephone number that the creditor or a prior collector could have used to send electronic notices under the E-Sign Act; and
- Place the disclosure in the body of an email or on a secure website that is accessible by clicking on a hyperlink included within an email or text message. However, a collector could choose the hyperlink option only if the consumer first received notice and an opportunity to opt out of hyperlinked delivery and did not opt out.

- The proposed rule would also provide a safe harbor for debt collectors who follow certain steps when providing a validation notice in the body of an email that is the initial communication with the consumer.

NPRM: Decedent Debt

The NPRM proposes certain clarifications regarding collection of decedent debt. For example, the proposal would:

- Clarify that personal representatives of a deceased consumer's estate are consumers with whom collectors may discuss the debt.
- Clarify that collectors may locate this person without violating the prohibition on disclosing to a third party that a consumer owes a debt by asking for a person who is authorized to act on behalf of a deceased consumer's estate.
- Require collectors collecting debt from a deceased consumer's estate to send validation notices to, and respond to disputes by, the executor, administrator, or personal representative of the deceased consumer's estate.

NPRM: Additional proposals

The proposal also would:

- Require a collector to communicate with the consumer about the debt (which generally would entail sending the consumer a validation notice) before reporting a collection item to a credit reporting agency.
- Prohibit collectors from selling, transferring, or placing for collection a debt if the collector knows or should know that the debt was paid or settled, discharged in bankruptcy, or subject to an identity theft report, subject to certain exceptions.
- Bar debt collectors from suing and threatening to sue on a debt if the debt collector knows or should know that the applicable statute of limitations has expired.
- Provide rules for the treatment of "duplicative disputes," which would be defined as a written dispute submitted within the 30-day validation period to which the debt collector has already responded, unless the consumer provides new and material information.

NPRM: Additional proposals

- The proposal would provide a safe harbor against claims that an attorney falsely represented that the attorney was meaningfully involved in the preparation of a litigation submission if certain conditions were met.
- Finally, the proposal would require retention of evidence of compliance with the statute and regulation from the time the collector begins collection activity on a debt until three years after:
  - The collector's last communication or attempted communication in connection with the collection of the debt, or
  - The debt is settled, discharged, or transferred to the debt owner or to another debt collector.

Update on the Bureau's Work to Educate and Engage Consumers

Combined Advisory Committee Roundtable

June 6, 2019

Consumer Financial Protection Bureau

Pathways to Financial Well-Being

Janneke Ratcliffe, Assistant Director

Irene Skricki, Senior Financial Education Program Analyst

Office of Financial Education

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This document was used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of topics therein.

What is financial well-being?

A state of being reflecting a person's ability to meet current and ongoing financial obligations, feel secure in their financial future, and make choices that allow enjoyment of life.

	Present	Future
Security	Control over your day-to-day, month-to-month finances	Capacity to absorb a financial shock
Freedom of choice	Financial freedom to make choices to enjoy life	On track to meet your financial goals

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The Financial Well-Being Scale

Questions	Response Options
How well does this statement describe you or your situation? 1. I could handle a major unexpected expense 2. I am securing my financial future 3. Because of my money situation, I feel like I will never have the things I want in life 4. I can enjoy life because of the way I'm managing my money 5. I am just getting by financially 6. I am concerned that the money I have or will save won't last	• Describes me completely • Describes me very well • Describes me somewhat • Describes me very little • Does not describe me at all
How often does this statement apply to you? 1. Giving a gift for a wedding, birthday or other occasion would put a strain on my finances for the month 2. I have money left over at the end of the month 3. I am behind with my finances 4. My finances control my life	• Always • Often • Sometimes • Rarely • Never

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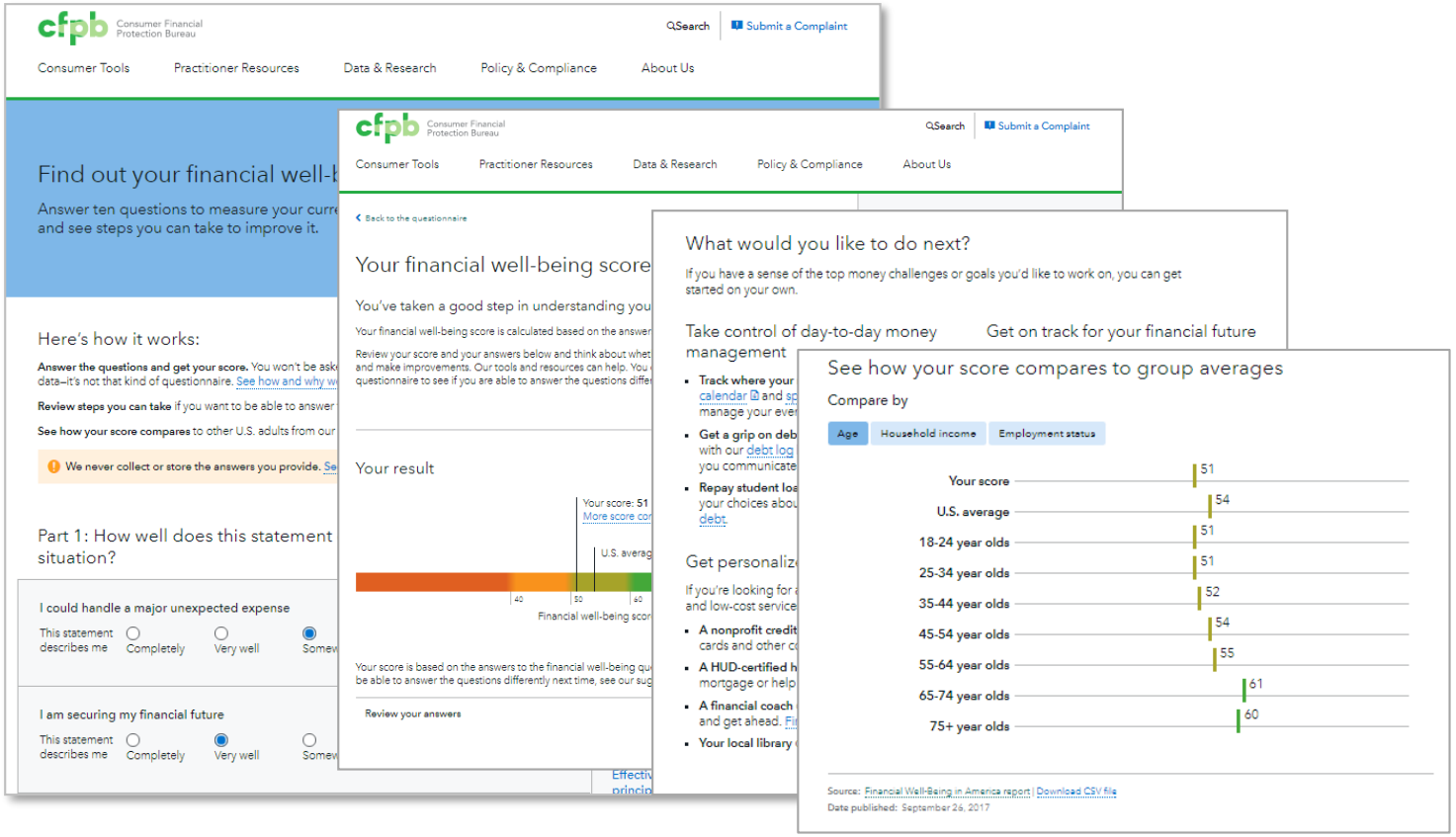
Interactive consumer tool



consumerfinance.gov/consumer-tools/financial-well-being/

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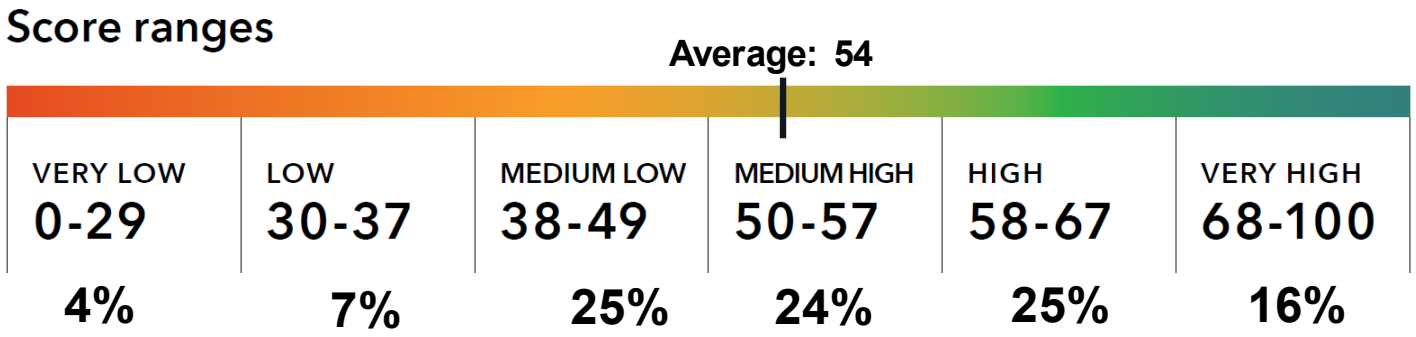
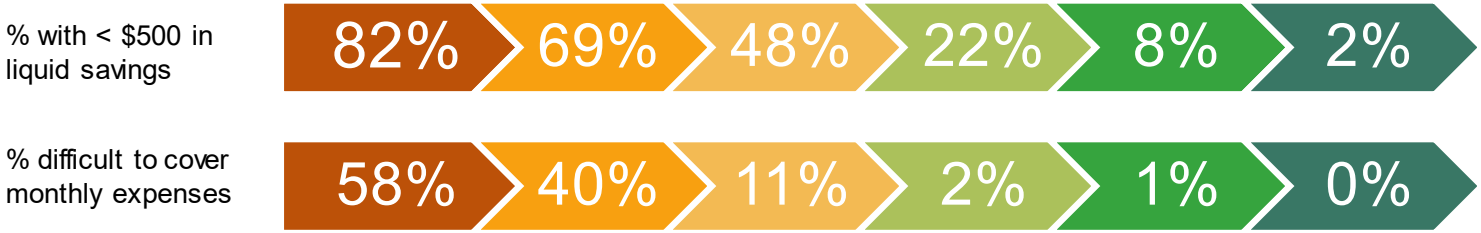
Financial well-being score benchmarks (adults 18+)



Scores reflect a continuum of real financial experiences:



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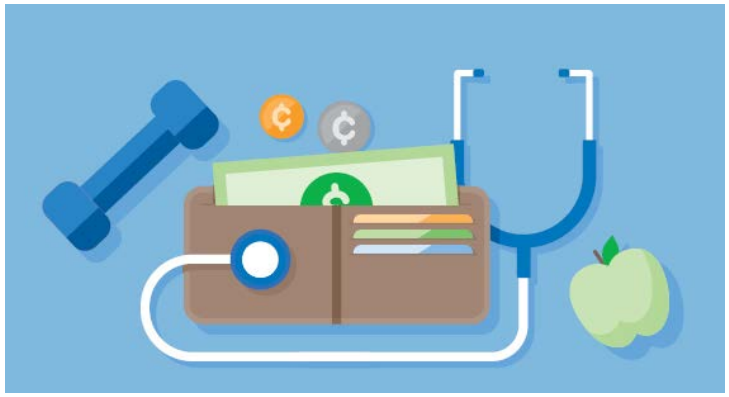
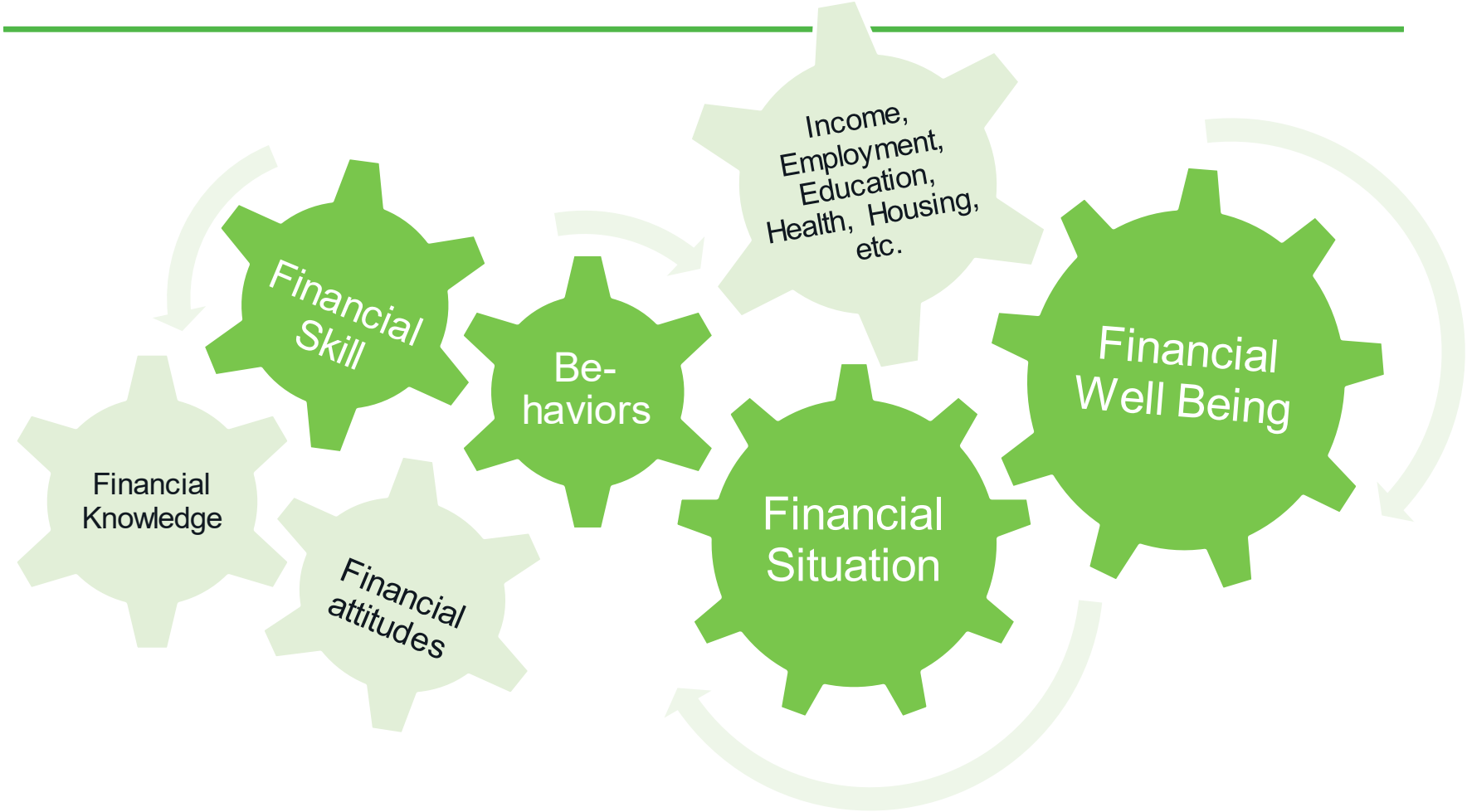


Financial skill as a pathway to financial well-being

Key concepts



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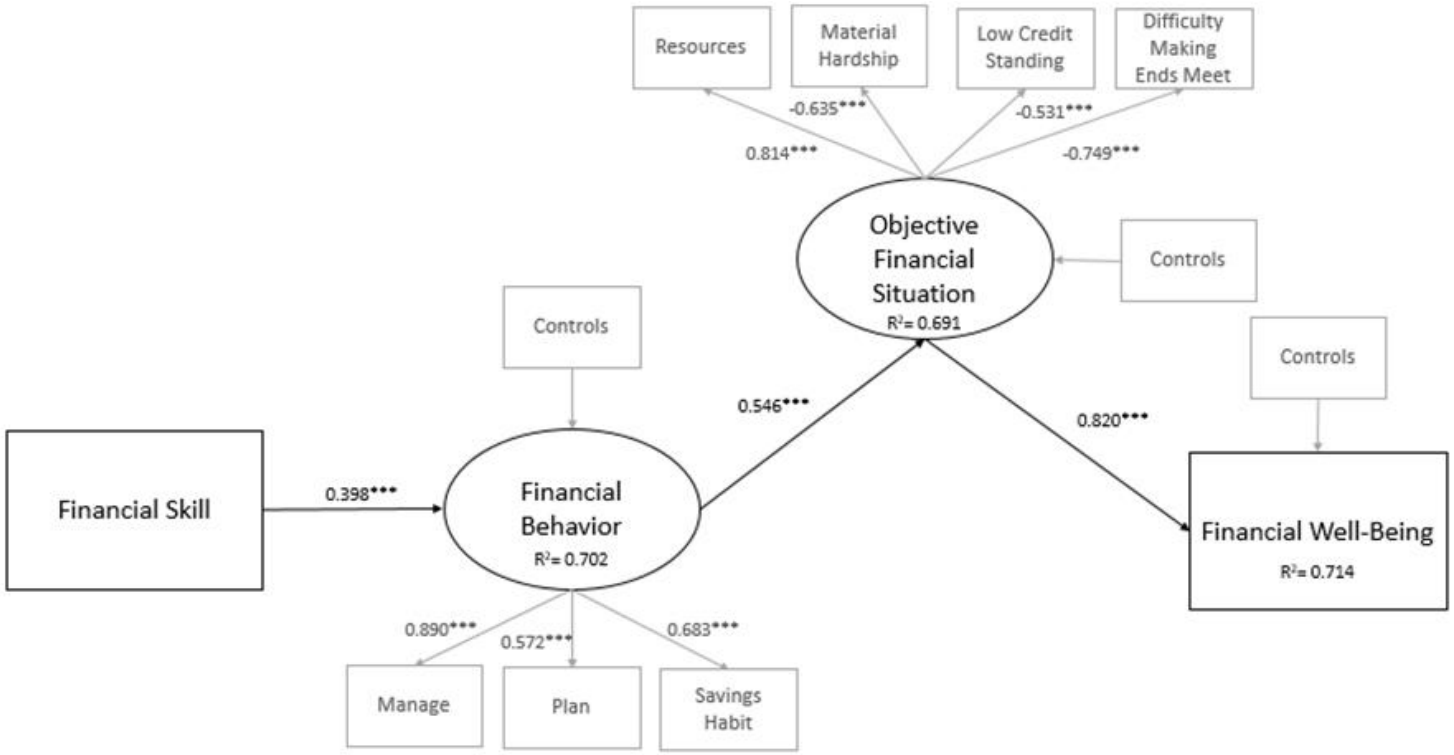
Results of the model



SOURCE: CFPB 2016 National Financial Well-Being Survey
CONTROLS: Income, retirement status, financial self-efficacy, frugality, perceived economic mobility, and self-control.
NOTE: N = 6,394. Standardized coefficients for the model of the associations among financial well-being, objective financial situation, financial behavior, and financial skill. Only significant paths shown. * $p < .05$. ** $p < .01$. *** $p < .001$. In the table below, [c] Indicates control variables.
MODEL FIT: χ^2 (df) = 1666.253 (54); RMSEA = 0.068; CFI = 0.911, TLI = 0.862, SRMR = 0.045.

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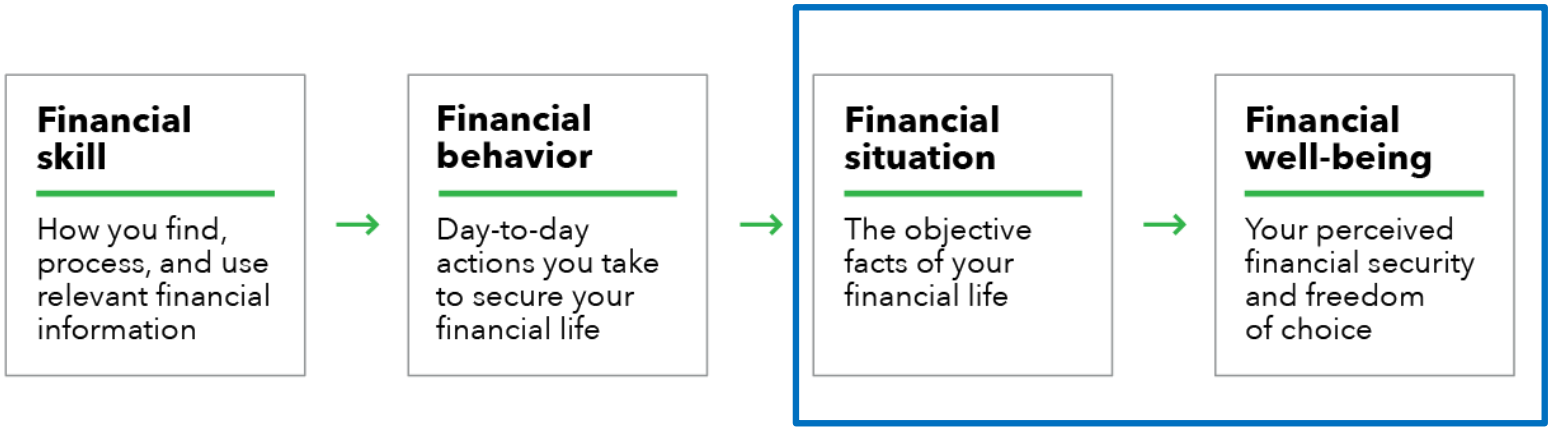
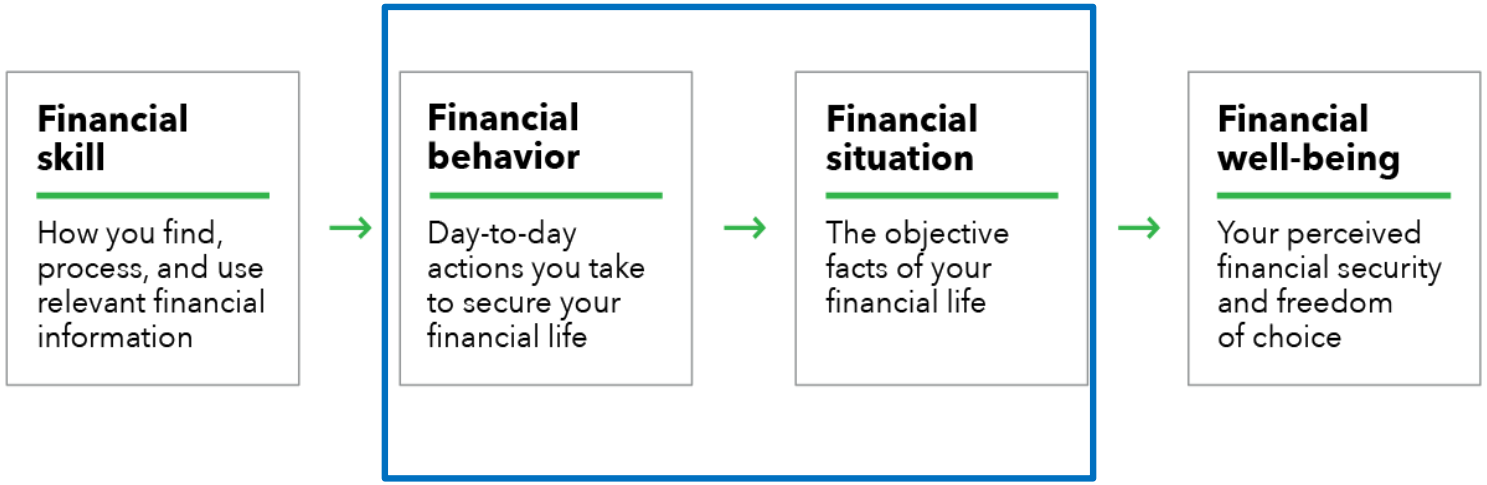
Explaining financial well-being



#1 There is strong association between a respondent's objective or "real-world" financial situation and their sense of financial well-being.

Explaining financial situation



#2 Income and behavior have the strongest associations with a respondent's objective financial situation.

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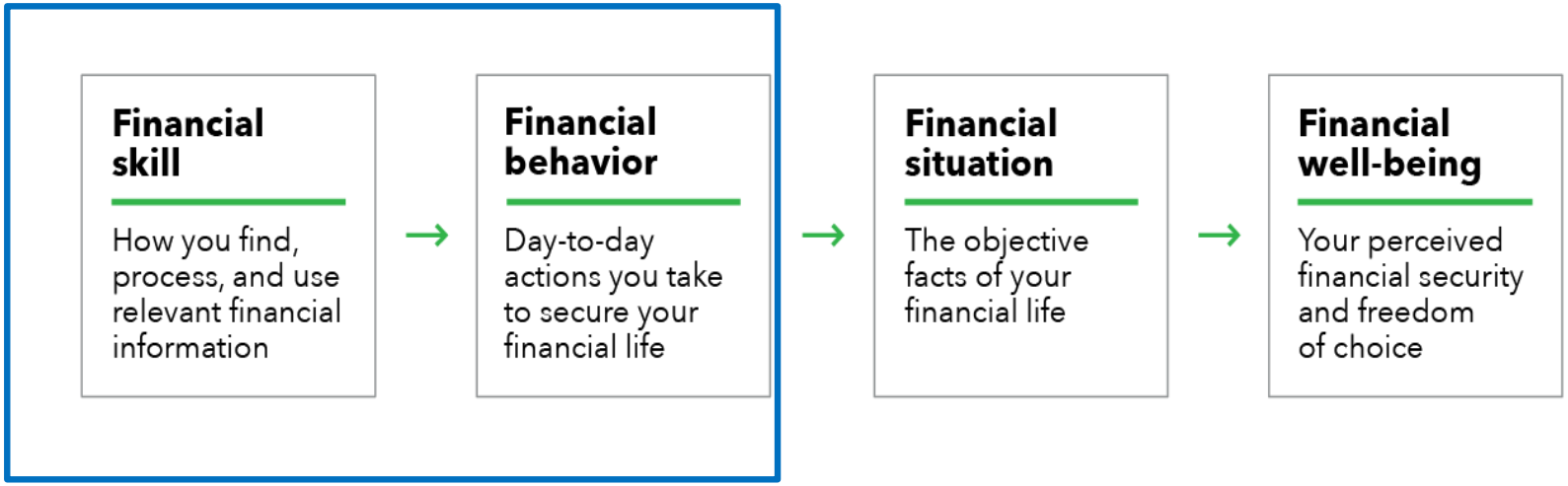
Implications: Specific Financial Behaviors

- Effective Money Management
  - ✓ Pay bills on time
  - ✓ Stay within budget
  - ✓ Pay off credit card balance each month
  - ✓ Check statements, bills, and receipts
  - ✓ Follow through on financial commitments and goals
- Propensity to plan
  - ✓ Consult budget to guide spending
  - ✓ Consider steps to take to stick to budget
  - ✓ Set financial goals, and make a plan of action to achieve it
- Savings habit

Explaining financial behavior



#3 Financial skill was strongly associated with financial behavior, more strongly than financial knowledge and financial behavior were associated

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Implications

Controlling for an array of personal financial and demographic characteristics:

- Financial skill (and related financial self-efficacy) likely contribute more to financial decisions and actions than general knowledge of financial facts. In particular, knowing *how to*:
  - ✓ Find reliable information to make financial decisions.
  - ✓ Process financial information to make financial decisions.
  - ✓ Execute financial decisions, adapting as necessary to stay on track.

Financial Skill Scale

Questions	Response Options
How well does this statement describe you or your situation? 1. I know how to make complex financial decisions† 2. I am able to make good financial decisions that are new to me 3. I know how to get myself to follow through on my financial intentions† 4. I am able to recognize a good financial investment 5. I know how to keep myself from spending too much 6. I know how to make myself save† 7. I know where to find the advice I need to make decisions involving money	• Describes me completely • Describes me very well • Describes me somewhat • Describes me very little • Does not describe me at all
How often does this statement apply to you? 1. I know when I do not have enough information to make a good decision involving my money† 2. I know when I need advice about my money 3. I struggle to understand financial information* †	• Always • Often • Sometimes • Rarely • Never

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* Denotes questions for which the response options are "reverse coded."
† Denotes questions that are part of the abbreviated (5-question) scale.

Implications

The resulting model of interconnected pathways suggests that financial education can help consumers improve their financial well-being by helping them improve their financial skills and behaviors.

Financial skill

How you find, process, and use relevant financial information

→

Financial behavior

Day-to-day actions you take to secure your financial life

→

Financial situation

The objective facts of your financial life

→

Financial well-being

Your perceived financial security and freedom of choice

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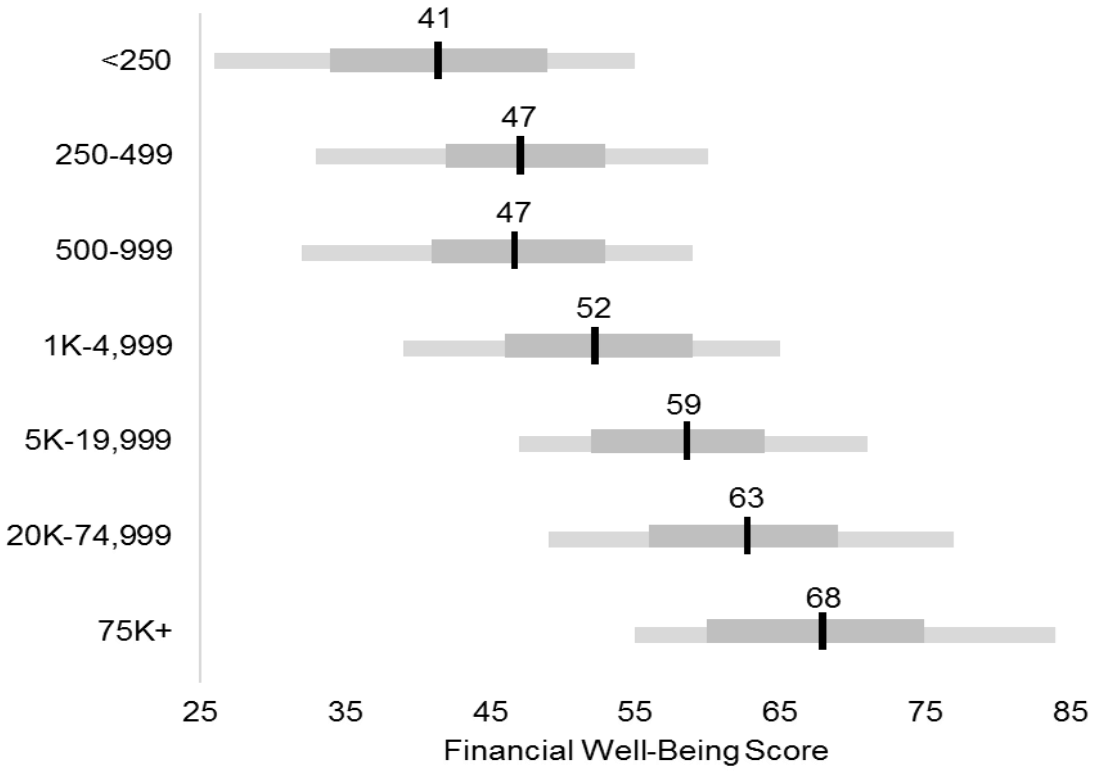
Steps to help consumers improve their financial skill and confidence

- Build financial skill. In particular, knowing how to:
  - Find reliable information to make financial decisions.
  - Process financial information to make financial decisions.
  - Execute financial decisions, adapting as necessary to stay on track.
- Provide actionable, relevant and timely financial information at "teachable moments" to support development of financial skill and financial knowledge
- Don't overlook the skill of implementing and sticking to a plan
- Provide opportunities to practice to build skills and financial confidence

Saving as a pathway to financial well-being

Financial well-being score by liquid savings



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Promoting financial well-being through saving

Financial skill

How you find, process, and use relevant financial information

→

Financial behavior

Day-to-day actions you take to secure your financial life

→

Financial situation

The objective facts of your financial life

→

Financial well-being

Your perceived financial security and freedom of choice

Knowing how to save is key to a savings habit

A savings habit correlates to the amount of savings someone has

Amount saved is a strong predictor of financial well-being

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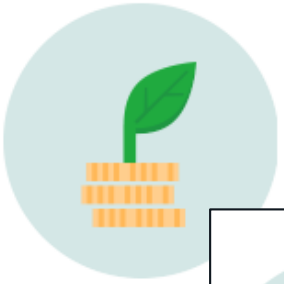
CFPB Initiative: Start Small, Save Up



Start small

One of the best ways to achieve your financial goals is to start small. People often find that just putting aside some money–even if it's a small amount like $5 or $10 a week–is a good place to start.

Plan for the unexpected

Unexpected expenses happen whether it's a trip to the hospital or a broken down car. Having money set aside for that unexpected expense can save you money in the long run. You won't have to rely on credit cards or other types of loans.

Save automatically and plan for the future

Once you have money set aside for unexpected and emergency expenses, you can start saving more consistently for future goals. You could direct money from each paycheck to your savings account.

Here are two ways to get started saving automatically:

1. Have your bank or credit union automatically move money from your checking account to your savings account or investment account on a regular

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Discussion Questions – Pathways to Financial Well-being

How can the CFPB and its stakeholders help consumers build financial skills and financial confidence?

How can financial institutions and other industry players use these findings to improve the products and services they offer?

What can the Bureau do to help you in your efforts to help educate and empower consumers?

Discussion Questions -- Savings

How can establishing basic liquid savings put people on the path to achieving longer term financial well-being? What can support people in balancing their various financial goals, short-term and long-term?

What strategies and approaches do you use to help consumers establish savings? How do you measure the success of these strategies? What are lessons learned?

What are obstacles that people need to resolve in order to succeed in saving? What are promising strategies to overcome specific obstacles or serve specific populations?

How can you help amplify the message about the importance of establishing savings and a habit of saving?

Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends

Naomi Karp, Senior Policy Analyst

Office for Older Americans

Suspicious Activity Reports (SARs)

- Bank Secrecy Act mandates that FIs report suspicious activity that might indicate criminal activities to FinCEN
- SAR filers include banks, credit unions, money services businesses (MSBs), broker/dealers, others
- Access to SARs and knowledge of existence generally limited to law enforcement (LE) and financial regulators
- LE can use SAR information to trigger investigations, support ongoing investigations, identify subjects

Elder financial exploitation (EFE) SARs

- 2011: FinCEN Advisory noted that SARs are valuable avenue for FIs to report elder financial exploitation (EFE)
  - Includes *transactional* red flags signaling EFE, e.g. frequent large withdrawals, uncharacteristic attempts to wire large sums
  - Includes *behavioral* red flags, e.g. elder shows fear or submissiveness toward caregiver, FI is unable to speak directly with elder
- 2013: FinCEN introduced electronic SAR filing, including designated category for EFE
  - "Clear, complete and concise" description of activity to be included in narrative field

SAR data analysis summary

	Limited Structured Data from All EFE SARs	Full Data from a Random Sample of EFE SARs
Number of observations	185,214 (BSAID)	1,051 (MasterID)
Focus	Number by year and filer type Total amounts	Patterns and issues, average amounts
Time frame of data	April 2013-December 2017	April 2013 - September 2017
Methods involved	Descriptive statistics	Reading and coding Descriptive statistics

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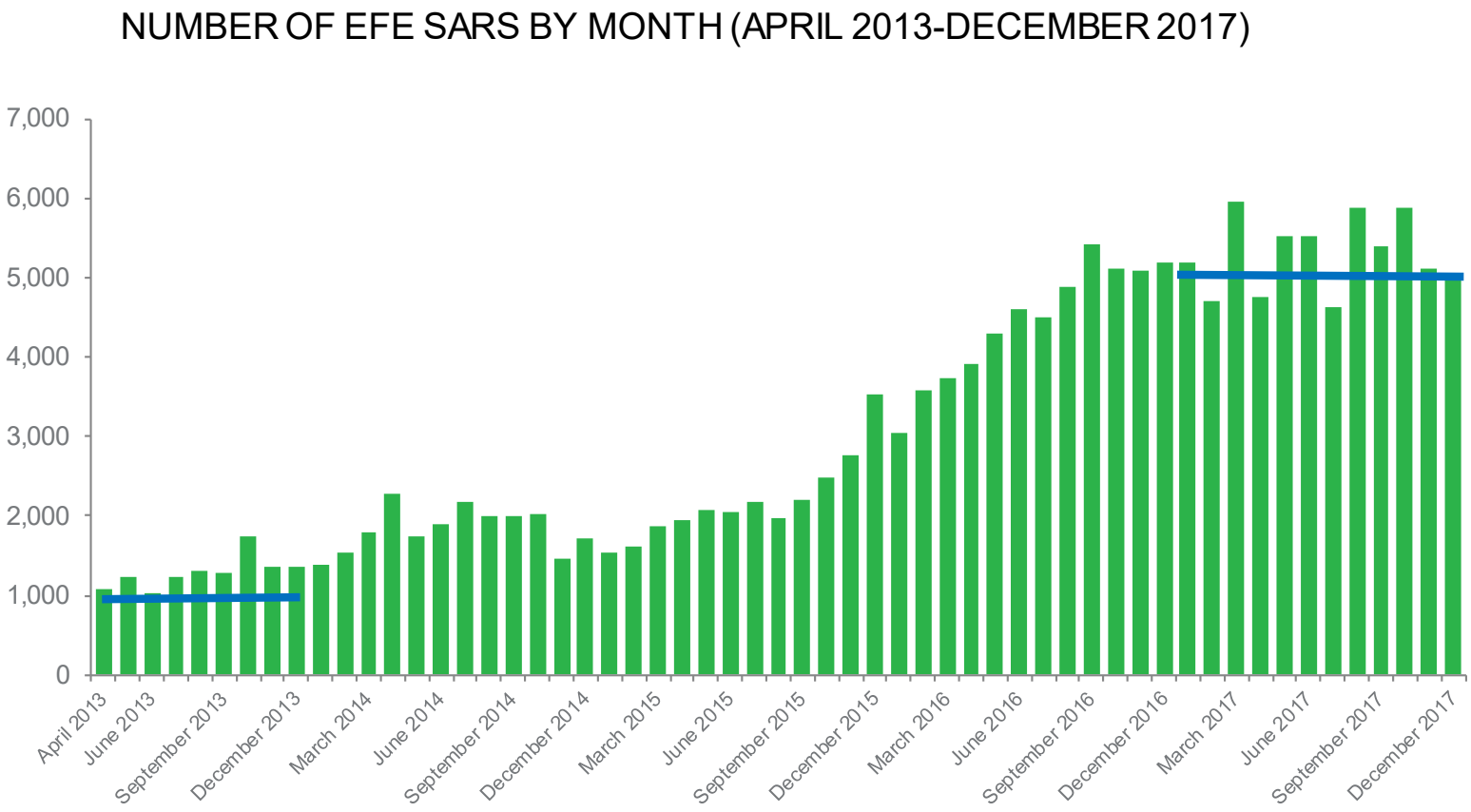
SAR filings on elder financial exploitation quadrupled from 2013 to 2017



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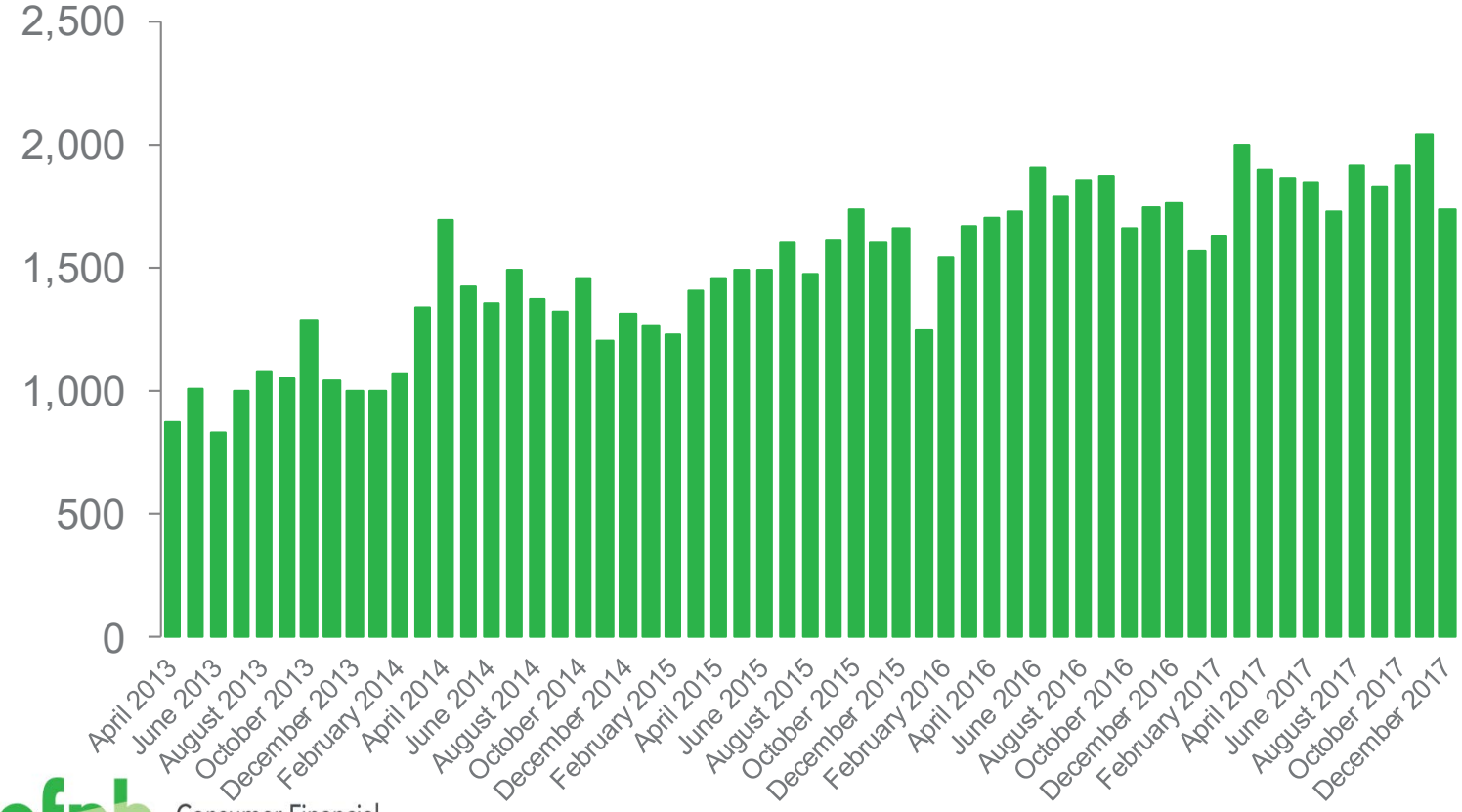
Source: Bureau's analysis of EFE SARs filed between April 2013 and December 2017 (176,690 SARs)

Depository institution (DI) SAR filings on elder financial exploitation doubled from 2013 to 2017

NUMBER OF DI EFE SARS BY MONTH (APRIL 2013-DECEMBER 2017)



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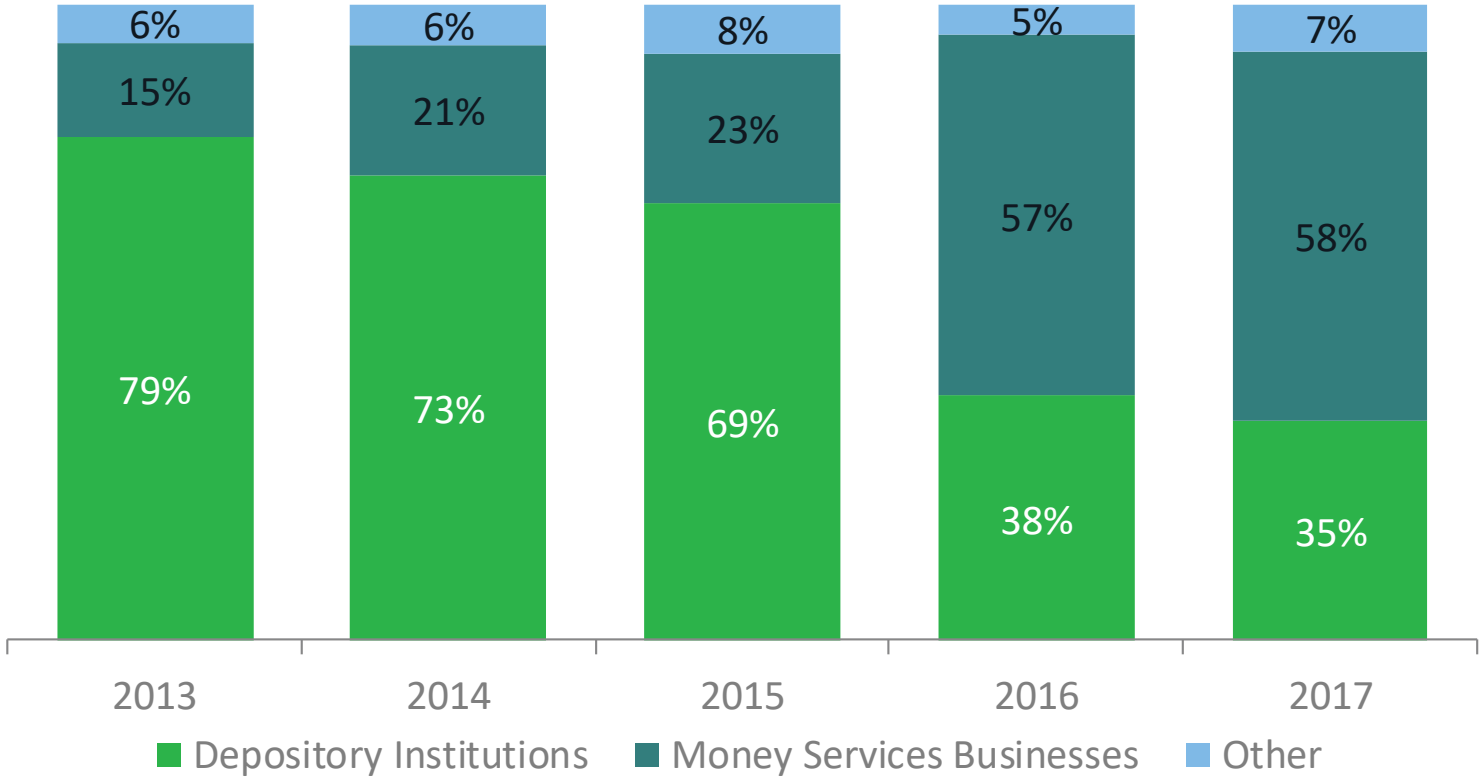
Source: Bureau's analysis of EFE SARs filed between April 2013 and December 2017 (176,690 SARs)

MSBs have filed an increasing share of EFE SARs

PERCENT OF EFE SARs FILED BY FILER TYPE (APRIL 2013 – DECEMBER 2017)



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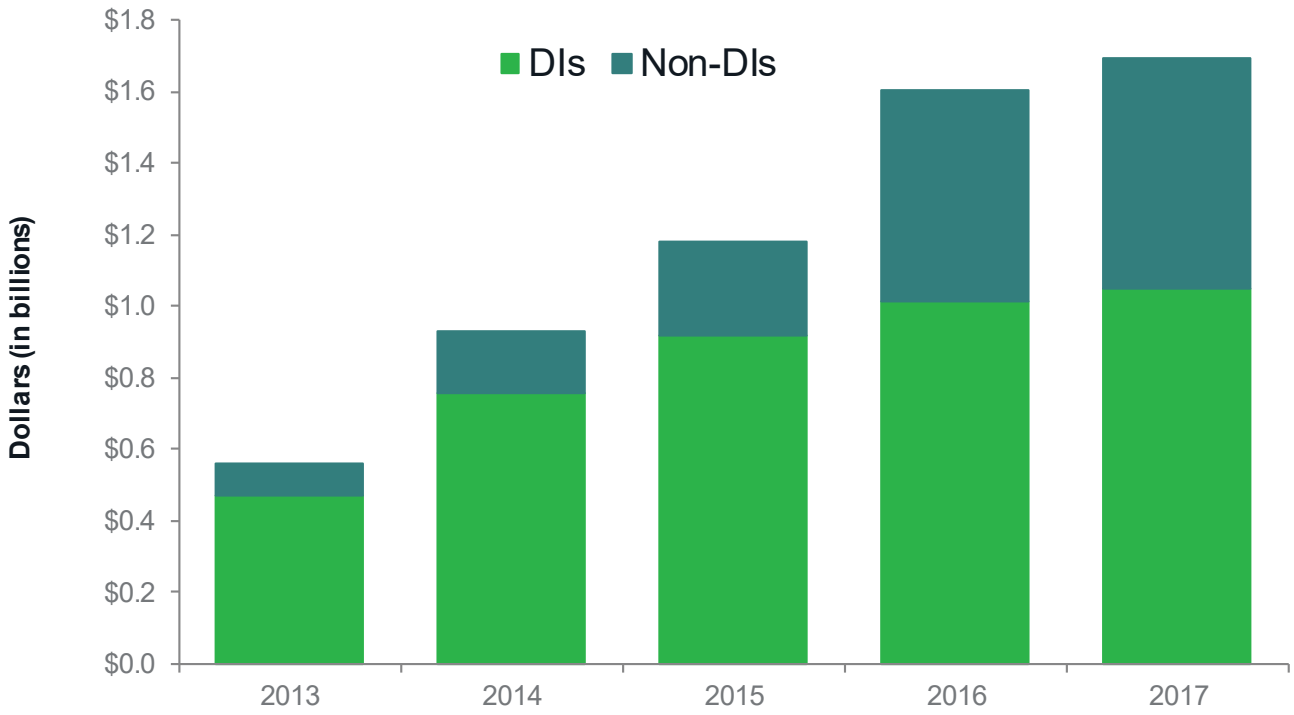
Financial institutions reported a total of $1.7 billion in suspicious activities in 2017

TOTAL AMOUNT OF MONETARY LOSSES AND ATTEMPTS REPORTED IN EFE SARs BY YEAR (IN BLLIONS)



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Source: Bureau's analysis of all EFE SARs filed between April 2013 and December 2017 (183,360 SARs).

Monetary losses are common and substantial

- Nearly 80 percent of EFE SARs involved a monetary loss to older adults and/or filers
- Older adults' monetary losses ($34,200*) were greater than filers' losses ($16,700*)
- One third of the individuals who lost money were ages 80 and older
- Losses were greater when the older adult knew the suspect ($50,200*) than when the suspect was a stranger ($17,000*)

*average

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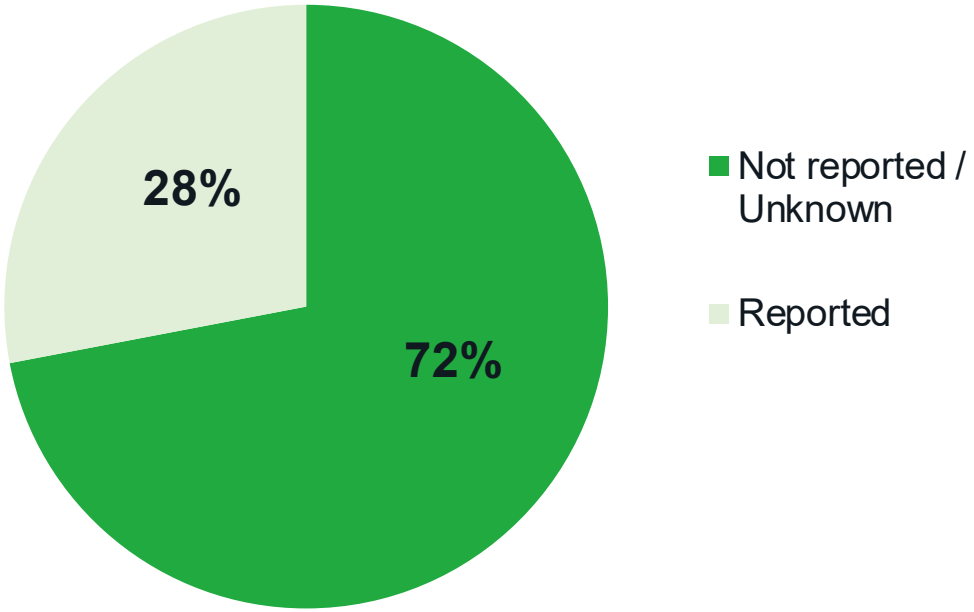
Fewer than one-third of EFE SARs indicated that the filer reported the suspicious activity to a local, state, or federal authority

PERCENT OF EFE SARS NOTING A REPORT TO A LOCAL, STATE OR FEDERAL AUTHORITY (APRIL 2013 – SEPTEMBER 2017)



Source: Bureau's analysis of a random sample of EFE SARs (1,051 SARs)

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Implications and next steps

- SARs indicate that EFE is widespread and damaging – this highlights need for strong interventions by FIs, law enforcement, social services, and involvement of policymakers
- FIs are filing more EFE SARs, but in most cases SARs **don't indicate that they are reporting EFE to law** enforcement or adult protective services – if not reporting, missed opportunity to strengthen prevention and response
- EFE SARs are useful/untapped resource for monitoring/measuring EFE

Implications, continued

- The types of suspects/activities reported by MSBs and DIs differ significantly – interventions can be tailored accordingly
- Law enforcement can mine database of EFE SARs to be more proactive in investigating cases and bringing more prosecutions

Combined Advisory Committee Roundtable: Trends in the Mortgage Market

Mark McArdle, Assistant Director
Jessica Russell, Mortgage Data Assets Program Manager
Office of Mortgage Markets

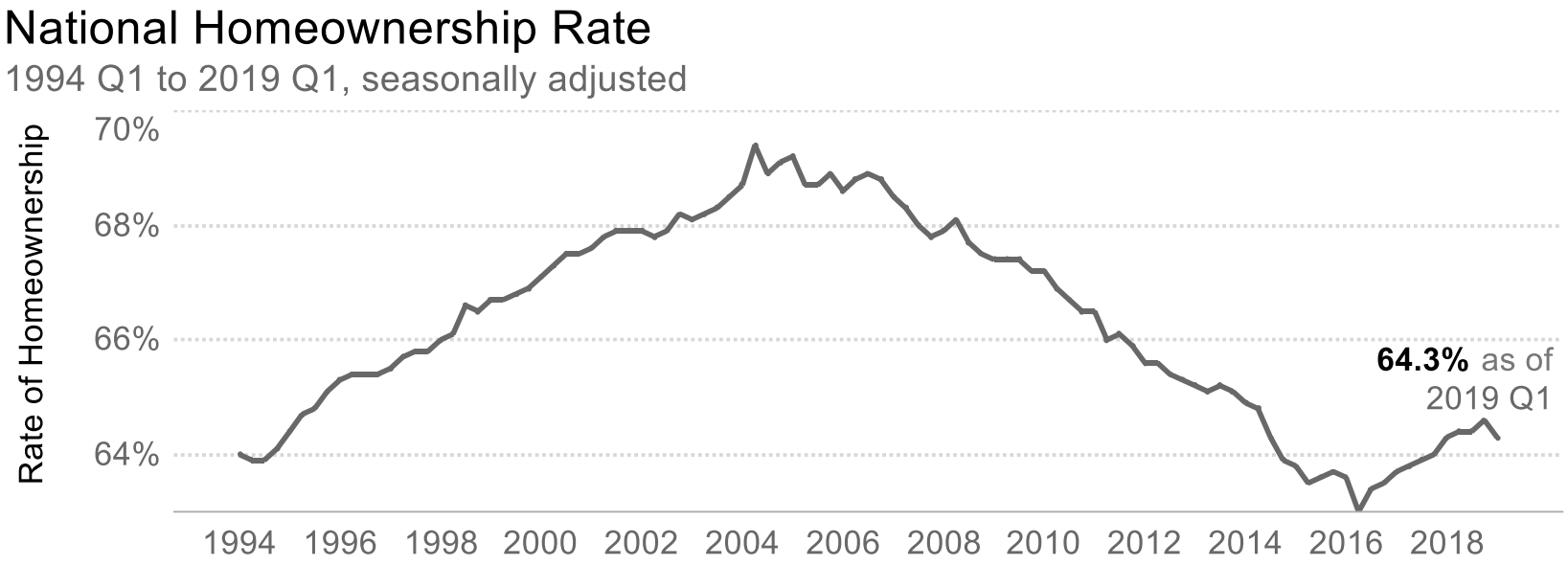
June 2019

Consumer Financial Protection Bureau

Agenda

- Macroeconomic conditions
- Home equity borrowing
- Origination & servicing trends

Homeownership recovering after low in 2016



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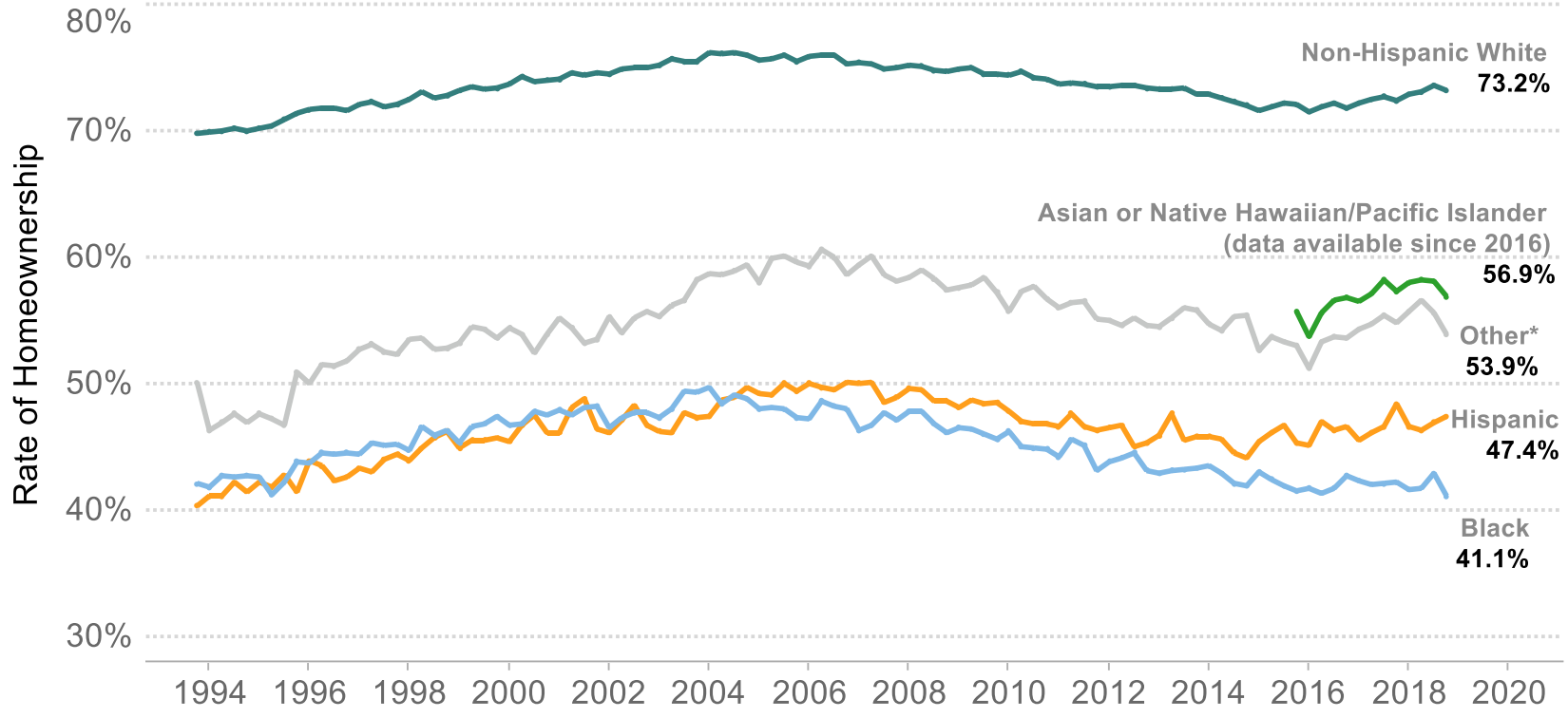
Though post-crisis gains vary by race and ethnicity

By Race and Ethnicity

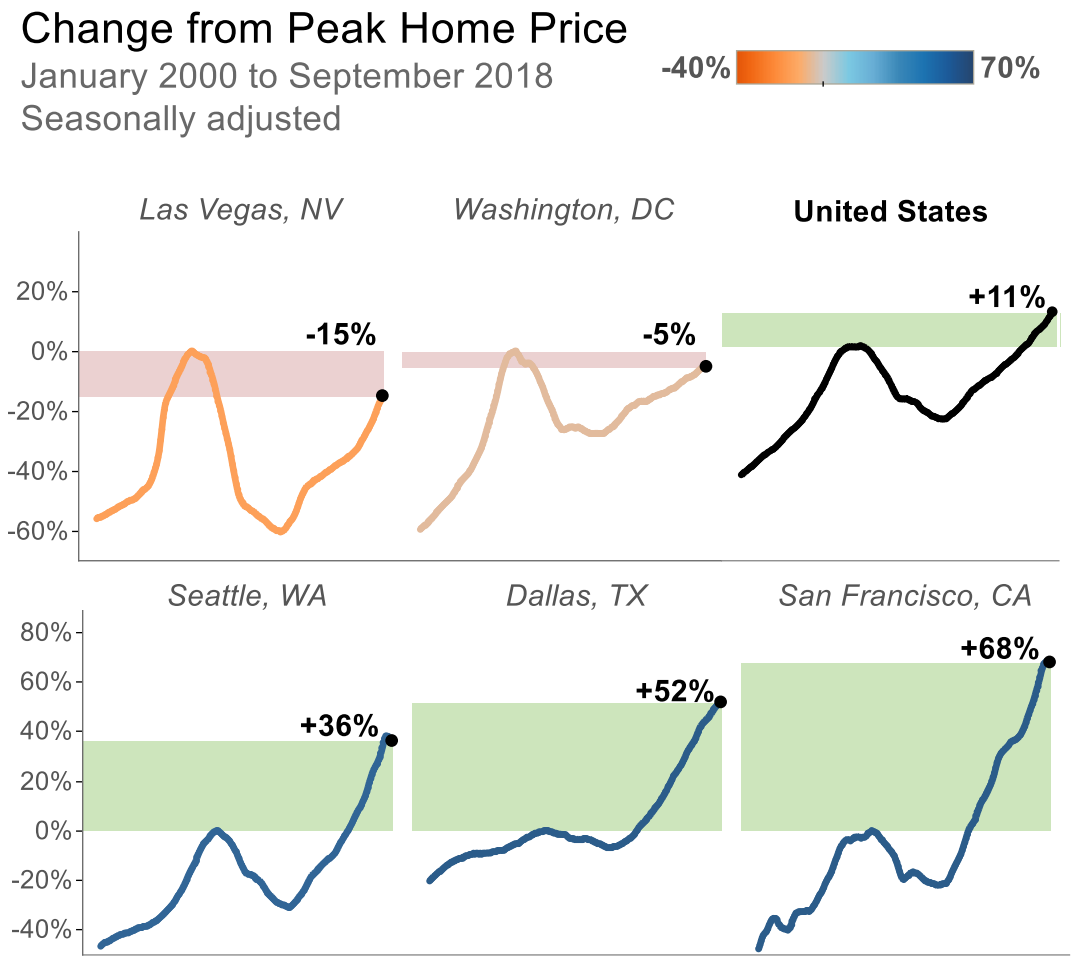
1994 Q1 to 2019 Q1, not seasonally adjusted



Data Source: US Census via Federal Reserve Bank of St. Louis; Census Current Population Survey/Housing Vacancy Survey.

***Note:** As defined by the Census Bureau, "Other" includes people who reported Asian, Native Hawaiian, or Other Pacific Islander, or American Indian or Alaska Native regardless of whether they reported any other race, as well as all other combinations of two or more races. Beginning in the first quarter of 2016, homeownership rates for Asian, Native Hawaiian or Other Pacific Islander households were tabulated separately from "Other" category.

Nationwide, home prices are 11% above prior peak

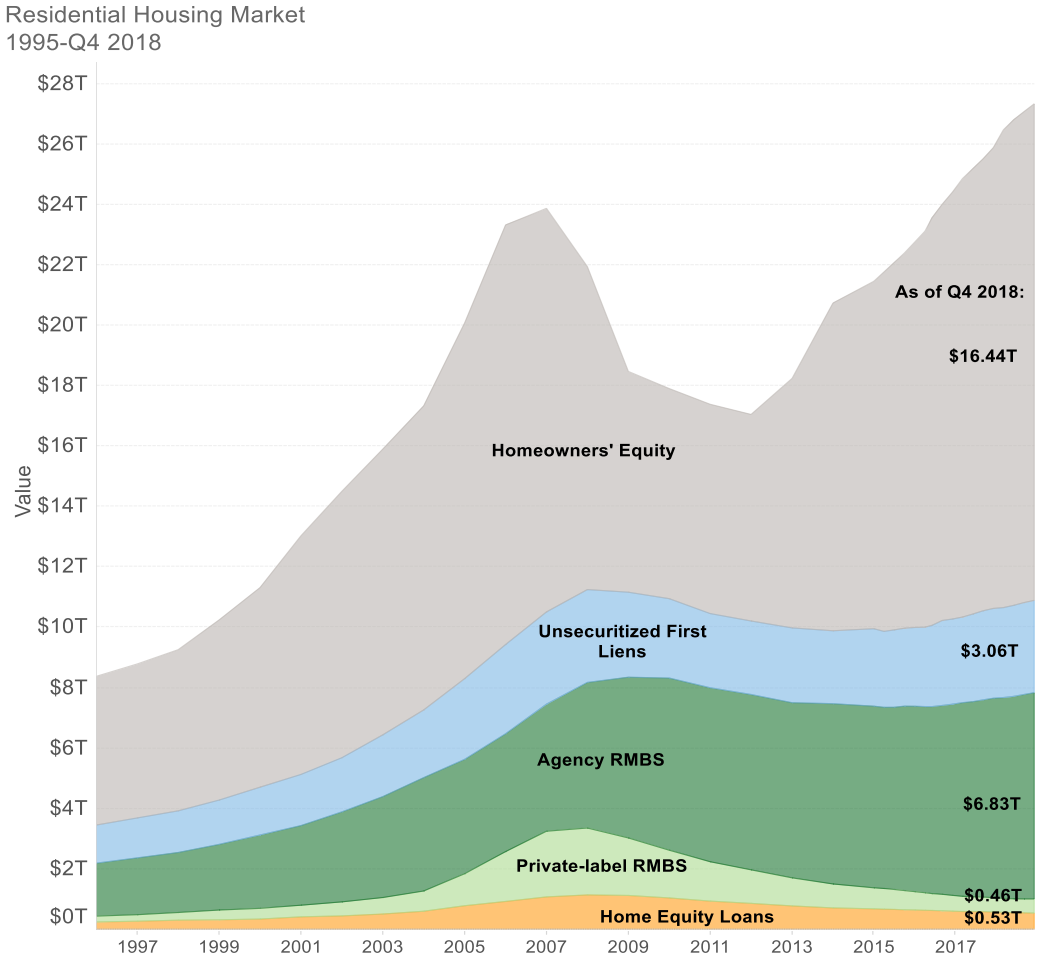


Data source: CFPB Analysis of Black Knight Financial Services data.

- Home prices have grown significantly, especially in some western markets, but slowed recently.
- The shortage of homes for sale contributed to affordability issues

Homeowners have $16.4 trillion in equity

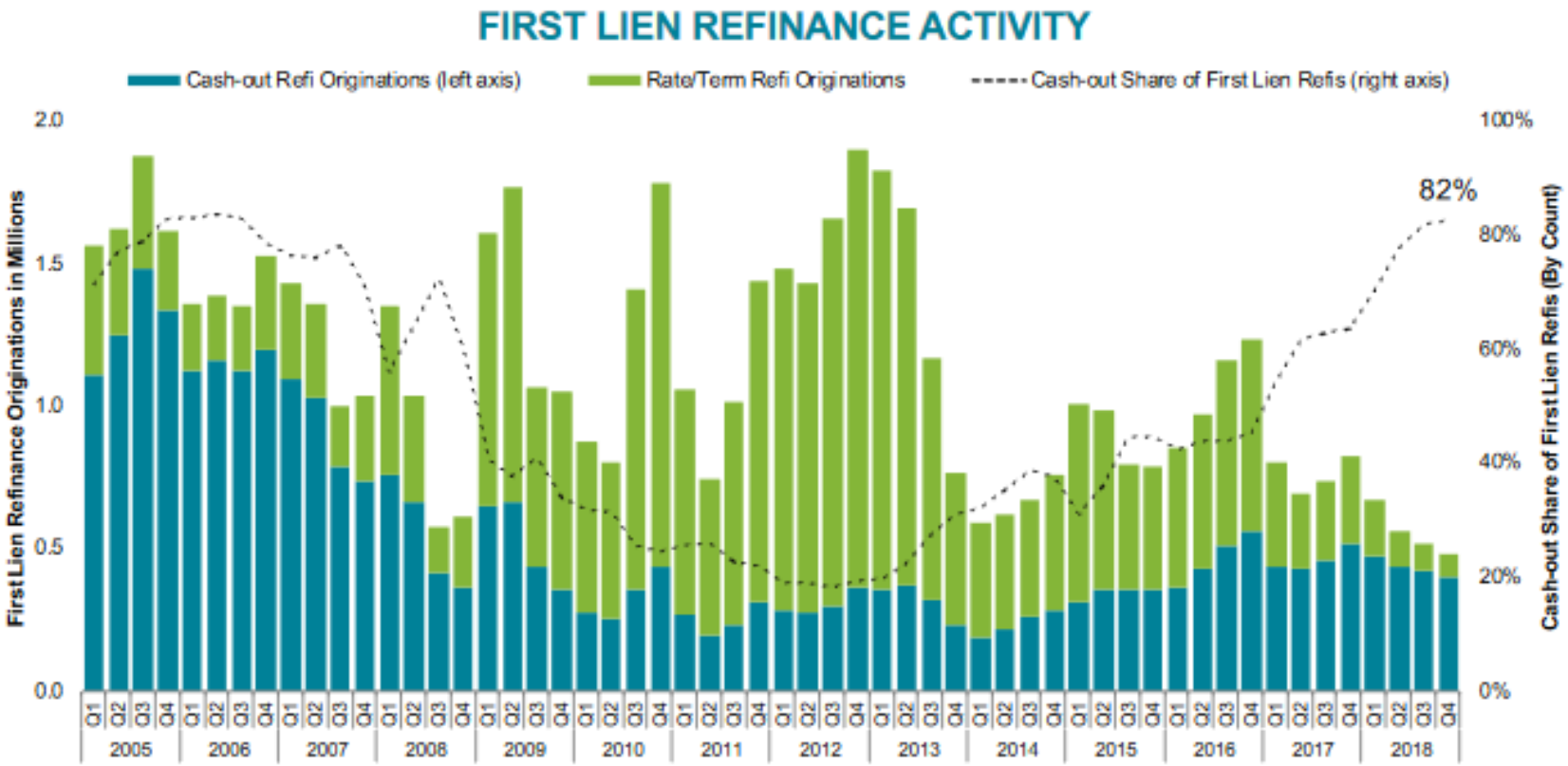
Market Size Overview



Data Sources: CFPB analysis of Federal Reserve Flow of Funds data, based on methodology from Urban Institute and Compass Point Research. Data reported annually prior to 2014 and quarterly in subsequent years.

- Black Knight estimates that over $6 trillion of that is "tappable equity"
- Yet consumers are showing restraint about using it.

Cash out refi volume far below prior peaks

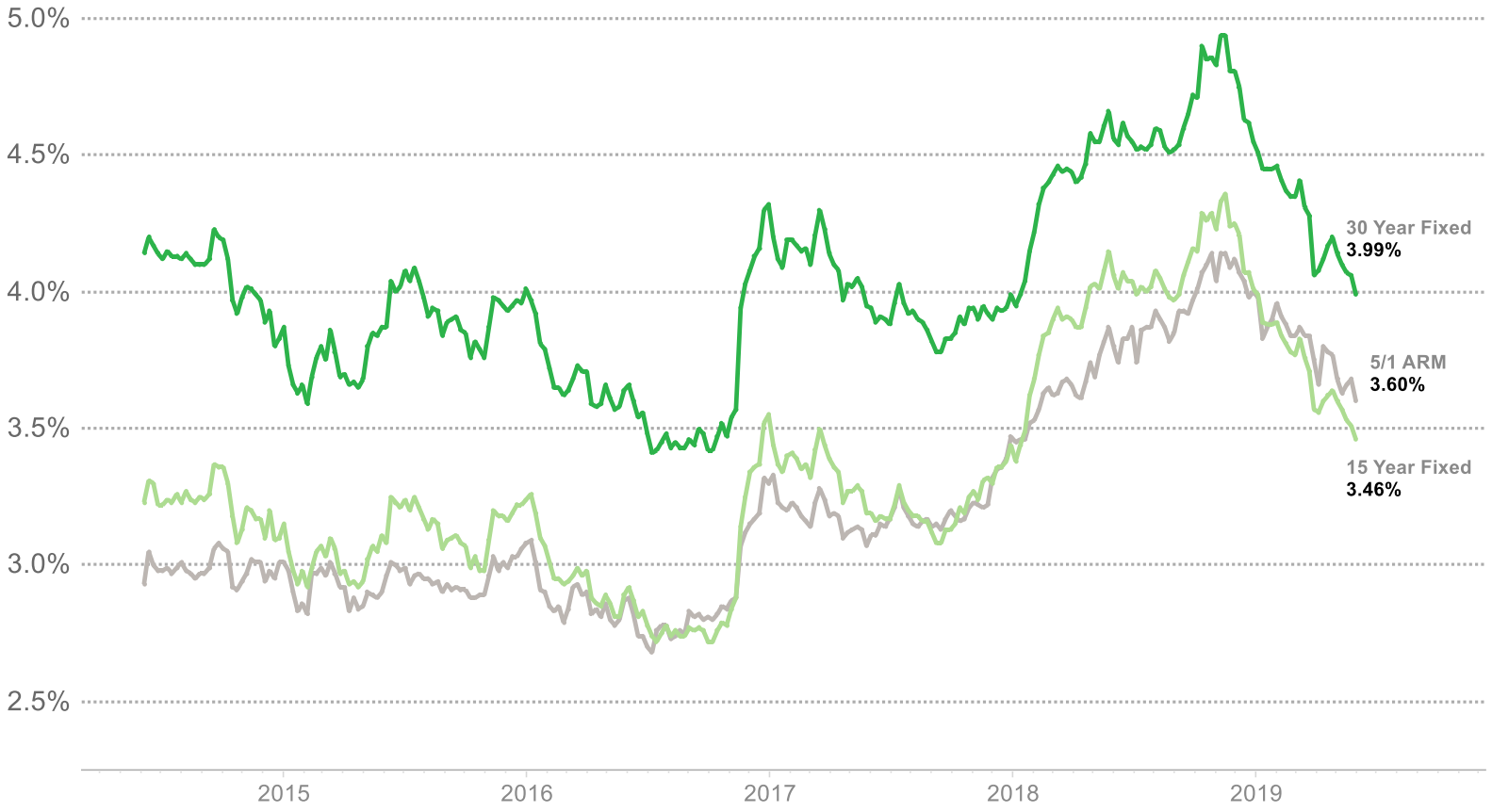


BLACK KNIGHT

Interest rates back near 4%

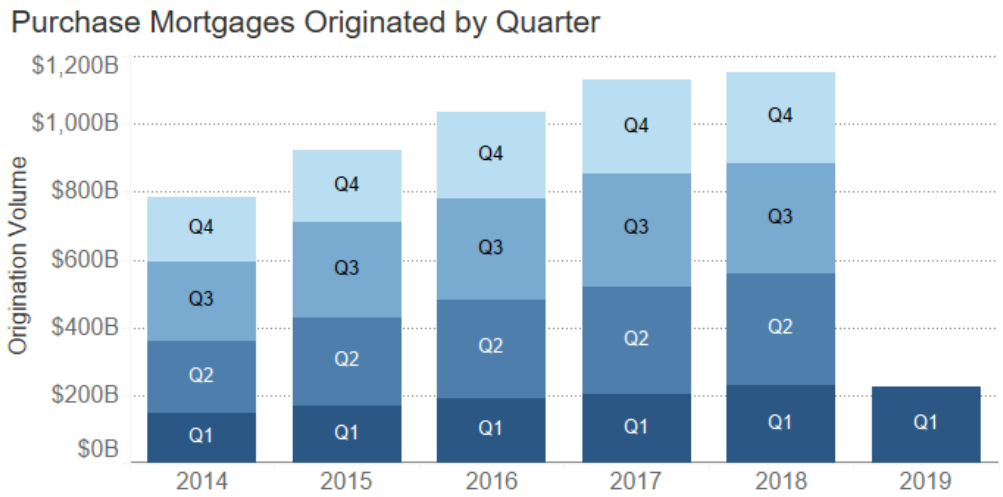
Mortgage Interest Rates

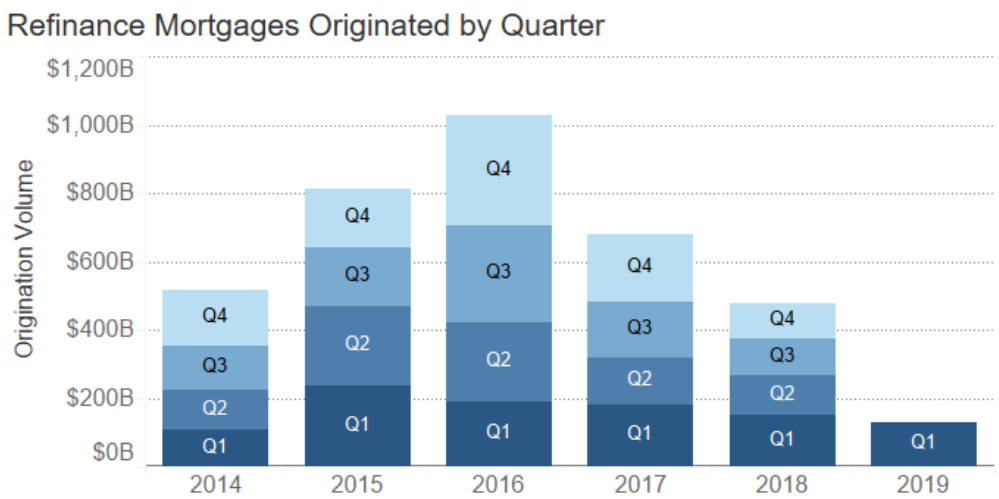
By product type from June 5, 2014 to May 30, 2019



Data Source: Freddie Mac Primary Mortgage Market Survey via Bloomberg LLC.

Shift from refi to purchase

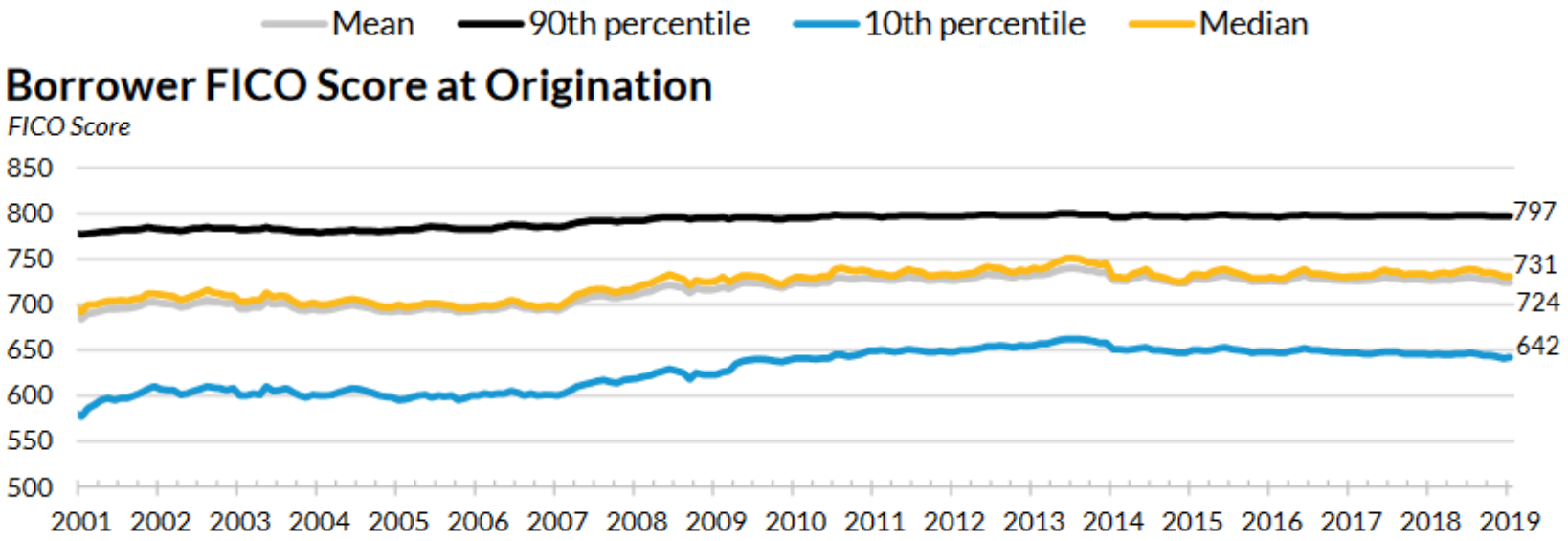




Data Source: Inside Mortgage Finance Publications, Inc. Copyright © 2018 www.insidemortgagefinance.com

- More consumers are getting mortgages to purchase a home…
- But refinance volume fell 34% in 2017 and another 29% in 2018.

Credit scores at origination remain high…



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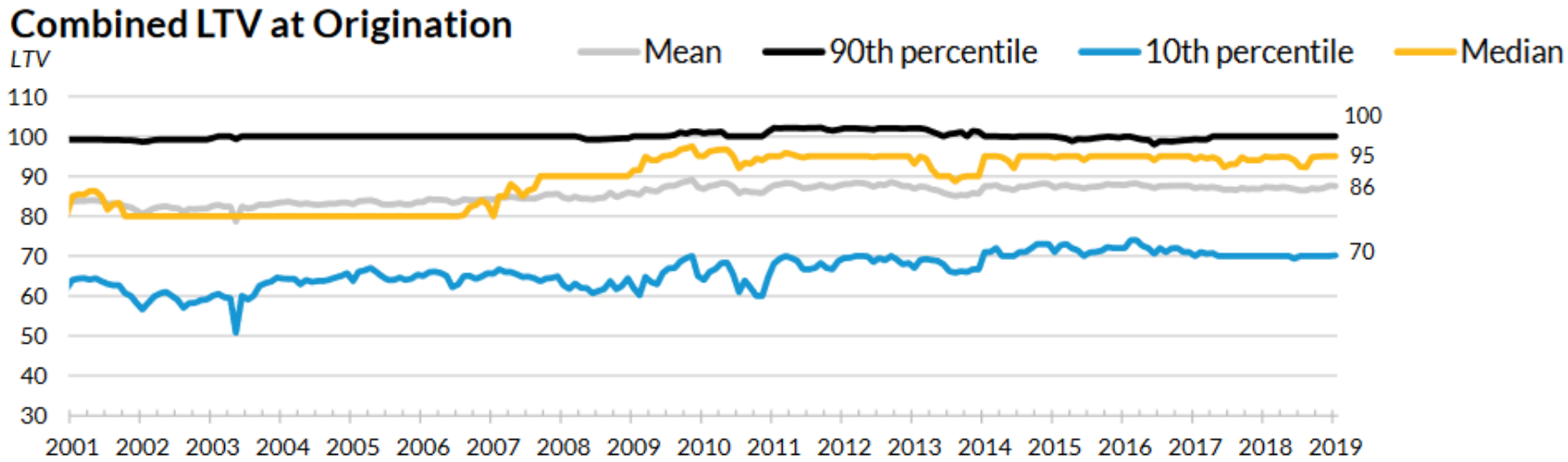
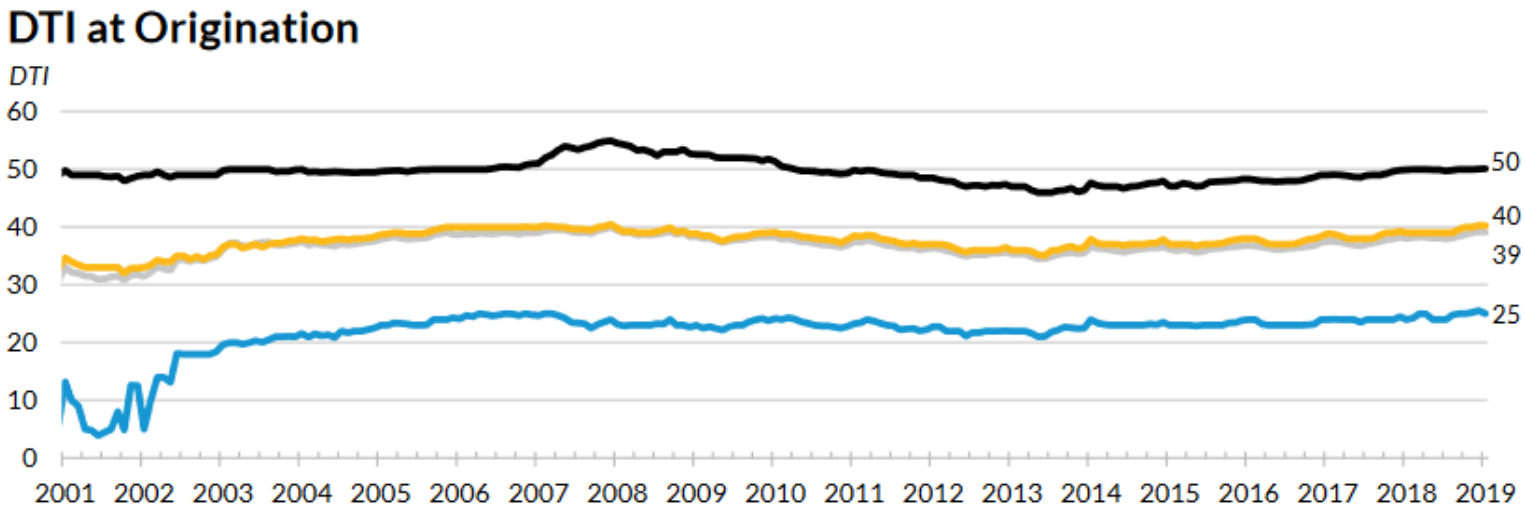
While DTI and LTV have loosened



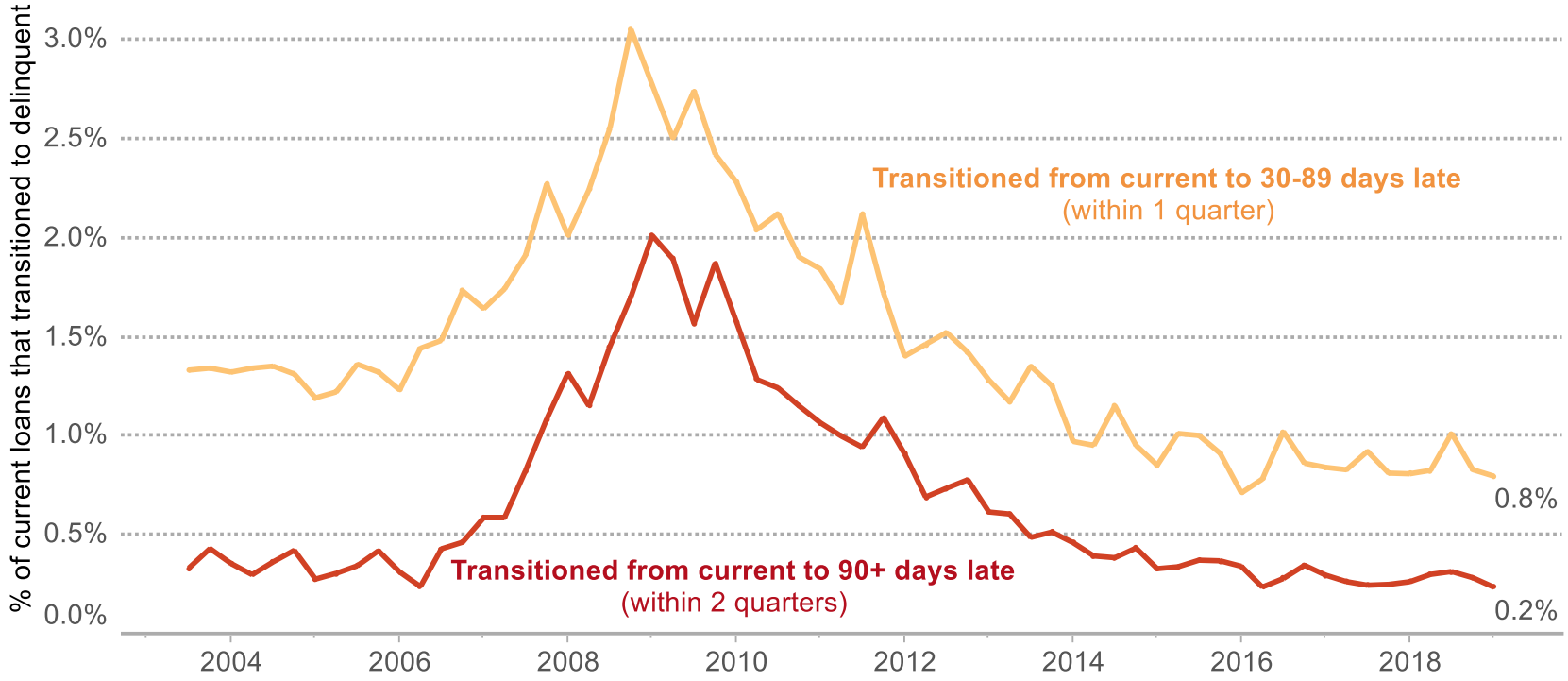


Sources: Black Knight, eMBS, HMDA, SIFMA, CoreLogic and Urban Institute.
Note: Includes owner-occupied purchase loans only. DTI data prior to April 2018 is from CoreLogic; after that date, it is from Black Knight. Data as of January 2019.

Delinquencies are near historic lows

Newly delinquent loans

Percent of loans that were current on payments but became delinquent | 2003 Q3 to 2019 Q1



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